

Chief Assistant Attorney General Miovas,

This is now the third request for a reply to the issues below. Please respond as soon as possible.

Sincerely,

David Haeg

----- Original Message -----

Subject: Fwd: RE: Grand Jury Investigation

Date: Mon, 28 May 2018 00:30:19 -0400

From: haeg@alaska.net

To: paul.miovas@alaska.gov

AAG Miovas,

You have not responded to my May 16, 2018 email (below) in which I ask you: (1) to provide the authority you are relying on to keep our public petition to the grand jury from the grand jury; (2) the authority by which DA Scot Leaders and Judge Wells stopped grand juror Ray Southwell from presenting, to the other jurors, his knowledge and reasons to believe DA Leaders committed crimes that are triable by the court; and (3) when you would be available to meet with Senator Micciche and myself to discuss the situation.

Please answer all the questions in the email and provide a date/time senator Micciche and I can meet with you.

Sincerely,

David S. Haeg
(907) 262-9249 or (907) 398-6403

----- Original Message -----

Subject: RE: Grand Jury Investigation

Date: Wed, 16 May 2018 14:29:21 -0400

From: haeg@alaska.net

To: paul.miovas@alaska.gov

Cc: "Peter Micciche" <senator.peter.micciche@akleg.gov>

Mr. Miovas,

Can you please give me the authority that allows the Department of Law or you to decide what goes to the grand jury in a public petition to the grand jury?

All authority I found holds that the greatest power of the grand jury, and very need for its existence (as laid out in detail by the framers of Alaska's constitution, documented in the AK Judicial Council's report "*The Investigative Grand Jury in Alaska*"), is to investigate wrongdoing by government officials without any restrictions. If the you or the Department of Law ("the government") is allowed to dictate and/or restrict what is presented, this violates the whole intent of the grand jury to be investigators of the government to protect the public.

You state you are willing to "vet" our concerns, but isn't that the job of the grand jury and not you?

I, and I believe all the petition signers, would also like to know the authority District Attorney Scot Leaders and Judge Jennifer Wells relied on to stop Kenai grand juror Ray Southwell from presenting, to the other grand jurors, his knowledge and reasons to believe District Attorney Scot Leaders committed crimes that are triable by the court. Especially when an Alaskan Statute states this:

AS 12.40.040. Juror to disclose knowledge of crime. If an individual grand juror knows or has reason to believe that a crime has been committed which is triable by the court, the juror shall disclose it to the other grand jurors, who shall investigate it.

And Article I, Section 8 of Alaska's constitution states this:

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

You state "*the DOL simply cannot present the Petition you and your colleagues have submitted in its current form.*" What authority do you rely on to make this statement? I cited the authority that allows public petitions to the grand jury.

Because we are the public, and not attorneys, it stands to reason our petition may be inexpertly drawn, and have numerous other flaws. But it's essence is very clear, we the public ask for the grand jury investigation into Alaska's judicial system, starting with the fact that District Attorney Scot Leaders and Judge Jennifer Wells illegally prevented Kenai grand juror Ray Southwell from presenting, to the other jurors, his knowledge and reasons to believe triable crimes were committed by "District Attorney Scot Leaders, judge investigator Marla Greenstein, Tropers, and Alaska judges". We believe the crime by DA Leaders and Judge Wells in stopping grand juror Southwell is enough to justify the start of a grand jury investigation. Our hope is that the grand jury would then wish to examine the evidence that grand juror Southwell was illegally prevented from presenting to the other grand jurors. The grand jury may decide to expand their investigation

beyond that. In other words, we believe (and have cited authority that this is in fact the case) it is up to the grand jury to decide what they investigate, not you or the Department of Law.

I really have no problem meeting with you. But after amassing such overwhelming evidence of corruption and active suppression of this by the government (see specific examples in my May 15, 2018 email to you - below) I know that if you are not already under pressure to cover up, you soon will be. And it may actually be what you believe is standard operating procedure to us is cover up - exactly in how we are now viewing this issue of how the grand jury is supposed to physically receive petitions from the public. We believe you are bound to give the grand jury the petition no matter how screwed up it may seem to you. You don't believe this.

My work season begins very shortly and it will be difficult then for me to meet. Are you willing to come to the Kenai in the next few days to meet? Senator Micciche just call last night to inform me he is back and wanting to help. I would like him to attend any meeting we might have.

