

**ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE JUDICIARY STANDING COMMITTEE
HOUSE JUDICIARY STANDING COMMITTEE
ANCHORAGE LIO**

September 12, 2008

9:15 a.m.

MEMBERS PRESENT

SENATE JUDICIARY

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

HOUSE JUDICIARY

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

SENATE JUDICIARY

All members present

HOUSE JUDICIARY

Representative Bob Lynn
Representative John Coghill

OTHER LEGISLATORS PRESENT

Senator Gary Stevens - via teleconference
Senator Kim Elton
Senator Lyda Green
Senator Thomas Wagoner
Representative Carl Gatto
Representative Kurt Olson
Representative Mike Chenault
Representative David Guttenberg

Representative Bryce Edgmon - via teleconference

COMMITTEE CALENDAR

Matters pertaining to Legislative Council Investigation

PREVIOUS COMMITTEE ACTION

No previous action to consider

WITNESS REGISTER

STEPHEN BRANCHFLOWER, Investigator
Legislative Council
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on subpoenas.

TAMARA COOK, Director
Division of Legislative Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on legal issues regarding subpoenas.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the joint meeting of the Senate and House Judiciary Standing Committees to order at [9:15:29 AM](#). Present at the call to order were Senators Therriault, Wielechowski, McGuire, Huggins and Chair French. House Judiciary members present were Representatives Gruenberg, Holmes, Samuels, Dahlstrom and Chair Ramras.

Matters pertaining to the Legislative Council Investigation

CHAIR HOLLIS FRENCH said the question before the committee is whether to issue subpoenas to witnesses whose testimony is sought by Mr. Branchflower. Mr. Branchflower's task as set out by unanimous vote by the Legislative Council Committee on July 28, 2008 is, "to investigate the circumstances and events surrounding the termination of former Public Safety Commissioner Monegan and potential abuses of power and or improper actions by members of the executive branch and prepare a report."

[9:17:19 AM](#)

CHAIR FRENCH said the same motion made him the project director. Again, he said the issue before the two committees is fairly straight forward and fairly narrow - should the subpoenas be issued or not. The statute that authorizes this action is AS 24.25.010(b), which reads as follows:

A subpoena requiring the attendance of a witness before a standing or special committee of the legislature may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker.

SENATOR THERRIAULT remarked that Senator French just stated that the purpose of the meeting is "to consider," but the press release that was put out last Friday said the meeting was going to be held today to issue subpoenas as if the outcome was already presupposed. In addition, he said there is a statement that they agreed on an earlier completion date on the report that would be fair to all sides. He asked where the statement that subpoenas would be issued today came from and also where the authority that an earlier completion date should be set came from. He thought the motion talked about a report being done in a timely manner; nothing stated a completion date or gave authority to compel any date.

9:19:39 AM

SENATOR FRENCH responded the subpoenas clearly won't be issued until there is a vote and concurrence by the presiding officer of either body. As to the earlier report date, he discussed that with the chair and vice-chair of the House Judiciary Committee, Representative Jay Ramras and Representative Nancy Dahlstrom, and the chairman of the Legislative Council, Senator Kim Elton. There was concurrence in getting the date of the report as far away from the November election as possible.

SENATOR THERRIAULT asked what if the date was November 10.

CHAIR FRENCH asked if he was making a motion.

SENATOR THERRIAULT replied no; he's questioning why the investigator is being directed on the delivery date if he's not being directed about how to conduct the investigation.

9:20:24 AM

CHAIR JAY RAMRAS [House Judiciary Committee] said he would speak to his own conclusions that were reached in the only meeting he

had with Mr. Branchflower. For the benefit of the record in both bodies, he requested a meeting with Mr. Branchflower prior to any national implications that have since transpired. He invited the vice chair to that meeting. Their conversation went to when the interviews would be concluded, how long it would take to write the report and the most timely manner in which that report could be presented to the project manager.

His sense is that this was not to have any implications for the State of Alaska's election cycle, and because of the unforeseen circumstances Alaska finds itself in, he thought it would be in the best interests of the State of Alaska and the Alaska State Legislature as an institution to move forward in a measured and disciplined fashion and to complete this report in a timely, responsible fashion.

CHAIR RAMRAS said that he also read the newspaper reports that suggested the report could come out October 31, but Mr. Branchflower said he thought a report could be written in 10 working days. So, "we asked him to put together the report in as timely fashion as possible to move it away from the election date that faces us in November."

[9:22:48 AM](#)

SENATOR THERRIAULT said it seems like this is getting into a pitched battle between branches of government over subpoena powers and he isn't sure what amount of time it might take to muddle through that. He doesn't agree with the suggestion that an earlier date might somehow help the situation and thinks it potentially exacerbates it. Plus, he said if there is any move afoot to have any kind of an October surprise, he doesn't know if it is any less troubling if the date is October 31 or October 10.

[9:23:45 AM](#)

SENATOR FRENCH responded that this discussion is best had with the person who is actually doing the work.

[9:24:00 AM](#)

SENATOR BILL WIELECHOWSKI said that October 31 was initially chosen because that is the date Mr. Branchflower's Legislative Council contract expires. He reminded the body that the contract was issued by a vote of 12 to nothing, unanimously, by a bipartisan group of legislators that consists of eight Republicans and four Democrats who are House and Senate members, minority and majority members. The goal at that time was to get it done as quickly as possible. Further, he said, "This was an

investigation, quite frankly, that was welcomed by the Palin administration. It was an investigation that the Governor repeatedly said she welcomed and she would fully cooperate with."

SENATOR THERRIAULT said he believes the administration and those members who cast that vote thought at the time that the direction would be outside the political realm. Based on comments that have been made, he understands the administration's concern that they were not going to get a fair shake. Some members of the Legislative Council have written to the chairman that they want a new meeting to review what has transpired since that initial vote was taken. He said the chair runs the risk of being replaced under Mason's Manual Sections 577 and 581 if, in fact, he refuses to convene a meeting to thwart the will of that body.

[9:27:07 AM](#)

SENATOR FRENCH responded that's a matter for the Legislative Council and outside of the issue that is now in front of the committee.

[9:27:19 AM](#)

STEPHEN BRANCHFLOWER put himself on the record. He said he arrived in Anchorage in 1965; he attended the Alaska Methodist University where he graduated in 1968; he attended the University of Arizona Law School and graduated in 1973. He went to work for the Anchorage DA's office in September 1974 and departed in 1998. His work consisted primarily of reviewing cases, felony intake and working major crimes trials. In 1998 he was appointed by Bruce Botelho to be the director of the Alaska Medicaid Fraud Control Unit. He retired in 2002 and was appointed by the Legislature that year to head up the new office of the Office of Victims Rights. He stayed there until 2005 when he retired. He currently resides in the state of South Carolina. In summary he said he has been practicing law for 31 years and he resided in Anchorage for 40 years.

[9:28:54 AM](#)

MR. BRANCHFLOWER said he would give a procedural overview of the investigation to date. He is mindful of the political implications of the investigation and he wants to keep his comments short and to the point. This is an ongoing process and he is here today to ask for legislators assistance in getting it completed.

He reported that he started the job on August 11 in his office that's located at 310 K Street. This is the 31st day of the investigation. During that time, he has identified 33 individuals who have relevant information about the scope of his work. He has taken 11 sworn statements so far. He clarified, "When I say statements, I'm talking about sworn tape recorded statements where the witness has been sworn by a court reporter. I do the recording on my own equipment. I submit the audio file to a certified court reporter who then prepares the certified transcript."

He reported that he has taken two unsworn tape recorded statements; one from an employee of the Municipality of Anchorage who is not involved and the other one from a former Department of Public Safety (DPS) employee. The latter is reviewing the transcript and will be submitting an affidavit attesting to the truthfulness of her statement. He has also taken three traditional depositions for a total of 16 statements "that are in the can so to speak."

MR. BRANCHFLOWER said he wants to interview 14 people, 13 of which he is asking subpoenas for; the 14th is Governor Palin. Additionally, he is asking for a subpoena for the telephone records of Frank Bailey.

9:31:47 AM

MR. BRANCHFLOWER said he wants to explain two things, one is the difficulty he has had contacting and enlisting the cooperation of each of these individuals to give him a statement, and secondly why he thinks each of them have something to contribute.

