

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

October 20, 2008

Attorney General Talis Colberg
Office of the Attorney General
1031 W. 4th Ave
Anchorage, AK 99501

Re: Independent Investigation On Potential Criminal Witness Tampering

BY FAX AND MAIL

Dear Talis:

I am concerned that the state's criminal witness tampering laws have been broken by certain staff for Sen. McCain's presidential campaign. Campaign staff came to Alaska shortly after our Governor was named to his presidential ticket on August 29, 2008. Press account and legal filings show they worked in Alaska much of the past month and a half to try to stall, or stop the Legislature's bi-partisan Troopergate investigation. Colonel Audie Holloway, the Director of the Alaska State Troopers, recently wrote that he considers this potential of criminal witness tampering a "serious issue."

Colonel Holloway has suggested that given the potential appearance of a conflict at his agency, and other considerations, the Attorney General and/or legislature should appoint an independent investigator to look into this matter. Colonel Holloway's October 2 letter in this regard is attached. Since your agency enforces the state's criminal laws, it seems the most appropriate entity to appoint an independent investigator is the Department of Law.

It appears your Department would have a conflict investigating this matter directly, given its opposition to the Legislature's investigation, both publicly, an unsuccessfully in court, and it's representation of witnesses who did not comply with investigation subpoenas. I would note that while I believe criminal conduct may have been committed by campaign staff who worked in Alaska to stop the Troopergate investigation, I do not believe you or your staff have engaged in such conduct. Nonetheless, your office, as counsel to many witnesses who did not show up for legislative subpoenas, and counsel for the Governor, would appear to have at least conflicts on this matter. Those potential conflicts would suggest the appropriateness of an independent investigator.

Alaska's witness tampering statute is clear. Our criminal code forbids any person from "*attempting*" to "*induce* a witness to be absent from an official proceeding." A.S. 11.56.540 & .545. A legislative hearing to which a person has been subpoenaed constitutes an "official

proceeding” under this statute. AS 11.81.900. I am concerned that certain people encouraged, or attempted to encourage witnesses to fail to comply with subpoenas issued by the Senate in the Troopergate investigation.

The facts suggesting our criminal laws may have been broken are in essence as follows. It appears there has been contact with witnesses, previously willing to cooperate in this investigation, and that persons may have “attempted” to “induce” them not to comply:

- Until the Governor’s August 29, 2008, nomination to Senator McCain’s national presidential ticket, no witnesses stated any opposition to complying with the Legislature’s Troopergate investigation.

- That investigation began in July, before anyone knew Governor Palin was going to be named to Senator McCain’s ticket. Governor Palin stated repeatedly that she and her staff would comply with the legislature’s investigation. See, e.g., KTUU.com, July 18, 2008 (“We would prohibit or be less than enthusiastic about any kind of investigation”); Anch. Daily News, July /29, 2008 (“staff will cooperate as well”). The Governor agreed an investigation into whether her office pressured for the firing or discipline of her former brother-in-law, a Trooper, was appropriate.

- The investigation was not controversial at the time, and was decided upon by a unanimous, bi-partisan Legislative Council (8 Republicans, 4 Democrats). That same committee also unanimously released the Independent Investigator’s report on October 10. The Legislature hired former prosecutor and Office of Victim’s Rights Director Steve Branchflower.

- Starting shortly after August 29, when the Governor was named to Senator McCain’s campaign, his campaign staff came to Alaska.

- Shortly thereafter campaign staff and counsel for Governor Palin, who has sometimes been described as working for the state, and sometimes described as being paid for privately or by the McCain Campaign, began work to stop the investigation. The McCain Campaign began near-daily press conferences aimed at creating pressure to stop the investigation, and, it appears, helped coordinate legal efforts to stop the investigation, bringing in outside counsel.

- Until August 29 no witness ever refused to comply with a request by the Independent Investigator for an interview. Starting August 29 witnesses who had never objected to the investigation suddenly refused to voluntarily show up for interviews with Mr. Branchflower. After refusing to show up voluntarily, these witnesses then refused to show up for subpoena’s issued by the Legislature.

- Between August 29 and the release of the Independent Investigator's report on October 10, approximately 10 witnesses failed to show up before the Senate Judiciary Committee for their subpoenas. After failing to show up for subpoenas, these witnesses did later provide written statements.

- Their later decision to submit to written questions, after failing to show up for their subpoenas, doesn't cure this violation, or any criminal conduct by any person who attempted to induce those witnesses from showing for their subpoenas. Complying with the law after breaking it doesn't excuse a criminal violation. If any person attempted to induce a witness to fail to show for a subpoena, that witness' later cooperation, after failing to show for the subpoena, doesn't cure the criminal conduct.

- The first round of witnesses who did not show up for subpoenas appear from correspondence to include Ivy Frye, Todd Palin, Randy Ruaro. See Sept. 19 and Sept 26, 2008, letters to Senate President Lyda Green from Senate Judiciary Chair Hollis French.

- In September the Attorney General agreed that seven other witnesses would comply with the investigation without subpoenas. That position was then reversed, and subpoenas were issued for Dianne Keisel, Annette Kreitzer, Nicki Neal, Brad Thompson, Michael Nizich, Kris Perry and Janice Mason. According to a letter from the Judiciary Committee to Senate President Lyda Green, none of those witnesses showed for their subpoenas.

- None of these witnesses had made any statements prior to August 29 that they would not comply with the Legislature's investigation. It is hard to believe that witnesses who had never previously objected to appearing for testimony would risk, without outside advice or pressure, the potential jail time that comes with a refusal to comply with a subpoena. Refusal to show up for a legislative subpoena is punishable by jail time under Alaska law.

- McCain Campaign staff, including Washington, D.C. attorney Ed O'Callaghan, admit to at least some coordination with witness counsel during this investigation. Based on his press statements, it appears Mr. O'Callaghan was hired in part to try to stop this investigation.

According to a September Newsweek article, Mr. 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. See Michael Isakoff, "Can He Stop Troopergate?," Newsweek, September, 2008.

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 has been vocal in his opposition to the Legislature's investigation.

- The sometimes daily press conferences held by Mr. O'Callaghan and other McCain staff show a significant effort by that campaign to stop this investigation. Ultimately, efforts to stop the investigation, both through political pressure and in court, failed. I do not know the details of the contacts McCain staff had with state personnel, counsel for witnesses, and the witnesses themselves.

It appears the witnesses who did not show up for their subpoenas would have information on who may have encouraged them not to show up for their subpoenas. Likewise counsel for witnesses, and the McCain staffers who worked in Alaska may have such information.

I would request that you appoint a non-partisan investigator to look into this matter. I agree with Colonel Holloway that it is serious.

Feel free to contact me if you need further information.

Best Regards,

Rep. Les Gara