David Haeg
(907) 262-9249 or (907) 398-6403

On Tue, 15 May 2018 17:54:15 +0000, "Miovas, Paul J (LAW)" wrote:

Mr. Haeg,

You have stated: "Department of Law personnel with more authority than you have already made the decision not to investigate - and that any government "investigation" may be nothing more than a ruse to further frustrate justice that has already been denied for over 14 years . . ."

What I have been offering is not a "ruse," and there has been no pressure placed upon me by anyone in my chain of command to force any sort of preordained outcome in this matter (your request to seek an investigative grand jury). However, the DOL simply cannot present the Petition you and your colleagues have submitted in its current form.

I am still completely willing to vet your concerns further, as I have been offering to do, to see if there is an appropriate way to navigate this issue and present something to the grand jury to see if they would like to conduct an investigation. I predict that this will not assuage your concerns, and if that is true, I would encourage you to consider petitioning the court to request some form of relief.

Respectfully,

Paul J. Miovas, Jr.
Assistant Attorney General
Chief - Office of Special Prosecutions
(907)269-6250

From: haeg@alaska.net [mailto:haeg@alaska.net]
Sent: Tuesday, May 15, 2018 8:20 AM
To: Miovas, Paul J (LAW)
Subject: Re: Grand Jury Investigation

Mr. Miovas,

Thank you for your response, it sounds very genuine and brings up important points.

I have had additional discussion with numerous petition signers, which included the following key issues:

1. On January 20, 2010, as specifically requested by David Heller (then the #2 top FBI official in all Alaska - who reviewed my evidence of corruption and conspiracy between Alaska's prosecution and my own defense attorneys) that I do so, I wrote letter asking for a personal meeting with Alaska's Attorney General, the Director of the Alaska State Troopers, and the Alaska Bar Association. Mr. Heller stated I could tell everyone it was he who thought such a meeting was necessary, and I did so. On March 1, 2010, Alaska's Deputy Attorney General wrote me a letter stating:

"This letter is to inform you the Department of Law will no longer be responding to your correspondences. I have personally reviewed the allegations you have made and have found them to be without merit. Hence, Mr. haeg, it is time to accept responsibility for your conduct and move on."

2. On January 22, 2015, after 5 years of trying, I managed to get a personal meeting with the Director of the Alaska State Troopers, Colonel Steve Bear. During this meeting we gave Colonel Bear the tape recording of prosecutor Scot Leaders, **prior to my trial**, talking with the state's witnesses about how no wolves had been killed in my guide area and talking about how the state's map had been falsified to convict me of this.

We presented Colonel Bear the evidence that at my trial the state's witnesses, knowing it was false testimony when given, testified to my jury that the wolves were killed in my guide area. We presented Colonel Bear the evidence that Mr. Leaders, knowing it was false when he did so, presented the false map to my jury as proof I killed the wolves in my guide area to benefit my guide business.

We presented Colonel Bear proof that my evidence, proving I killed the wolves where the state told me to, had been corruptly removed out of the official court record by my trial judge before my jury could see it (the evidence disappeared out of the court record while the record was in my trial judge's possession, with the only thing remaining in the court record is the evidence's cover letter - proving the evidence had been properly admitted and then corruptly removed).

We presented Colonel Bear the evidence that 28-year sole Alaska judge investigator Marla Greenstein falsified contacting all four witnesses I had given her during her "investigation" of my complaint that my trial judge was chauffeured full-time during my trial by the state's main trial witness against me; completely falsified what the witnesses would have testified to had they been contacted; refused to provide Superior Court Judge Stephanie Joannides with her investigative report as ordered by Judge Joannides (Joannides tried to investigate how Greenstein could claim, in a tape-

recorded statement on why she dismissed my complaint, to have contacted all 4 witnesses when all 4 witnesses had sworn out affidavits that Greenstein had never contacted them and that Greenstein falsified what they would have testified had they been contacted.); and no one did a thing when Judge Joannides certified the evidence of Greenstein's and my trial judge's corruption and sent it to the Department of Law, the Alaska Court System, the Alaska Bar Association, the Alaska Commission on Judicial Conduct, and even to the Ombudsman.