The first one is Frank Bailey. Mr. Bailey made the recorded telephone call to Trooper Rodney Dial on February 29, 2008. The Governor's office placed him on administrative leave and it was stated that by doing so, they could direct him to assist Mr. Branchflower. He exchanged emails and telephone calls with Mr. Bailey and finally established a deposition date on September 3 for two hours. However, Mr. Bailey decided he didn't want to give a statement. He said he could go into greater detail, but he feels it is fairly obvious from the transcript he expects most of the committee has reviewed.

MR. BRANCHFLOWER said Mr. Bailey gave a statement to Mr. Barnhill on August 4, and according to a Newsweek article published on September 5, he has also given a deposition to Mr. Van Flein who is a lawyer for the Governor's office. "So he

apparently has something of value to contribute; he has not talked to me. I'm here to ask for your assistance to issue a subpoena for him so that I might share in whatever it is that he knows."

9:33:33 AM

The next individuals on the letter, Mr. Branchflower said, should be taken together - Annette Kreitzer, Commissioner of the Department of Administration (DOA), Dianne Kiesel, former director of the Division of Personnel and Labor Relations in DOA, Nicki Neal, current director of the Division of Personnel and Labor Relations DOA, and Brad Thompson, director of the Division of Risk Management in the DOA. He continued:

Let me tell you why I have not been able to speak with them and why I need to speak to them. First of all, all four of these witnesses were cooperative with me initially, and, in fact, we had times and dates set up. Kiesel's was set for September 4 at 10:00; Nicki Neal was set for that same day at 1:30, Brad Thompson for September 5 at 1:30 and Annette Kreitzer was scheduled for September 8 at 10:00. The attorney general's office cancelled those on September 4, and I received a letter from Mr. Barnhill that day that says that all of the depositions of the Department of Administration employees were cancelled until further notice and that as of that date the Attorney General now represented all Department of Administration employees.

MR. BRANCHFLOWER said the letter stated the concern related to consequences regarding the possibilities that Department of Administration employees may have disclosed matters relating to employees' personnel records. Mr. Branchflower offered to address this in a follow up question if someone wanted to ask.

9:35:18 AM

SENATOR THERRIAULT said that is an important point. The chairman made a statement about possible criminal charges, referring to anybody having access to personnel records, but there is a difference of interpretation of the state law on whether, in fact, people in the chain of command in the executive branch have a right to look at those records. Based on the suggestion that they might have committed some crime and might be up for possible criminal sanctions, the attorney general's office, based on that misunderstanding, advised them not to cooperate. He doesn't want to get into a pitched battle forcing subpoenas.

If they could get some clarification on that issue, the attorney general's office has said those people would come forward willingly thus avoiding a test of strength between branches of government.

9:36:29 AM

MR. BRANCHFLOWER agreed with his concern and having just learned about it in a news article, said he could defuse it right now. "As far as I'm concerned, it's a non-issue and let me tell you why."

He said three statutes are involved: AS 23.30.107, which deals with the release of confidential information; AS 39.25.080, which deals with personnel records stating that they are confidential; and AS 39.25.900, which is the penalty provision. The key to understanding this issue is to focus on AS 23.30.107 (b)(1), which says:

'Medical or rehabilitation records in an employee's file maintained by the division (Workers' Compensation Division) or held by the board are not public records subject to public inspection and copying under AS 40.25. This subsection does not permit the reemployment benefits administrator, the division, the board or the department from releasing medical or rehabilitation records in an employee's file without the employee's consent to a physician providing medical services or a party to a claim filed by the employee or a governmental agency.'

Now the Governor's office is a governmental agency. So if medical records or personnel records were released by the division to the Governor's office, for the sake of argument, let's assume that that happened, in my view, that would be authorized under the statutes. So it would not be a crime; it would not be a prosecutable offense. And I think somewhere along the line, a party sort of got cross threaded and there is a belief on the part of the attorney general's office that I believe that that's a punishable offense. I don't subscribe to that view. As far as I'm concerned it's a non-issue because of the statute. It would be a misdemeanor to violate the statute, and I think that's what they are concerned about.

Now there is a separate problem, which is that this statute is in-artfully drafted because it permits what

I've just described, that is, release of confidential information to a governmental agency. So without specifying any need for it, or demonstrated need for it - so for example, somebody from the Fish and Game Department might ask for someone's medical records from the Department of Highways and not have any legitimate need to review those records. This statute needs to be revised; it needs to be redrafted, and what needs to be incorporated is a requirement of some legitimate purpose, some nexus between the request and the need. Right now that statute does not require that, and so it is subject to problems.

So as far as I'm concerned, it is a non-issue and what I am hopeful for is that I can sit down with Mr. Barnhill and Mr. Van Flein and try to come up with an expedited schedule, get these witnesses in and to work cooperatively, get their statements on record, to have depositions that are short and pointed without going down a lot of rabbit rails. And with the end of complying with the accelerated schedule that we are working on right now, the release date of October 10.

[9:40:25 AM](#)

SENATOR FRENCH interrupted to explain how subpoenas work:

If the committees decide to issue subpoenas, the returns are taken back before the committee. There is no way to delegate the subpoena return to a hearing or deposition in Mr. Branchflower's office. But it's not our intention to force that issue. If a witness who is subpoenaed chooses to meet with Mr. Branchflower or if they are able to work out some kind of a mutual agreement, in my view as project director - I think the Leg Council chairman's view is the same - that that's completely fine - if they want to go and sit with Mr. Branchflower and give a deposition in his office with their attorney or whoever else they want to bring. Again I think that's just another attempt to diffuse this and keep it on as even a keel as possible.

[9:41:18 AM](#)

SENATOR THERRIAULT asked Mr. Branchflower if he could get cooperation without the issuance of a subpoena would that be the preferable way to move forward.

MR. BRANCHFLOWER answered, "I think that would expedite the process." However, he said "There is a risk that if subpoenas are not issued there might be some other problems that might arise that might forestall the inclusion of that testimony in which case I think the report would suffer. Because my view is that I want to maximize the evidence, and then let the reader decide."

[9:42:47 AM](#)

SENATOR THERRIAULT said it appears that the arbitrary deadline of October 10 is driving Mr. Branchflower's investigation and that Mr. Branchflower should have as much time as he needs to get to an agreement with the Department of Law on whether, in fact, there is a risk of anybody coming forward exposing themselves to criminal sanctions or not. The Legislative Council's motion was that it be done in a timely fashion, not that it be done in an accelerated fashion.

[9:43:33 AM](#)

SENATOR WIELECHOWSKI reminded members that they had previously set a meeting whereby they were to discuss issuing subpoenas and that was cancelled because at that time the administration said it would fully cooperate. He asked Mr. Branchflower if he would be able to institute criminal proceedings on his own or if Senator French could.

MR. BRANCHFLOWER replied no.

SENATOR WIELECHOWSKI asked who would institute criminal proceedings if criminal behavior was found.

MR. BRANCHFLOWER replied the Attorney General or perhaps the Office of Special Prosecution. It would have to be some state or federal executive authority. He emphasized that he just didn't see that on the horizon.

[9:45:05 AM](#)

REPRESENTATIVE GRUENBERG said he was troubled because the Governor asked the Attorney General to investigate this project after the Legislative Council started it. And now Mr. Barnhill in the attorney general's office is acting like an advocate and he saw a potential conflict of interest there. He pointed out the very basic rules of professional conduct, Rule 1.7, prohibits conflicts of interest and Rule 1.10 imputes disqualification to everyone in the same law firm. "Looking at the attorney general the same as a firm, do you have any comment on this?"

MR. BRANCHFLOWER replied that each lawyer has to decide the question of conflict and live with the consequences; he has stayed away from that issue because any movement on his part in that direction would not advance his work.

REPRESENTATIVE GRUENBERG remarked that the question stands unanswered.

[9:46:19 AM](#)

SENATOR THERRIAULT said that a conversation with one of the prospective witnesses revealed that, based on the advice of independent legal counsel, he chose not to be interviewed because of Mr. Branchflower's statement about possible criminal sanctions and public humiliation if he didn't come forward. If that can be cleared up, maybe there isn't need for the subpoenas.