We presented Colonel Bear the evidence that, when I filed a complaint to the Alaska Bar Association of what she had done, attorney Greenstein not only falsely claimed in a written document under penalty of perjury that she contacted witnesses I had given her, but also falsely claimed under penalty of perjury that she contacted my trial attorney Arthur Robinson. Robinson, when subsequently questioned under oath about this during a deposition, swore that investigator Greenstein had never contact him and stated that even he remembered the main trial witness against me chauffeuring my trial judge during my trial. This means that every one of the 5 witnesses that investigator Greenstein swears to have contacted during her investigation have sworn under penalty of perjury that she never contacted them and that she falsified the testimony they would have given had they been contacted. The Alaska Bar Association never did a single thing to investigator Greenstein for either falsifying an official Alaska Commission on Judicial Conduct investigation or for committing perjury to cover up.

We presented Colonel Bear the sworn testimony of my own private attorneys that the reason they didn't defend me was that prosecutor Leaders would harm them if they did and their sworn testimony that they in fact were harmed when they tried to do so.

During our 5 hour meeting (also attended by my wife Jackie and by witnesses who Greenstein falsified contacting and whose testimony she falsified), Colonel Bear asked all the right questions, was visibly shaken at the extent and quality of the evidence, promised he would investigate, and promised we would have another meeting in 2 weeks to discuss his findings. On that day I would have bet the lives of my wife and daughters on the honesty and integrity of Colonel Bear.

After 2 weeks Colonel Bear asked for another 2 before meeting with us. After that 2 he asked for 2 more. After more than 6 months of this Colonel Bear finally had his secretary call and tell me that he could not talk to us until after he had talked to his own attorney. We have now been waiting for over 3 years without word from him.

3. When we presented the evidence of what judge investigator Greenstein had done to FBI section Chief Doug Kein, he stated:

"It is obvious why Greenstein falsified her investigation. No one would believe you got a fair trial otherwise."

4. When we confronted my trial attorney Robinson on how I could be so easily framed without any backlash, we tape-recorded Robinson stating this: *"The point is that you are not in the fold. The group they protect and don't do anything against. It's the good old*

boys system. It's the American way. So in the good old boy network you have not only the prosecutors and the cops, but you also have the judges and the magistrates."

5. During meetings with FBI Section Chief Colton Seale on the above, set up and attended by Don Young's District Director Greg Kaplan, Seale stated: *"We had had a number of complaints nearly identical to yours. In every case our investigation expanded rapidly and implicated nearly everyone."*

6. In December 2017/January 2018, after I was tased 10 times in Anchorage Superior Court to stop me from presenting the false trial map and the tape-recording of prosecutor Scot Leaders discussing, prior to trial, how it had been falsified to convict me, we had meetings (Senator Peter Micciche's aide Konrad Jackson attending some) with my trial attorney Robinson to ask him if Leaders had violated Robinson's pretrial discovery request by not providing, prior to trial, a copy of the map used against me at trial and/or a copy of the pretrial tape-recording of Leaders and state witnesses discussing how the map was falsified to convict me. Robinson confirmed Leaders violated his written discovery request by not ever providing the 2 items. Robinson is tape-recorded stating:

"Since I was not provided a map copy, so I could check it for accuracy, I cannot be blamed for the jury's use of this map to convict Mr. Haeg and I cannot be blamed for Judge Murphy's use of the map's falsified GMU 19-C/19-D boundaries to sentence Mr. Haeg. Since I was not provided a tape-recording copy prior to trial or during trial, I did not know there was evidence of an intent to falsify the location of where the wolves were taken. Because of Mr. Leaders failure to abide by my discovery request this evidence was withheld and I only found out about it many years after trial."

When I asked what he would have done had he been provided the required discovery Robinson replied:

"I would have argued you didn't get a fair trial because they were using false evidence to convict you. I could have proved they were intentionally lying at trial. And you would have had evidence of their motive to do so."

7. After examining the evidence in this case, this is long-time Alaskan attorney Dale Doifka's August 25, 2010 sworn testimony before Superior Court Judge Stephanie Joannides with AAG Andrew Peterson (now Superior Court judge) cross-examining:

"Never has there been a case in history that cries out more for outside intervention because you have been to all the major players. Other than just an outright payoff of a judge or jury it is hard to imagine anyone being sold down the river more. The judge riding around with the Trooper and commandeering vehicles. I mean that smelled to high heaven. Your case has shades of Selma in the 60's, where judges, sheriffs, & even assigned lawyers were all in cahoots together. The reason why you have still not resolved your legal problems is corruption. I can tell you exactly what happened. In the early stages you were one of the first that I realized it was corruption. At first I thought it was ineptness. Over time in this journey with you here's a corrupt case, here's a