[9:48:31 AM](#)

MR. BRANCHFLOWER stated that as an experienced prosecutor with many years of service, he is mindful of how to deal with witnesses. He said:

And I have told no witness, contrary to what you have been told, I have told no witness that they risk criminal prosecution, because I don't see that as my function. I have told no witness that they would suffer public humiliation or however you phrased it. I have been polite, respectful and professional in all my dealings. And if anyone has said anything to the contrary, it is not true.

He said he would dispute any claims made by an advocate on the behalf of an individual that he is trying to get information from. He asked Senator Therriault to be mindful of that person's adversarial role in relation to his and urged him to question the validity of such claims.

[9:49:56 AM](#)

REPRESENTATIVE DAHLSTROM asked Mr. Branchflower to comment on some of the things they've heard in the last 24 hours about quashing subpoenas if they were issued.

MR. BRANCHFLOWER replied an article in the paper this morning seemed to say that if subpoenas are issued, that there might be an effort undertaken to quash them because of a potential for criminal prosecution. That is a non-issue for him as he said

earlier in referencing AS 23.30.107. He hopes his clarification will put that issue to rest and give the lawyers for the Attorney General and the Governor's office some assurance that he agrees with their view. Going to court to quash subpoenas is procedurally difficult and it raises a question of which forum to go.

[9:51:54 AM](#)

He said that the bottom line is that it is not necessary and, it would prejudice the outcome of the report simply because it will deprive him of a fund of information, that is, witness statements, that the public can benefit from. He sees no reason to not cooperate. In response to Senator Therriault's earlier comments, he said the subpoenas are necessary because while they will hopefully get over this little bump in the road, others may arise.

CHAIR FRENCH asked him to proceed down his list of requests.

[9:52:24 AM](#)

MR. BRANCHFLOWER said he was addressing four individuals together: Annette Kreitzer, Dianne Kiesel, Nicki Neal and Brad Thompson. He had stated that he set up depositions for them and he had mentioned Mr. Barnhill's letter. Those people now are not available to him.

He has reason to believe that Mr. Tibbles, who is a former chief of staff for the Governor, called a meeting on November 19, 2007 to discuss Michael Wooten who was in the process of coming back to work after a workers' compensation injury. He believes the people who were present at this meeting in Mr. Tibbles' office were Kevin Brooks, the deputy commissioner of the Department of Administration, Nicki Neil, director of the Personnel Division, and Dianne Kiesel, former director of Personnel and Labor Relations. Kevin Brooks took notes. Mr. Branchflower said he interviewed Mr. Brooks under oath and he provided a copy of the notes he took at the meeting. They corroborate some things that were said and while he would prefer not going into detail, he was prepared to do so. They dealt with Trooper Wooten and what to do with him - placement, job classification and some other things. All of those things are relevant to my investigation, he said. That is why he is asking for assistance in issuing the subpoenas for those four individuals.

[9:54:27 AM](#)

SENATOR THERRIAULT asked the date of that meeting.

MR. BRANCHFLOWER replied it was November 19, 2007 according to Mr. Brooks' notes.

SENATOR THERRIAULT said the Department of Law (DOL) has taken some statements and turned those notes over to him.

MR. BRANCHFLOWER said that is correct.

SENATOR THERRIAULT asked if they were verbatim or just notes.

MR. BRANCHFLOWER explained that prior to his involvement in this case at the end of July and during the time in which there was public discussion about doing an investigation amongst legislators, the Attorney General directed two individuals to undertake an internal investigation. He appointed Mr. Barnhill as the point person, and another assistant attorney general, Susan Cox, to assist him. They selected eight to twelve individuals to interview and get information about Mr. Wooten, but he didn't know what basis was used to select them. That group was referred to in a memo by the attorney general as "the witness list." Mr. Barnhill and Ms. Cox each took notes. The first Wednesday after he was hired, he set up a meeting to meet and greet the Governor, the Attorney General, Mr. Barnhill and Mr. Nizich, and he was told that he would be provided those notes.

His meeting occurred immediately following the Governor's press release during which Mr. Bailey's tape recorded statement was released. He didn't know about that at the meeting; he was driving to it when the press release was taking place. He was also given a large amount of confidential material consisting of personal records, workers' compensation records, disciplinary records, et cetera. In total he reviewed hundreds of documents as well as the notes taken by the DOL folks. Some of the notes are clear although Mr. Barnhill's writing is hard to read. From the notes, however, it is "pretty clear" that these folks have relevant information. Simply relying on the notes is not sufficient for his purposes.

[9:57:31 AM](#)

REPRESENTATIVE GRUENBERG asked why Mr. Tibbles is not on the list.

MR. BRANCHFLOWER deferred that question to the chair.

[9:57:52 AM](#)

SENATOR THERRIAULT asked if he or Senator French put the list together.

MR. BRANCHFLOWER replied that he put the list together in talking with Senator French. He wants to talk to Mr. Tibbles, but he is represented and not available to him.

SENATOR THERRIAULT said he doesn't know why that question has to be deferred to Senator French if it's his list.

MR. BRANCHFLOWER said he's not sure why his name was removed because his initial request was to have his name included on the list.

CHAIR FRENCH added that in conferring with his co-chair and Mr. Branchflower, it appeared that the political will wasn't there to subpoena Mr. Tibbles, but he added, "If you would like to put his name forward in a separate motion, that's certainly your right as a member of the committee."

SENATOR THERRIAULT said, "I don't understand who's putting together this list. Is it Mr. Branchflower or is it we politicians?"

[9:59:06 AM](#)

CHAIR FRENCH said, "If you'd like to vote on a motion for a subpoena, you're here today and that's certainly within your prerogative."

[9:59:19 AM](#)

SENATOR THERRIAULT said, "Either Mr. Branchflower conducts his investigation without direction - and now we know he's being directed on the date and changing what he's doing and how he's doing it because of time pressure that he's feeling. And now we're hearing that people that he's trying to get information from - there's a direction going on on that too."

CHAIR FRENCH responded, "I think your position is clear, and I think mine is clear, as well. Mr. Branchflower, please proceed."

[9:59:52 AM](#)

MR. BRANCHFLOWER moved on to Mr. Nizich, the Governor's current deputy chief of staff, who was interview by Susan Cox on August 6. He commented:

From those [Ms. Cox's notes] notes it appears that Frank Bailey talked to Nizich about Mr. Wooten - told

him several things that he had done, he being Mr. Bailey, had done. Nizich is the one who fired Walter Monegan at the Governor's direction. Mr. Nizich has spoken to Mike Tibbles about this matter; Tibbles told Nizich that he had talked to Monegan about Mr. Wooten. Tibbles said that he knew it was an issue for Todd Palin, so I feel it's necessary to talk to Mr. Nizich about these things and other things as well. And that's the reason I'm seeking a subpoena for him.

10:00:58 AM

John Bitney, former legislative liaison for Governor Palin, to my knowledge, he is not represented. I spoke to him about what his involvement was in this matter, what he knew about it. I spoke to him on September 3; I took some notes. He told me that he was willing to provide a deposition and it has been tentatively set for September 15, excuse me, the 16th, but he has requested the issuance of a subpoena. I told him that would be fine.

In terms of what he knows, he told me that he and Governor Palin and Todd Palin have been life-long friends and known each other since the seventh or eighth grade. He has had conversations with Ted Palin, excuse me, Todd Palin, about Mr. Wooten, both in person and on the phone and some other matters as well, that I don't want to get into right now in this public forum. But I think he definitely has some information to provide and I want to get it.

Ivy Frye is the next person on my list. She is the special assistant for constituent and external affairs for Governor Palin; she is represented by private counsel. Her deposition had been set for September 8 at 3:00 p.m.; she was interviewed by Susan Cox on August 12; she has talked to Mr. Bailey about Mr. Wooten and while Ms. Frye was formerly at the Department of Administration, she told Ms. Cox that she may have heard some comments about Wooten by folks there at the DOA. She has received an email from Frank Bailey about Mr. Wooten; she told Susan Cox that she has emailed Todd Palin about the Governor's business on Todd's private email line, account, I should say.

10:02:53 AM

Kris Perry is the director of the Governor's Anchorage office, and given her position it seems logical to me that she must know about discussions about Wooten. She was never interviewed by Cox or Barnhill and I'm not sure why that is, but my experience tells me that it's worth looking into, because she is such a central person within the Governor's office, and yet she was not interviewed. She was cooperative; she had agreed to a deposition with me on September 11 at 9:00 a.m. and that was cancelled.

10:03:36 AM

By the way, when I say deposition, it's sort of force of habit. A deposition - and I have been using the term deposition when on some occasions I mean taking a tape recorded statement that is under oath, recorded, and where the person is sworn by a court reporter as opposed to what is traditionally referred to as depositions where there's notice, and there's more of an adversarial sort of meeting where both parties are there. There's direct cross-examination and re-cross. Just a point of clarification.

10:04:03 AM

SENATOR THERRIAULT said that generally in a deposition, a person can be sworn in and asked anything. He asked under what procedures he is operating as far as what happens with that information. Could it become public?

MR. BRANCHFLOWER replied that's correct; a deposition is sometimes referred to as discovery. That has been the purpose of his statements - to discover what happened. It's a fact gathering device. His plan is to have all of these tape recorded statements transcribed, which is being done. He has preserved the audio files, and at the conclusion of his work when he submits his report he will attach the transcripts to the report. The reason that is necessary is because the report will discuss what the evidence is and will have references to the record. He explained:

I feel it's important that whatever I say, I be able to document and anchor it to statements that have been given so that the reader can flip through that page and see for themselves what the context of the question was, what the context of the response was.

He plans to attach the transcripts and provide Senator French with the disk that contains all of the audio files. If this matter is to be posted on line, he would request that those be posted as well. He explained why:

Because a great part of what people say comes not only from the words they use and as are seen in the whole transcript, but also the inflections of the voice and the demeanor of how the person speaks. So between the transcripts and the audio file, I think a person will become informed as to what happened.

10:06:09 AM

SENATOR FRENCH interjected that the only caveat is that the material will actually go to the Legislative Council, the committee that authorized the investigation. Before they release any material it has to go through the prism of the confidentiality and personnel laws to make certain that nothing made confidential by law is released in the course of this investigation.

MR. BRANCHFLOWER said he has segregated the material into separate stacks and identified it for the Legislative Council.

10:06:58 AM

SENATOR THERRIAULT said he imagines that a number of people are concerned about what gets used. A court proceeding would have well-established procedures.

MR. BRANCHFLOWER agreed that there is not a lot of precedence for a proceeding like this, although there are statutes that discuss the issuance of subpoenas, contempt and so forth. But this particular undertaking lacks the traditional tools an investigator has such as access to a grand jury, subpoenas, search warrants, applications that take place on an ex parte basis, not in a public forum. For example in a traditional proceeding, someone in his position would not have to make an application to a body for a subpoena and in the process disclose matters that are the subject of the investigation. The work he is doing needs to be done as there are good reasons for it.

10:09:43 AM

SENATOR THERRIAULT said one of the things that got the ball rolling is that there was no action before the Personnel Board, and there is now. So, when Mr. Branchflower says it needs to be done, could it be done by the Personnel Board with an established set of procedures and clear delineation of powers

and protection of witnesses. "Is there some reason this is a preferable way than that?"

[10:11:07 AM](#)

MR. BRANCHFLOWER replied:

Well, I have no experience with experience with a matter before the Personnel Board. However, it's my understanding that complaints that are lodged with the Personnel Board require the involvement of the executive, specifically the attorney general who has to appoint someone to investigate it. So, that gets me back to a concern you had expressed or someone had expressed earlier about conflicts of interest. So that's one issue.

The second issue is - and I don't have enough information yet to say that matters that I've discovered so far are limited to ethical issues. The charge has to do with wrong doing. So I'm not sure how to reckon those two. I'm not saying that it's not possible to do; I just am saying that I don't have experience sufficient to address the question with the Personnel Board.

[10:11:37 AM](#)

SENATOR THERRIAULT suggested that wrongdoing is always unethical, so he doesn't think that would be a problem. An investigation under the previous administration resulted in the resignation of the attorney general, so he thinks that process has been proven to work. The Personnel Board's process seems to work and this effort has a lack of clarity.

[10:12:04 AM](#)

SENATOR FRENCH said the issue before them is whether this body should issue subpoenas. It's a fairly narrow focus. He understands that it's impossible to avoid discussions about the broader political context, "but clearly the legislature has the inherent authority to investigate acts by the executive branch. That's just part of our, you know, three-legged stool of a government. And that's what we're here for."

[10:12:26 AM](#)

REPRESENTATIVE GRUENBERG said he has two questions. One is that Mr. Branchflower indicated, as a prosecutor, he has routinely put people under oath. The statute that governs legislative

investigations by committees, AS 24.25.060, entitled oath and penalty for violation of oath is as follows:

The president of the senate and speaker of the house of representatives and the chairman of every committee of either body may administer an oath to a witness before appearing before their respective bodies. A person who willfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year and no more than five years.

He then asked Mr. Branchflower if he had any doubt of his own ability to place people under oath in this matter.

[10:13:40 AM](#)

MR. BRANCHFLOWER said he hadn't considered that. His preference has been to have a third person place the person under oath for a couple of reasons. He wanted to avoid any appearance that people might draw from him placing them under oath. It's a solemn undertaking and it should be done by a separate person. Also all of the people who have spoken to him so far have done so willingly. He has asked them for their statement and he has informed them that they will be placed under oath and that at the conclusion of his work, they would be provided a copy of the transcript and the audio file if they wished. Some expressed an interest in doing it and some have not. No threats were made; all these people came forward, they arrive at his office on their own and they talk to him and at the conclusion of the interview they leave. He again stated that he did not use any heavy-handed action and if anyone says anything to the contrary it's not true.

[10:14:56 AM](#)

REPRESENTATIVE GRUENBERG asked if he used someone else to place these people under oath now.

MR. BRANCHFLOWER replied he used a court reporter, an independent contractor, who is very experienced. She has all her own equipment and he has no personal ties to her or financial interest in her business.

[10:15:34 AM](#)

REPRESENTATIVE GRUENBERG asked if Mr. Barnhill and the Attorney General have been advising Ivy Frye and Kris Perry from the Governor's office not to cooperate.

10:16:41 AM

MR. BRANCHFLOWER replied the question of who represents who is not clear to him. He has sent at least two emails to Mr. Van Flein posing that specific question. He has stated that he represents quote "the Governor's Office." The online directory indicates that office has 55 people, but he is not interested in all of them; he is interested in just a few. Maybe who exactly Mr. Van Flein represents could be clarified.

To answer the question, early on in August, Mr. Barnhill was representing everyone - all government employees, and he based that belief on the memo that the Attorney General sent out encouraging people to cooperate and be truthful with him [Mr. Branchflower]. Mr. Barnhill sent out a letter that said if anyone had a question or was interested in talking about representation they could consult him. He thought that was directed to the "witness list," some of whom are Governor Palin's employees. Mr. Van Flein entered the picture and that's when the claim was made that he represents all of the Governor's office. If Mr. Van Flein represents the Governor and the Governor's employees, he didn't know exactly who Mr. Barnhill represents. By his letter, it was the employees of the Department of Administration and perhaps other individuals as well.

CHAIR FRENCH asked Mr. Branchflower to proceed with his list.

10:17:51 AM

MR. BRANCHFLOWER said the next person on his list is Janice Mason, scheduler and executive secretary to the Governor. He explained that the Governor was elected in November 2006 and sworn in on December 5, 2006. Right about that time, a little after the swearing in, someone, a female, from the Governor's office called Commissioner Monegan's secretary to set up an appointment with him and the first gentleman, Todd Palin. That appointment was scheduled for January 4, 2007. He has taken a tape recorded statement under oath from Mr. Monegan's secretary.

10:19:14 AM

According to Mr. Monegan's statement, the meeting occurred on January 4 in the Governor's office. The persons present were Mr. Monegan and Todd Palin; the subject of the meeting was Michael Wooten. Mr. Palin provided Mr. Monegan with some records, a portion of which had to do with a private investigation that he had undertaken.