corrupt case, and here's a corrupt case. Now here's what happens when they come up on appeal. You have a [Appeals] Court sitting there looking at a pile of dung & if they do right by you & reveal you know you have the attorneys going down, you have the judges going down, you have the troopers going down. Everyone in your case has had a political price to pay if they did right by you. You had a series of situations which everyone was doing things to protect everyone rather than you because there was a price to pay. If they did right by you the DA would take it out on them in other cases. I walked over here & lawyer A says my God they're violating every appeal rule ever. How can it be like this? I think almost everyone goes back to that original seminal issue that how the hell did this case go on when it appears to lay people & to me a lot of it was built on a lie in a sworn affidavit? You're just one of many. It's absolute unadulterated self-bred corruption. It will get worse until the sleeping giant [public] wakes up. Everyone is scared & afraid. [R.00523-3105]

In light of the above, indicating Department of Law personnel with more authority than you have already made the decision not to investigate - and that any government "investigation" may be nothing more than a ruse to further frustrate justice that has already been denied for over 14 years, we reaffirm our demand that you present the petition and cover letter, first given to the Kenai District Attorney's Office on May 8, to the Kenai grand jury when they next meet in the Kenai Courthouse, likely 9 am on May 16, 2018. The defense of our constitution demands a grand jury, made up of common citizens, hear and weigh our petition and evidence without further delay.

To address your possibly valid concern the petition is too vague, we formally ask that, along with the petition, you submit a letter to the grand jury stating that David Haeg (907-262-9249 or 907-398-6403), Ray Southwell (907-202-6173), and yourself are at their disposal to answer any questions they may have and to provide any evidence/testimony they may wish to see or hear. You are guessing at what the grand jury will need to make a decision on whether to investigate and/or to proceed. The grand jury will know exactly what the grand jury needs to make a decision on whether to investigate and/or to proceed.

We are confident that the citizens on the grand jury will know right from wrong, and have absolute trust that their compass, if not replaced with a government compass, will guide their actions so they can dispense justice.

As documented in the Alaska Judicial Council's report "*The Investigative Grand Jury in Alaska*" :

The Alaska Constitution addresses grand juries in Article I, Section 8:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury...The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

The legislative history of the clause speaking to the investigative function suggests that this function was very important in the minds of the delegates to the constitutional convention, and that the scope of this power was intended to be broad.

The Committee on the Preamble and Bill of Rights of the Alaska Constitutional Convention submitted a proposal entitled "Grand Juries, Indictments and Information". The clause that addressed the investigative function read:

...the power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended.

The commentary of the section stated: "The grand jury is preserved, for all purposes, particularly for investigation of public officials."

I think a grand jury can investigate anything, and it is true that there is little protection against what they call in the vernacular, a runaway grand jury, but in the history of the United States there have been few runaway grand juries, extremely few, and I think that the broad statement of power that Mr. Barr asked for is proper and healthy. (Hellenthal, 1406) This suggestion was adopted.

A signer of both the Declaration of Independence and the United States Constitution and later an Associate Justice of the U.S. Supreme Court, James Wilson, made this observation in 1791: "The grand jury are a great channel of communication, between those who make and administer the laws, and for whom the laws are made and administered. All the operations of government, and of its ministers and officers, are within the compass of their view and research. They may suggest publick improvement, and the modes of removing publick inconveniences: they may expose to publick inspection, or to publick punishment, publick bad men, and publick bad measures."

A 1965 Fifth Circuit case stated: "To me the thing [is] this simple: the Grand Jury is charged to report. It determines what it is to report."

Grand jury recommendations in Alaska are limited only by the requirement that they concern "public safety and welfare." Since no restrictions on content occur in Alaska law, grand jury reports may presumably name names, recommend referral to governmental or nongovernmental bodies, allege indictable conduct and be published whether or not accompanied by indictments.

Rule 6(e) mandates the oath for grand jurors. The current oath reads:

"You and each of you as members of the grand jury for the State of Alaska, do solemnly swear that you will diligently inquire and true presentment make of all such matters as shall be given to you for consideration, or shall otherwise come to your knowledge in connection with your present service..."

The oath clearly includes the duty to investigate "matters" coming to the knowledge of the grand jury independently of the charges presented by a prosecutor.

The clear intent of the drafters of the state constitution was to provide the grand jury with broad investigative powers. The language of state statutes is equally broad and no case law in Alaska defines the appropriate subject matter or scope of grand jury investigations.

Mr. Miovas, if you do not intend on honoring our request to immediately give the petition to the Kenai grand jury we formally ask that you let us know. If you in fact do give the petition to the Kenai grand jury we also formally ask that you let us know.