Mr. Monegan's secretary was not sure if it was Janice Mason who made the call or another female, but she was certain about the date and the event that he just described. He suspected it was Janice Mason for two reasons. One is that she is the Governor's scheduler and executive secretary and secondly, not too long ago, Janice Mason called the Department of Public Safety (DPS) secretary who remained even though Mr. Monegan has departed. It was Janice Mason who called the secretary on July 22 seeking a copy of Mr. Monegan's online calendar and Ms. Mason was told that his email account had been cancelled and it would not be possible for the secretary to access that information. For all those reasons he believes it was Janice Mason, and the purpose of his desire to talk to her is that he wants to know who asked her to schedule the meeting between Mr. Monegan and the first gentleman and what the circumstances were.

10:20:40 AM

MR. BRANCHFLOWER said the next person on the list is Todd Palin, husband of the Governor. He said there is enough evidence in the public record to support the claim that he is the principle critic of Trooper Wooten. He has had many contacts with DPS personnel over the last several years and has made many comments about how it appeared that DPS was not doing its job because of Wooten; he wanted him fired. Mr. Branchflower said he didn't know if Mr. Palin is represented or where he is. He was hoping the subpoena, if issued, would permit him to interview him. He has spoken to numerous DOA employees about Mr. Wooten and, "I think because he's such a central figure to the events of the subject of my enquiry that I think one should be issued for him."

10:21:30 AM

CHAIR FRENCH noted that Representatives Johnson and Roses joined the committee some time ago.

10:21:45 AM

SENATOR THERRIAULT asked if in the deposition with Mr. Monegan he asked him if he had been asked to fire Mr. Wooten at that meeting and if the general concern was about the Governor's security.

MR. BRANCHFLOWER didn't remember that, but he recalled the thrust of the interview was that Mr. Palin was complaining to Commissioner Monegan that the investigation that had already taken place under the prior administration by former Colonel Grimes and the disposition of it, which had been agreed to by the PSEA and the administration under Commissioner Tandeske,

that that didn't solve the problem for Mr. Palin. He disagreed with it and thought it was an inadequate and insufficient measure, the measure being suspending Mr. Wooten for five days. In this meeting he was asking Commissioner Monegan to revisit something that had already taken place during the prior administration in light of some additional evidence he was providing. He gave that evidence to Mr. Monegan and asked him to look into it; Mr. Monegan agreed to do that and, in fact, took steps to see whether or not there was new evidence and if it would make a change. He detailed some folks to do that and they made a page by page comparison of the investigation that had been done earlier and the result was, as reported by Mr. Monegan, that there was nothing new.

10:24:03 AM

SENATOR THERRIAULT asked if Mr. Palin asked him to fire Mr. Wooten.

MR. BRANCHFLOWER replied not during that meeting, and he hasn't at this point uncovered any evidence where Mr. Palin posed that question directly.

CHAIR FRENCH asked him to continue with his list.

10:24:24 AM

MR. BRANCHFLOWER said Randy Ruaro, Deputy Chief of Staff, recently promoted, is on the list. He was interviewed by Susan Cox on August 8; her notes indicate that he had at least two conversations with Todd Palin about Mr. Wooten.

10:25:15 AM

MR. BRANCHFLOWER said the next witness is especially important and he wanted to take a long minute to detail why he wants her subpoenaed. He was referring to Murlene Wilkes, the owner of Harbor Adjusters in Anchorage. She has a contract with the State of Alaska to handle workers' compensation cases. She handles hundreds of them at any one time. He received information in August that someone from the Governor's office or the state had advised Ms. Wilkes that the workers' compensation claim made by Mr. Wooten should be denied. If that is true, he wanted to pursue it.

He called her on August 18; it was a preliminary call and not tape recorded. She said she had never talked to anyone from the Governor's office about the Wooten file and she never saw photos of Wooten riding on a snow machine while under workers' compensation and was never told to deny the claim.

The snow machine photographs of Mr. Wooten riding on a snow machine were amongst some of the items that were given Commissioner Monegan by Todd Palin when they met at the Governor's office on January 4. So he asked Ms. Wilkes about who handled the claim in the attorney general's office. She gave him the name of the assistant attorney general who handled the case; he contacted him and was assured the claim was handled in the normal course of business.

MR. BRANCHFLOWER asked him to give a statement and he said he would, and he did. He asked who his supervising attorney was; he told him; he contacted her and asked if the case was handled in the normal course of business; she said yes. He asked for and received a written statement. At that point everything looked okay and above board so he concluded that the information he had been given was not grounded in any fact.

10:26:59 AM

However on August 14, he received a call on the tip line he established from the employee who handled the workers' compensation claim at Harbor Adjusters. She gave him a statement on August 30 - under oath. He read into the record what she said (starting on page 6, line 12 of the transcript):

Well I remember at one - at some point in the conversation she had mentioned. (The "she" she is talking about is this Murlene Wilkes, this person I want to have subpoenaed) Well I remember at one point, at some point in the conversation, she had mentioned or said something to the effect that either the Governor or the Governor's office wanted this claim denied and I remember my response being why I don't, you know, care if it's the president who wants the claim denied, I'm not going to deny it unless I have the medical evidence to do that. I also remember stating that, you know, I would not treat Wooten's case any differently than, you know, I would any other claimant, no matter who it was that was pressuring me. I just wasn't going to do that. I had my license on the line and plus I just won't act that way.

MR. BRANCHFLOWER asked her for an idea of the give and take of the conversation. The witness responded, "Well, actually I also remember telling her that she could handle the claim herself if she wanted because I wouldn't be a part of that."

MR. BRANCHFLOWER asked, "What did she say?" The answer was:

I believe she said, you know, that was fine. And at that point, you know, she was dealing with - oh, I also recall that, you know, I think I inquired, you know, as to where this was coming from and what was going on. And I remember she said that [person's name] had called her about the claim and he was the one who had said somebody from the Governor's office, you know, wanted it either looked at or denied or something to that effect.

10:30:08 AM

MR. BRANCHFLOWER said after looking at this statement, he had reason to believe that when he spoke to Ms. Wilkes earlier that she wasn't truthful and so he resolved to try to get a statement by her to clarify the claims made by the witness. He called Ms. Wilkes recently and she wanted to know why that was necessary since he had already talked to her. He tried to convince her that it would be helpful to come down and he set the interview at 3:00 p.m. yesterday. At 3:00 p.m. she cancelled the interview on the advice of the attorney and wanted to know what would happen next. He answered that he was appearing before the joint meeting of the Senate and House Judiciary Committees and he would put her name on the list. She said that was fine.

MR. BRANCHFLOWER said Ms. Wilkes is obviously a key player because she handles all of the workers' compensation claims for the State of Alaska and she might have a financial motive given the fact that this is a contract that is awarded every five years. She had the contract; it was recently renewed and if she loses it due to the testimony he just described, it's her opinion that it will be tough on her business.

10:31:18 AM

MR. BRANCHFLOWER went to his last request, which deals with subscriber records for Frank Bailey that include, but are not limited to, incoming and outgoing cell phone calls for 907-748-5816 for the period of February 1, 2008 through March 31, 2008. The records are in the possession of ACS wireless at 600 Telephone Avenue in Anchorage. He has talked to the attorney for ACS who said the records are available in Anchorage.

The reason he wants the phone records is because in the transcript of his call, Mr. Bailey gave Trooper Dial his cell phone and urged him to call back. Mr. Branchflower thought it might be relevant to find out who Mr. Bailey called just before

talking to Trooper Dial and right after he had that conversation and perhaps those records might lead to some additional evidence.

10:32:47 AM

MR. BRANCHFLOWER said he hopes someone asks him about his relationship with Mr. Monegan.

CHAIR FRENCH asked what his relationship is with Mr. Monegan.

MR. BRANCHFLOWER assured him that it is professional. He spoke with his wife, Linda, this morning to reassure himself of the dates. Linda Branchflower was employed at the Anchorage Police Department May 1986 through January 2002; she worked under Chief Audey, O'Leary, Udman and Monegan, but only for the last two years. She had very little contact with Monegan; she has not socialized with him and had never been to dinner with him. They were both on patrol. He recalled that Officer Monegan was primarily a patrol division officer; she used to work the west end and Mr. Monegan used to supervise the west end and from time to time they had lunch as officers do during the noon hour. She has never been to his house; there are no financial dealings. Mr. Monegan had never been to the Branchflower home. Linda started working in the Cold Case Unit at the Alaska State Troopers (AST) after she retired from the Anchorage Police Department in January 2002. She was at AST from August 2003 to May 2005; that was a period of time that Commissioner Tandeske was the head of the DPS department. Mr. Monegan didn't come on until after Mr. Branchflower and his wife relocated to the State of South Carolina. They left Alaska in July 2005; the Governor was elected in the fall of 2006 and Monegan was appointed in January 2007. They were long-gone by the time Monegan came on the scene.

10:34:49 AM

As far as Mr. Branchflower's relationship with Mr. Monegan, he said he didn't ever recall working with him on a case where he was his case investigator. He didn't recall even calling him to the stand although he may have because of the many people he had examined there. They hadn't socialized or been to dinner; they have no financial ties. He had not been to his house and didn't know if he had children. Most of his contact with Walter Monegan has been in an adversarial context during the time he was working at the Office of Victim's Rights. It had to do with his investigation of APD following the Patty Godfrey 911 incident. The report that he issued at that time was pretty critical of

the Anchorage Police Department. "So those are my ties with Mr. Monegan, just to set the record straight."

10:35:52 AM

SENATOR WIELECHOWSKI moved:

Pursuant to AK 24.25.010(b), I move that you be authorized to issue subpoenas to the following individuals and for the following documents: Frank Bailey, Dianne Kiesel, Annette Kreitzer, Nicki Neal, Brad Thompson, Michael Nizich, Don Bitney, Ivy Frye, Kris Perry, Janice Mason, Todd Palin, Randy Ruaro, Murlene Wilkes; cell phone records for Frank Bailey for the period February 1, 2008 through March 31, 2008. This authorization is contingent upon the concurrence of the Senate President.

SENATOR THERRIAULT objected.

SENATOR WIELECHOWSKI said they are undertaking a ministerial function; the Legislative Council authorized this investigation by a vote of 12 to 0; it was a bipartisan, unanimous vote of the House and Senate members. It said that if subpoenas were necessary they were to go to the Judiciary Committee, either committee. The Governor welcomed this investigation repeatedly starting on at least July 18 in a report on KTUU saying, "We would never prohibit or be less than enthusiastic about any kind of investigation."

SENATOR WIELECHOWSKI said you deal in the facts with an investigation. Multiple times the Governor has said she welcomes the investigation and would support that investigation. The Legislature scheduled a hearing to issue subpoenas in August. But On August [indisc], the Governor issued a press release directing her staff to cooperate fully with Mr. Branchflower and that hearing was cancelled. Mr. Branchflower has now testified that he needs this testimony and the records to conduct a fuller investigation.

In early September the administration ceased cooperation in this matter and the assistant attorney general has directed that witnesses not testify and not cooperate. Senator Wielechowski repeated, "We're simply undertaking a ministerial function here in issuing these subpoenas. Mr. Branchflower has testified that he needs these to continue his investigation and we clearly have the authority to do this, Mr. Chair."

10:36:54 AM

SENATOR THERRIAULT asked to have Tam Cook testify.

SENATOR WIELECHOWSKI objected. He said a motion has been made and testimony has been closed. The chair stated that there was no invited testimony.

SENATOR THERRIAULT said, "Mr. Chairman, you told me yesterday [indisc.]. "She is here; we flew her here for this purpose. I want to talk to her."

10:38:53 AM at ease 10:46:04 AM

SENATOR FRENCH called the meeting back to order and said normally the rules would preclude having a witness talk to the committee under debate on a motion. So Senator Wielechowski's objection was well founded, but he was using his prerogative as chair to relax the rules because it is important to get a record made on the legal questions in front of them.

10:46:43 AM

SENATOR MCGUIRE said given the serious nature of what they are dealing with procedurally, to have an accurate record, she would feel more comfortable if Senator Wielechowski would withdraw his motion and introduce it again.

SENATOR WIELECHOWSKI withdrew his objection.

SENATOR MCGUIRE said that still raises the concern that they are under debate on a motion and yet they are taking witness testimony.

10:47:27 AM

SENATOR WIELECHOWSKI withdrew his motion.

10:47:48 AM

TAMARA COOK, Director, Legislative Legal and Research Services Division, Legislative Affairs Agency, put herself on the record.

SENATOR THERRIAULT said he thought the action that the Legislative Council vote started, while innocent enough, seemed to head them for a "branch versus branch smack down" that should be avoided at all costs. If there is a suggestion of an ethical lapse or wrong doing in the administration, the Legislature created the Personnel Board to look in to those actions and make a decision and has the power to oversee that report to decide if it was co-opted somehow. Using the Personnel Board would allow

the investigation to go forward with established rules and procedures. The legislative investigation is in a "murky area" where the rules are not very set. He asked Ms. Cook to give her opinion on the advisability of the Legislature taking this step.

He speculated that if subpoenas are issued and then ignored, that would put the Legislature in the position of protecting its power and that would lead to a head to head clash with the administration over the rights of the Legislature to subpoena. Either that or this committee will have to reconvene and withdraw its subpoenas.

10:50:15 AM

MS. COOK responded that her understanding is that the question is one of judgment under a hypothetical situation, which involves a decision by this committee to issue a subpoena and the person subpoenaed either refusing to attend or attending and refusing to testify, or in fact if an effort to quash the subpoena is undertaken in court. The question is what position the Legislature would be placed in vis-à-vis the necessity to preserve the legislative prerogative.

MS. COOK said her view is if a subpoena were issued by a legislative entity, and a court action was brought attempting to quash that subpoena, then the Legislature would be faced with two reasonable options. One would be to defend against the effort to suppress the subpoena, and the other one, based on its legislative authority to investigate. Another one would be for the legislative entity that issued the subpoena to consider withdrawing it as perhaps a courtesy to the executive branch. As to the viability of ignoring the matter and not either defending the effort to suppress the subpoena or taking formal action to withdraw it and simply defaulting, "that would be a disturbing abrogation of legislative authority."

10:52:54 AM

SENATOR THERRIAULT said he is always protective of legislative powers and if they could avoid a clash that could potentially diminish legislative powers that should be their course of action. He asked if Ms. Cook could give them an opinion about an issue in Mr. Barnhill's latest later that talked about the issue of quashing the subpoenas. He said Mason's Manual 797 2., states:

The legislature has no right to conduct an investigation for the purpose of laying a foundation for the institution of criminal proceedings, for the

aid and benefit of grand juries in planning indictments, for the purpose of intentionally injuring such persons or for any ulterior purposes.

If there is any legal question about the appropriateness of people in the chain of command of the executive looking at any personnel records and that is used as part of the motion to quash the subpoenas, it would seem to him that 797 2. would kick in. Perhaps it would be ruled that they have no right to issue the subpoenas.

10:54:34 AM

MS. COOK responded, "I think that the description in Masons' Manual is correct as I understand it as to the state of the law." Alaska doesn't have a mature line of cases that describe the interface between the executive power and the legislative power in the investigatory arena, but from other jurisdictions, it seems quite clear that the legislature does not have the power to do a criminal investigation or to lay the foundation for a criminal investigation. She continued:

That does not mean that the Legislature's power is not fairly broad. The Legislature, it has been recognized that simply pursuant to the lawmaking power, let alone other powers that the Legislature may have constitutionally been granted, that pursuant to the lawmaking powers the Legislature has considerable latitude to looking into specific facts. And that's based on the proposition that a body that is charged with setting public policy, true lawmaking, which includes the possibility, by the way, of a proposed constitutional amendment, since it is the Legislature only that can propose a constitutional amendment to the people of the state, that the Legislature is authorized to gain such facts as it might need to make those types of policy decisions.

10:56:08 AM

SENATOR FRENCH said she raised a good point in that essentially what may come out of this is a report to Legislative Council that some laws of the state might need changing. Two changes that come to his mind are they might decide it is bad idea to have commissioners be at-will employees; after going through the confirmation process, they should maybe enjoy more employment protection. This is relative to the constitutional amendment she spoke of a few minutes ago. They may also see that it is time to revamp the state's disciplinary procedures for state employees.

SENATOR FRENCH asked for any further legal questions.