Respectfully,

David S. Haeg

On Mon, 14 May 2018 01:52:22 +0000, "Miovas, Paul J (LAW)" wrote:

Mr. Haeg,

I understand your position. I am not in physical possession of the original petition, I have only been provided a scanned copy of it thus far. One function my unit serves is to handle matters when other offices have a potential conflict, and since we understand that you have raised possible concerns regarding the Kenai District Attorney's Office, the matter was forwarded to me to determine how to best proceed. I suspect the original copy of the petition you dropped off last week is en route to my office in Anchorage.

As I noted above, you and your colleague's desires are understood - you are requesting that the petition you prepared be presented to the grand jury for their consideration. I would respectfully ask you to consider a few practical matters. First, the grand jury only meets on certain days and, as the legal advisor to the grand jury, the prosecuting attorney's office schedules matters that will be presented to the grand jury. Likewise, the prosecuting attorney "(3) shall, when required by the grand jury, **prepare indictments or presentments** for them and attend their sittings to advise them in relation to their duties or to examine witnesses in their presence." See AS 12.40.070.

Additionally, all matters considered by the grand jury are strictly secret and may not be disclosed to any party without an order from the court. See *Alaska Rule of Criminal Procedure* 6(l). I only mention this because I fear that this may frustrate you and your colleagues in the future because even if we can figure out the best way to present your concerns to the grand jury, you will likely not be entitled to know what the grand jury has elected to do or possibly even if it has decided to investigate without a court order permitting the disclosure of that information.

Finally, the grand jury itself is an arm of the judicial branch (See *O'Leary v. Superior Court*, 816 P.2d 163 (Alaska 1991)(O'Leary's contention that the grand jury is not a part of the judicial branch of government seems plainly wrong. Grand juries have traditionally been viewed as an arm of the court system)), but the executive branch is charged with the role of acting as its legal advisor. See AS 12.40.070. I mention this because I want you to understand you may have another option available to you. As I explained earlier last week and further below, my office is willing to try to assist in this matter, but if you are not inclined to work with me, you may wish to contact the court system, as the grand jury is technically part of the judicial branch.

When we spoke earlier this week, what I meant to convey, at this initial phase of your request, was that I (or one of the attorneys in the Special Prosecutions Unit), acting as the "prosecuting attorney" in this matter, would investigate the procedural background leading up to the request being made by the petition and recommend the best course of action on how to proceed. I fully recognize the inherent power of the grand jury to conduct an investigation, but it is my department's legal obligation to act as their advisor.

As you and I discussed, the grand jury as a whole body is the one that gets to decide whether or not to convene an investigative grand jury. Imagine if we simply provided a copy of your petition to the grand jury without any further instruction or guidance. Respectfully, the petition itself would not give them sufficient information to make any decision. The petition does a very thorough job of articulating the history and authority for investigative grand juries in Alaska, but it really doesn't inform the grand jury about the history of your matter or specifically what you would like them to investigate. It is true that the petition states that you and your fellow petitioners are requesting an investigation "Starting with Former Kenai Grand Juror Ray Southwell's Evidence," but the grand jury will not have any understanding of this in a vacuum. And whether or not they will even entertain hearing any witnesses or evidence will be one of the first threshold questions that needs to be answered.

If this is going to proceed, we will need to figure out a way to give the grand jury some context regarding why you are requesting an investigation. This is why I asked about some specific details when we spoke - and your example and explanation regarding potential perjury was precisely what I believe we will need to articulate for the grand jury for the body to make a threshold decision concerning whether they would like to investigate. Indeed, even if you don't want the DOL to help at this initial stage, we will need to figure some other procedure out as **somebody** has to advise and instruct the grand jury concerning its options. I fully understand that one of your requests is to allow the grand jury to decide if they want to appoint a special investigator. But even if that is a legal option for them (which I am not commenting on one way or another since I have not done the legal research yet), they will need someone to advise them regarding their options and the process to be followed - and under the current law, the prosecuting attorney would be that advisor.

I asked you to give me a chance to build some rapport with you and your colleagues so I could try to help navigate this process. I ask for that chance again. As the representative of the state, I am not trying to dissuade or disregard your group's request in any way. I am merely asking that you at least work with me to try to figure out the best way to present your concerns so that the grand jury can make an intelligent and informed decision.