[10:57:12 AM](#)

SENATOR THERRIAULT addressed Ms. Cook again and asked if they are talking past each other on the right to review personnel records, it seems that would be the basis for the move by the attorney general's office to quash the subpoenas and taking a little bit of time to get a meeting of the minds on that issue would be advisable. Maybe people would come forward with their statements willingly. What is the advisability of working through that mechanism?

[10:58:22 AM](#)

MS. COOK answered the question asks her judgment as to a potential course of action for the Legislature. For the most part, she would defer to the Legislature except to make a general observation that "my personal bias is to avoid litigation." If there seems to be a way to avoid litigation, "that's lovely."

[10:59:21 AM](#)

SENATOR THERRIAULT said he understands that sometimes through this kind of scrutiny statutes are found that need to be changed or tightened. That is what played out with the previous investigation into the former attorney general. The Legislature changed the ethics statutes and the administrative ethics statutes after that. That came from an investigation by the administration of one of its employees, the attorney general. That same process, the Personnel Board, can be used to play through this issue rather than pit one branch of government against another.

[11:00:28 AM](#)

SENATOR FRENCH said that is an entirely debatable issue and he views it differently.

[11:00:38 AM](#)

SENATOR WIELECHOWSKI read the subpoena motion again as follows:

Pursuant to AK 24.25.010(b), I move that you be authorized to issue subpoenas to the following individuals and for the following documents: Frank Bailey, Dianne Kiesel, Annette Kreitzer, Nicki Neal, Brad Thompson, Michael Nizich, John Bitney, Ivy Frye, Kris Perry, Janice Mason, Todd Palin, Randy Ruaro, Murlene Wilkes; and cell phone records for Frank

Bailey for the period February 1, 2008 through March 31, 2008. This authorization is contingent upon the concurrence of the Senate President.

SENATOR THERRIAULT objected.

SENATOR WIELECHOWSKI said he would let his former statement stand.

SENATOR THERRIAULT said this is in the middle of a political campaign and the volume has been turned up because the Governor was selected as the vice presidential candidate. Senators Elton, Wielechowski and French have very publicly taken a position in the Barrack Obama campaign, which is their right. Because of that, they should try to do whatever they can to take politics out of it and they have an avenue to do that in using the Personnel Board. He said the whole legislative process started because no complaint had been brought to the Board, but that has changed. Some members of the Legislative Council have indicated they would like to review their decision, and Senator French has made statements to the press that he admitted were unwise, even though they were taken out of context.

[11:03:33 AM](#)

Since that time, additional statements had been made and to the general public that have given this investigation a political flavor. If they can avoid that clash of two branches of government, they should do that.

SENATOR THERRIAULT said he thinks the subpoenas would be ignored and they would have to withdraw them or have a clash between the two branches and ultimately the Legislature would be the loser.

[11:06:03 AM](#)

SENATOR FRENCH said he thinks it's likely that something can still be worked out and he understands communication is happening with Mr. Barnhill and the offer he made to Chair Elton. He doesn't see a cataclysm; rather he sees two branches of government trying to work it out using the tools they have in a calm way to fundamentally get to the bottom of a situation.

[11:06:34 AM](#)

SENATOR THERRIAULT said if communication is going on why not give them the time to work it out. Again he pointed out that the October 10 date was arbitrary.

[11:07:25 AM](#)

SENATOR FRENCH said there is a good likelihood that this would be worked out, but Mr. Branchflower's essential point is that without the subpoenas there is a fair chance of another bump in the road arising causing them to have to reconvene.

SENATOR MCGUIRE offered a conceptual amendment stating that the subpoenas will be issued on the close of Election Day 2008.

11:08:11 AM

SENATOR WIELECHOWSKI objected.

SENATOR MCGUIRE said her reason for that amendment is because of Senator Therriault's comments and the appearance of real impropriety. The precedent for that, she said, is in the Legislative Ethics Act that states if someone is the subject of a legislative ethics complaint that they will allow that charge to take place following the completion of an election period. The reason for that is that someone could be targeted. The same act also says if a committee has already undertaken an investigation that the results will be kept confidential. Similarly the executive branch has a provision that says if a Personnel Board receives a complaint concerning the governor or lieutenant governor who is a candidate during any campaign period, that investigation will proceed after Election Day as well. She said that having the Governor nominated for vice president is unprecedented and this is offered in the same spirit as other acts that the Legislature has acted on.

11:11:24 AM

SENATOR WIELECHOWSKI said with all due respect to his colleague, he completely disagrees with her. Politics shouldn't be a part of this, but they are a political body, so they are. The Legislative Council wisely came to the conclusion that it didn't want politics to be part of the investigation; that's why Mr. Branchflower was chosen. He is a respected prosecutor with an excellent reputation and 25 years of experience. They specifically didn't choose a Democrat or a Republican; they chose someone who is independent. He said delaying the investigation until after the election politicizes it even more. "The election should have absolutely nothing to do with our decision." It should have nothing to do with when the report is issued or when the subpoenas are issued.

11:12:50 AM

SENATOR WIELECHOWSKI said the Legislative Council decided back in July to go forward on this investigation - before the Governor was selected for vice president. They set the date

before having any idea that this situation would arise and to change it now politicizes it even further.

11:13:44 AM

SENATOR THERRIAULT countered that the Legislative Council did not set the date of October 31; the report was supposed to be done in a timely fashion. It was after the Council's vote that the date right before the election was set and moving it to October 10 does not make the situation better. He said this post-election provision was put into the ethics law so that an investigation could not be used as a political tool. He said the Council is a 14-member body and he doesn't think the one legislator up on criminal charges would participate in taking any action; so that means it's a 13-member body. Representative Coghill has signatures from seven people, which would constitute a majority of those 13 saying they want to reconvene to relook at the action they set in motion.

11:15:28 AM

SENATOR FRENCH said there would be plenty of time for the Legislative Council to review the report and there would be action at that time to decide how to handle the confidential portions along with the other portions.

11:15:44 AM

SENATOR HUGGINS said for the record he doesn't support Senator Obama. On the other hand, some of the factors in this are being distorted. He is concerned that the amendment does politicize the issue. He stated:

Now we're in a new era of let's get the facts on the table. Let's make it clear and transparent. And I see all this duck foot action under the water of well, let's delay, let's water down. I'm simply here today with a short break in my moose hunting to say let's get to the facts. Let's have the truth. Let's be clear and transparent. And why we want to start pushing back and pushing back for this event and that event - in this case the election timeframe - I think is politicization. I'm disappointed in some of things I have heard and some of the comments today because I as a person am a very poor politician, but I recognize the truth. And I have a picture on my wall that says, 'Don't lie, cheat or steal or tolerate those that do.' I've lived that a long time and I'm a bit disappointed in some of the action that I've seen here today, because I think it is a politicization of what we are

doing. I say let's just get the facts on the table, the sooner the better. Let Mr. Branchflower go back to South Carolina.

SENATOR HUGGINS said he hadn't met Mr. Branchflower until a couple of hours ago, but he remembers when he and Representative Samuels chaired a committee to hire his replacement. About that he said:

Person after person after person trooped forward and talked about what a great American he was, what a great Alaskan he was, and how he matured a process to protect victims. They heard how he had an adversarial position with Mr. Monegan at one point. And now people are trying to take different action to, at a minimum, muddy the water. What I vote on here today will be about the truth, the facts, the sooner, the better, no ill will, because my gut feeling, my instinct, I sometimes say, my bunion will say, that I think that Mr. Branchflower has characterized that to some degree this is not about a legal process that will send people to prison or get that sort of headline on them; it's about us getting to a process for a modification of a system that might need to be modified.

SENATOR HUGGINS said he has also heard remarks about whether the Troopers are good or bad and he happens to support every one of them. When he looked Mr. Monegan's mother in the eye, he knew how this defamation has hurt her as well as that person who is a leader in our state and to most law enforcement agencies. It just pales and disappoints him. To that extent, he repeated, he wants to hear the truth, the sooner the better, no matter what the consequences.

[11:19:52 AM](#)

SENATOR MCGUIRE said that she didn't offer the amendment in the spirit he alluded to, but rather she wanted to depoliticize the process by virtue of unforeseen events. She also has tremendous respect for Steven Branchflower and doesn't question his ethics in any way.

[11:21:26 AM](#)

She said the nice thing about this amendment is that it doesn't prevent the truth from coming out. She supports the subpoenas and giving the investigator the tools he needs. She does not support having the appearance of being politicized. She said she loves Betty Monegan and the Troopers.

[11:22:48 AM](#)

A roll call vote was taken. The proposed amendment failed 2:3 with Senators Therriault and McGuire voting yea and Senators Wielechowski, Huggins and French voting nay.

CHAIR FRENCH asked if there was further debate on the motion.

[11:23:37 AM](#)

SENATOR THERRIAULT reiterated his stance that this clash could be avoided. The deadline was set arbitrarily and not at the direction of the Legislative Council. If Mr. Branchflower thinks there is not enough time to work out the differences with the Department of Law because of that arbitrary deadline it's ill-advised. He thinks they were headed down a path to certain litigation between the branches of government.

[11:24:33 AM](#)

SENATOR WIELECHOWSKI wrapped up that no one wanted to get into this position; he certainly didn't. This hearing was scheduled a month ago and they avoid it because at that time the Governor said she would cooperate fully. But now they are in this situation and they have an obligation to find out the facts. He repeated that 12 members of the Legislative Council unanimously voted to go forward on this.

He saw Walt Monegan on TV yesterday; he didn't want to talk to reporters. Monegan said, "You know what? I'm exhausted. I'm just ready for this to be over." Senator Wielechowski said they all are. It's unfortunate that a man who has given his career to the Department of Public Safety, the Anchorage Police Department and the Troopers has been dragged through the mud; it's unfortunate that the chair has been dragged through the mud. "It's time that we get to the bottom of this; find out the facts. Let's get the investigation done, get the report and let's move on. Thank you."

[11:25:49 AM](#)

SENATOR MCGUIRE said she would be a "no" vote, but she would have been a "yes" vote to preserve and protect the power of this legislative branch to issue subpoenas. She believes it is part of that balancing of the three branches of government; she believes in the truth and the merits of many of the arguments that have been brought forward with respect to the investigation.

[11:26:31 AM](#)

SENATOR HUGGINS added that he would support this motion and he was heartened by seeing Mr. Branchflower today fulfill the image he had conjured up in his mind about him based on what people have said previously when they were looking for a replacement. He meant that as a complimentary backdrop to what he was going to say. If they had gone ahead and issued the subpoena powers in the first meeting it would have been done in an air of non conflict and it wouldn't have been an issue. However, in this case he was heartened by Mr. Branchflower saying he would be able to go forward now and deal with the administration and get cooperation from the attorneys involved so the witnesses can come forward and they can get the information they want.

By supporting the subpoena powers today, they won't have to have another meeting on it. Alaskans will hear the answer and he thinks it is probably much more benign than has been hyped. He wants the facts on the table and to be clear and transparent. "If subpoena powers are an insurance policy that helps Mr. Branchflower get there, I'm fully supportive of that."

11:28:42 AM

A roll call vote was taken. The motion to issue subpoenas carried 3:2 with Senators Wielechowski, Huggins and French voting yea and Senators McGuire and Therriault voting nay.

11:29:15 AM

CHAIR FRENCH said that to a large degree concludes the work of the Senate Judiciary Committee and he turned the meeting over to the House Judiciary Committee.

11:30:55 AM

CHAIR JAY RAMRAS said the House Judiciary Committee would also have debate and entertain a motion, although it would be advisory in capacity. In the interests of full disclosure, he said he has had a McCain sign in his front yard since August 21. To that end, the only time he met Mr. Branchflower prior to today was on September 3. That meeting was attended by himself, Senator French, Vice-chair Dahlstrom and Mr. Branchflower.

When they got to the issue of subpoenas, Mr. Branchflower recommended eight names plus the Governor's name. Representative Ramras said he requested that the Governor be excluded from the subpoena process; he thought it was inappropriate given the comments about politicization of this issue. However, they encouraged Mr. Branchflower to continue to pursue an interview with her.

They agreed on seven of the eight names and the eighth name was Mike Tibbles. Again at his request, Mr. Tibbles was excluded from the list for subpoenas. He believes as Senator Therriault stated that the subpoenas would be ignored.

The other seven people are all still under state service and enjoying compensation from the State of Alaska, including the first gentleman who benefits from monetary issues that surround his unique dual position of being a private citizen as well as being the first gentleman of the State of Alaska. In that conversation they did not exclude Mr. Tibbles from being invited to interview with Mr. Branchflower either. Chair Ramras said because they didn't anticipate the others would come forward whether they were subpoenaed or not and because that morning Mr. Branchflower informed them that Frank Bailey, who the Governor said was put on paid leave so as to be available to the Legislature for the purposes of cooperation, was really the rogue catalyst that triggered a great deal of this, he asked that Mr. Tibbles be excluded. Further, Mr. Tibbles had completed his state service and was no longer compensated by the State of Alaska and hopefully would be able to continue on with his name and reputation in tact.

CHAIR RAMRAS said he conveyed his position forcefully enough to the others in the meeting that there was consent to exclude him ultimately from the list of those for whom subpoenas would be issued. He then welcomed a motion from House members in an advisory capacity.

[11:34:02 AM](#)

REPRESENTATIVE DAHLSTROM moved:

Pursuant to AK 24.25.010(b), I move that you be authorized to issue subpoenas to the following individuals and for the following documents: Frank Bailey, Dianne Kiesel, Annette Kreitzer, Nicki Neal, Brad Thompson, Michael Nizich, John Bitney, Ivy Frye, Kris Perry, Janice Mason, Todd Palin, Randy Ruaro, Murlene Wilkes; and the cell phone records for Frank Bailey for the period February 1, 2008 through March 31, 2008. This authorization is contingent upon the concurrence of the Senate President.

[11:34:48 AM](#)

REPRESENTATIVE GRUENBERG objected saying he was very troubled about the absence of Mr. Tibbles' name on the list in view of Mr. Branchflower's testimony. He was aware of the conversation

that had taken place, but he is also aware that the eyes of the state and the nation are upon the integrity of this process, "And as my friend from the Mat-Su said a minute ago, this is something that rises above any personal or political consideration and in my mind the important thing is that the public know the truth."

REPRESENTATIVE GRUENBERG said he wanted to offer an amendment to add Mr. Tibbles' name to the list.

CHAIR RAMRAS reminded him that the committee's authorization of the issuances is in an advisory capacity and he asked if he wanted to offer the amendment.

REPRESENTATIVE GRUENBERG asked if he preferred that they take up this issue separately.

[11:36:35 AM](#)

CHAIR RAMRAS responded:

The Senate will be the body that moves the subpoenas forward to its presiding officer. The House will simply vote today in the appearance of a joint Judiciary Committee in an advisory capacity. Therefore our vote on the motion for subpoenas is non-binding, but we can, for the purposes of the record, have a dynamic discussion on the subject matter. So to that end, to follow our rules, if you're interested in offering an amendment to the House motion you are welcome to, or at this point you can just leave the discussion open to the motion itself and at the appropriate time if you care to offer an amendment, you may and I would be happy as the chair to follow through and to vote on it.

REPRESENTATIVE GRUENBERG said he would do the latter.

[11:37:32 AM](#)

REPRESENTATIVE SAMUELS said he was with Senator Huggins in that he would not be supporting Barrack Obama to be the president of the United States and he also agrees with him that at the end of the day this isn't going to be an issue of national importance. That said, he stated that changing a process they already started automatically makes a political statement. He said the only person amongst all of them that had anything to do with this is not a politician, and that is Mr. Branchflower. He said

he would be voting yes on the motion and he wishes Mr. Branchflower well on his investigation.

[11:39:32 AM](#)

REPRESENTATIVE DAHLSTROM specified that her motion was contingent on approval of the Speaker of the House because they don't have a Senate President in the House.

[11:40:02 AM](#)

CHAIR RAMRAS said that was noted for the record and said she didn't need to restate the entire motion. Without objection, the motion carried.

CHAIR FRENCH announced an at-ease from 11:41 a.m. to [11:42:12 AM](#). He called the meeting back to order to adjourn at [11:42:14 AM](#).