Respectfully,

Paul J. Miovas, Jr.
Assistant Attorney General
Chief - Office of Special Prosecutions

On May 12, 2018, at 8:28 PM, haeg@alaska.net wrote:

Chief Assistant Attorney General Paul Miovas, Alaska Department of Law,

My name is David Haeg and on May 11, 2018 I talked with you by phone about a public petition for grand jury investigation of corruption within Alaska's judicial system, which included a request for investigation of crimes and cover up by officials within the Alaska Department of Law, Alaska Court System, Alaska Bar Association, Alaska Department of Public Safety, and Alaska Commission on Judicial Conduct. You had stated the petition was forwarded to you in spite of the fact I had left it with the Kenai District Attorney's office with explicit instructions it be given to the Kenai grand jury.

You stated you wanted to investigate, I replied this was like the fox guarding the henhouse, and you agreed it could be seen as this.

What makes this situation all the more serious is that Kenai District Attorney Scot Leaders and Superior Court Judge Jennifer Wells prevented Kenai grand juror Ray Southwell from disclosing, to the other jurors, his knowledge and evidence that triable crimes had been committed by DA Leaders - when Alaska Statute 12.40.040 required Southwell to disclose his belief and evidence to the other jurors:

AS 12.40.040. Juror to disclose knowledge of crime. If an individual grand juror knows or has reason to believe that a crime has been committed which is triable by the court, the juror shall disclose it to the other grand jurors, who shall investigate it.

After our phone conversation I contacted numerous signers of the petition, to get their input. All stated that that the petition they signed was specifically for a grand jury investigation, not a Department of Law investigation. All stated they do not believe the Department of Law can be trusted with an investigation that includes investigating the Department on Law.

In light of this we demand that you give the public petition for grand jury investigation, which you state is in your possession, to the Kenai grand jury when they next meet in the Kenai Courthouse. We believe this to be May 16, 2018 at 9 am.

If you do not intend on doing so please let me know so I can inform the signers of the petition.

The authority we rely on for our demand is attached to the bottom of this email.

David S. Haeg
PO Box 123
Soldotna, AK 99669
(907) 262-9249 home and (907) 398-6403 cell
haeg@alaska.net

The Investigative Grand Jury in Alaska (Alaska Judicial Council 1987)

State grand juries have often exercised investigative powers to battle political corruption. **At times, they have acted on their own initiative in the face of opposition from a district attorney:**

In New York City an extensive grand jury probe toppled the notorious Boss Tweed and his cronies. **Since the district attorney was closely associated with Tweed, the panel acted independently of him, conducting its own investigation and interviewing witnesses without the prosecutor's help.**

In Minneapolis **a grand jury hired its own private detectives** and amassed evidence sufficient to indict the mayor and cause the chief of police to resign.

Alaska's grand jury serves two distinct functions. First, it acts as the charging body for crimes committed within its jurisdiction. The grand jury considers evidence presented to it by the state's district attorney who has investigated the crime or crimes in each case.

Although infrequent, the grand jury can also sit as an investigative body. In response to instructions from the court or the district attorney, **or in response to petitions or requests from the public**, or on the initiative of a majority of the members of the grand jury, the grand jury may investigate concerns affecting the public welfare or safety. These public welfare or safety concerns may arise from criminal or potentially criminal activity, or they may involve noncriminal public welfare or safety matters. After completing its investigation, if the grand jury has found sufficient evidence to charge an individual or individuals with a crime, the grand jury may ask the district attorney to prepare an indictment or indictments.

The importance of the investigative function, however, has not been questioned. While half the states have abolished or severely restricted the grand jury's charging function, **all states have retained the investigative function of the grand jury.**

The Alaska Constitution addresses grand juries in Article I, Section 8:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury...The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.

The legislative history of the clause speaking to the investigative function suggests that this function was very important in the minds of the delegates to the constitutional convention, and that the scope of this power was intended to be broad.

The Committee on the Preamble and Bill of Rights of the Alaska Constitutional Convention submitted a proposal entitled “Grand Juries, Indictments and Information”. The clause that addressed the investigative function read:

...the power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended.

The commentary of the section stated: “*The grand jury is preserved, for all purposes, particularly for investigation of public officials.*”

An amendment was proposed to make prosecution by grand jury indictment mandatory unless waived, as had been practice under territorial law. Proponents of the change in the committee proposal argued that the grand jury was not the best charging mechanism. All delegates, however, appear to have supported the continuation of the investigative role of the grand jury:

Now we had preserved the investigative power of the grand jury...(Buckalew, 1323)

The grand jury... is useful where any particular fraud or general scandal has occurred...(Rivers, 1323)

...I am against the use of a grand jury in criminal prosecution...I would say retain the grand jury all right for investigative purposes of officials in public institutions...it serves no useful purpose except for just investigative purposes. (Taylor, 1324)

The grand jury should certainly and definitely be preserved as an investigatory agency. There is no question about it at all...(Hellenthal, 1325)

The debate suggests that some votes for mandatory grand jury indictment may have been cast to assure free exercise of the grand jury’s investigative function:

...[I]t is true the investigative grand jury had been preserved in the bill as set forth here. However, an investigative grand jury will only be called under certain specific circumstances, and somebody is going to have to find conditions pretty bad before an investigative grand jury will be called. Whereas a grand jury which is empaneled regularly, once or twice a year in our division, has full investigative power as well as the power to consider indictments. The grand

jury is there and may take any step that it feels may be necessary towards investigations. (Davis, 1326)

*...The grand jury in its investigative power as well as for **the fact that it is sitting there as a panel sometimes is the only recourse for a citizen to get justice...**(Kilcher, 1328)*

The new amendment does not make any mention of the investigating powers of the grand jury, and I have been told they would still have those powers under the Federal Constitution, but I believe it should be mentioned in our constitution because I think that is one of the most important duties of the grand jury. (Barr, 1344)

The delegate speaking suggested returning to the language in the initial Committee proposal that referred to the grand jury's investigative powers:

The power of grand juries to inquire into the willful misconduct in office of public officers, and to find indictments in connection therewith, shall never be suspended.

When the subject of investigative powers rose again, the language proposed was somewhat different. The new suggested language read:

The power of grand juries to investigate and make recommendations concerning conditions detrimental to the public welfare or safety shall never be suspended. (1344)

A delegate who spoke in support of the expansion of investigatory powers made an additional suggestion:

*Mr. President, my suggestion was that the word "detrimental" be stricken and the word "involving" be inserted because I agree with Mr. Barr that the investigatory power of a grand jury is extremely broad, not narrow as Mr. Rivers contends. **I think a grand jury can investigate anything**, and it is true that there is little protection against what they call in the vernacular, a runaway grand jury, but in the history of the United States there have been few runaway grand juries, extremely few, and I think that the broad statement of power that Mr. Barr asked for is proper and healthy. (Hellenthal, 1406)*

This suggestion was adopted. The final amendment read:

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

As the language was incorporated into the constitution, the word "involving" became "concerning" but there is no discussion of this choice in the convention minutes.

The Alaska Code of Criminal Procedure in Section 12.40.030 essentially repeats the Alaska Constitution's language concerning grand jury powers:

Sec. 12.40.030. Duty of inquiry into crimes and general powers. The grand jury shall inquire into all crimes committed or triable within the jurisdiction of the court and present them to the court. The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety.

Two other sections of the code seem to speak to the intended subject matter and scope of the grand jury's independent investigative powers:

Sec. 12.40.040. Juror to disclose knowledge of crime. If an individual grand juror knows or has reason to believe that a crime has been committed which is triable by the court, the juror shall disclose it to the other grand jurors, who shall investigate it.

Sec. 12.40.060. Access to public jails, prisons, and public records. The grand jury is entitled to access, at all reasonable times, to the public jails and prisons, to offices pertaining to the courts of justice in the state, and to all other public offices, and to the examination of all public records in the state.

The language of the first section above suggests that in addition to reviewing the cases presented by a prosecutor, the grand jury is empowered to investigate all criminal or potentially criminal activity that comes to the attention of one or more of its members. The use of the word "present" refers to the informal writing of charges by a grand jury.

Alaska's Criminal Rules hint at the potential investigative, recommending and reporting powers of the grand jury. Rule 6(e) mandates the oath for grand jurors. The current oath reads:

"You and each of you as members of the grand jury for the State of Alaska, do solemnly swear that you will diligently inquire and true presentment make of all such matters as shall be given to you for consideration, or shall otherwise come to your knowledge in connection with your preset service..."

The oath clearly includes the duty to investigate "matters" coming to the knowledge of the grand jury independently of the charges presented by a prosecutor.

The clear intent of the drafters of the state constitution was to provide the grand jury with broad investigative powers. The language of state statutes is equally broad and no case law in Alaska defines the appropriate subject matter or scope of grand jury investigations.

(1) Complex criminal cases.

Interviewees noted that the grand jury's investigative powers were extremely useful in certain complex criminal cases. Examples of such cases included the 1974 Fairbanks grand jury investigation of a mob incident at the Tanana Valley Fairgrounds that resulted in injury to several persons; the 1970 Anchorage grand jury investigation of the Cordova fire; the investigation by an Anchorage grand jury in 1970 of the slaying by a police officer of two persons who were engaged in the commission of a felony; and complicated murder cases such as the Investor murders recently considered by a grand jury in Ketchikan.

(2) Patterns of crime.

A Fairbanks grand jury investigated the problem of drugs in Fairbanks high schools, after several instances of drug-related juvenile crime. In 1973, a grand jury, after recognizing the number of crimes being committed on campus, investigated security at the University of Alaska in Fairbanks. A 1976 Fairbanks grand jury investigated the Checker cab Company after observing the extremely high incidence of felony incidents it had processed against Checker cab personnel. In January, 1986, a Bethel grand jury issued a report following an investigation into sexual abuse in that community, having noted the large number of sexual abuse cases being brought before them. Grand juries seem uniquely positioned to recognize patterns in criminal activity and to investigate the implications of these patterns.

(3) Alleged misconduct in state government.

Five investigations have been conducted into alleged misconduct in state government. A 1974 Fairbanks grand jury investigated alleged conflicts of interest by public officials in appropriating funds for the Fairbanks flood control project. In 1981 and 1982, grand juries in Juneau investigated unrelated charges of alleged misconduct by two state senators. In 1984, an Anchorage grand jury investigated potentially criminal practices related to property and inventory maintained by the Alaska Division of Fish and Wildlife Protection's Aircraft Section. Finally, a 1985 Juneau grand jury conducted an investigation into the executive branch's handling of state office leasing practices.

(4) Alleged misconduct in local government.

Two grand juries have investigated alleged misconduct in local government. In 1953, a Ketchikan grand jury conducted an investigation into alleged corruption in the Ketchikan police department [Ketchikan District Attorney and Ketchikan Police Chief indicted in connection with prostitution]. A Kenai grand jury in 1973-74 considered allegations of improper conduct by municipal officials and allegedly inappropriate conduct of a judge.

(5) Potentially criminal activity affecting public welfare or safety concerns.

An Anchorage grand jury in 1964 investigated waste of game animals; in 1965, alleged irregularities in a local election; in 1966, the use of listening devices; in 1967, drug abuse by minors; and in 1969, the public exhibition of adult motion pictures. All of these subjects involved potential criminal activity, and clearly affected public welfare or safety concerns.

In general, investigations are initiated by the district attorney. In the case of major investigations, the district attorney may request that a grand jury be empaneled to investigate that case alone. On occasion investigations have been called *sua sponte* by the judge sitting in the jurisdiction.

One Alaska statute provides that *"If an individual grand juror knows or has reason to believe that a crime has been committed which is triable by the court, the juror shall disclose it to the*

other jurors, who shall investigate it.” **This provision suggests that an investigation might be initiated at the request of an individual grand juror.**

Routine safeguards have been exercised in Alaska. **Judges and prosecutors have said that the majority of grand jurors, not counting the juror requesting the investigation, have had to vote to undertake any investigation. If the investigation has been taken up, the grand juror requesting it was excused from grand jury duty and called as a witness in the ensuing investigation.**

A signer of both the Declaration of Independence and the United States Constitution and later an Associate Justice of the U.S. Supreme Court, James Wilson, made this observation in 1791:

*The grand jury are a great channel of communication, between those who make and administer the laws, and for whom the laws are made and administered. All the operations of government, and of its ministers and officers, are within the compass of their view and research. They may suggest publick improvement, and the modes of removing publick inconveniences: **they may expose to publick inspection, or to publick punishment, publick bad men, and publick bad measures.***

APPENDIX B

The grand jury exercises its charging function by deciding whether or not to indict. **In the exercise of its investigative function, the grand jury is empowered to initiate investigations, to call witnesses, and to request that indictments be prepared.**

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Can a grand juror ask the grand jury to investigate a crime that the district attorney has not presented to them?

Yes. The Alaska Statutes state: “If an individual grand juror knows or has reason to believe that a crime has been committed that is triable by the court, the juror shall disclose it to the other jurors, who shall investigate it.”¹⁶

14 Sheldon v. State, 796 P.2d 831 (Alaska App. 1990)

15 Criminal Rule 6(q)

16 AS 12.40.040