

ALASKA CONSTITUTIONAL CONVENTION

January 6, 1956

FORTY-FIFTH DAY

PRESIDENT EGAN: The Convention will come to order. Chaplain Foss from Ladd Air Force Base will give the morning invocation.

CHAPLAIN HENRY A. FOSS: Eternal loving Heavenly Father, we raise our voices to Thee in gratitude for Thy protection and guidance in the days and years past, and we look up to Thee for guidance in the deliberations of this meeting which may determine the destiny of this Territory for the welfare of Thy people. May Thy Name be exalted and glorified for evermore. In His Name we pray. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

PRESIDENT EGAN: Mr. Cooper is ill.

CHIEF CLERK: Five absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Are there any petitions or memorials or communications from outside the Convention? Mr. Marston.

MARSTON: Mr. President, I requested that the College here through the student body sometime ago to give me an expression of their opinion on when a man should start voting. I have a petition here signed by the majority of the students addressed to the Alaska Constitutional Convention. I wish to submit it.

PRESIDENT EGAN: You may submit it, Mr. Marston, and if the Convention would stand at recess for about one minute the Chair will also get a communication relating to that subject that arrived last evening.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk may read the communications.

(The Chief Clerk read a communication from the President of the Associated Students of the University of Alaska pledging their support to and recommending any resolution of the Convention favoring an 18-year-old voting age in the future state of Alaska.)

PRESIDENT EGAN: The communication may be filed.

called, whereas a grand jury which is impaneled 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 steps that it feels may be necessary toward investigation. It does not have to wait for a call. Now it is true that a grand jury may be somewhat expensive, and it is true also that a grand jury dates back to the early days. But it does not follow in my opinion that the fact that a grand jury is something historic, or means that the grand jury at this time should be scrapped. It has served a useful purpose and it does serve a useful purpose. Mr. Buckalew has pointed out that the grand jury is more or less under the control, that isn't the right word but at any rate the proceedings are under the control of the district attorney. There is no question about that and there isn't any question that each grand jury that sits returns some "no true bills". The present grand jury just finished sitting in Anchorage has returned probably 10 "no true bills". For those who are not lawyers, a "no true bill" means that somebody has been charged with a crime by the district attorney and the district attorney, with all the control of the proceedings before the grand jury, has presented all of his evidence to the grand jury and in spite of that the grand jury has said that there is no cause to hold this man for trial, and the man has been released without going through a trial to a regular jury. Certainly under those circumstances it can't be said that the grand jury serves no useful purpose. It serves a distinctly useful purpose, and not as Mr. Hellenthal said, only to persons evilly disposed. It might be me, it might be you, it might be anybody that was charged with crime and was not guilty of that crime and should be released by a grand jury when the evidence was produced before the grand jury. Mr. Buckalew, possibly inadvertently, mentioned another useful purpose that the grand jury serves when he says that the district attorney can get his weak witnesses on record. Certainly that is worthwhile to the government in a case where the government has a case that he wants to prosecute. To get his witnesses on record under oath certainly is of considerable value. I will agree in a minute that in most cases, under present circumstances, the defendants are going to waive the right to grand jury investigation and to indictment and to proceed by information because it is so much faster, but I certainly hope that we preserve the right to have the criminal matters investigated by a grand jury if the accused wants it done that way.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, yesterday we attempted an amendment to Section 11. I think it was prompted by Mr. Taylor, on line 12, page 4, I don't recall the amendment verbatim, but it had to do with punishment defined for officers that are infringing on civil liberties. Isn't that so, Mr. Taylor? So I can see a contingency between your amendment of yesterday and the question

at hand right now. I recall personally a situation eight or nine years ago that brought it to my attention forcefully how the grand jury can be utterly vital. I think the grand jury can to some extent come into play in situations that your amendment yesterday was trying to remedy. 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, to get redress from abuse in lower courts. It is the only place where a citizen who had a just case but who was refused to have his just case treated in the lower court, as it is now in the Territory, the commissioner's court, to appeal directly to the grand jury is the only way. If the commissioner refuses to have the case appealed in superior court, this is my personal experience, it is the only safeguard a citizen occasionally has when for any reason and very often for political reasons, a case is not dealt with properly. The grand jury can be appealed to directly, which is an invaluable right to the citizen.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I would like to ask a question of Mr. Buckalew, if I may. I ask it out of pure ignorance as a layman. Where will we get our district attorneys or prosecutors under the state government?

BUCKALEW: From the way the constitution looks now, Mr. McLaughlin can probably answer it better than I could, I would say he would be elected from, what is this outfit, the boroughs.

SUNDBORG: I was wondering when we are a state and operating under this constitution, how will we get our prosecutors or district attorneys?

MCLAUGHLIN: This says the legislature shall prescribe them. I don't believe any one of the committee proposals makes any provision for the prosecutors. I presume the legislature will have to determine how the prosecutors are appointed.

SUNDBORG: What would be a logical method? Are there a number of choices?

MCLAUGHLIN: There are plenty of choices, elective, appointive by the governor, appointive within the borough.

SUNDBORG: I have another question. Will the state constitution and this material which we are going to have in our bill of rights be governing in the federal court in Alaska as well as in our state court?

MCLAUGHLIN: What is that again?

SUNDBORG: Will the state constitution and this material which

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1993

Amending Criminal Rule 6 and
Criminal Rule 6.1 concerning
grand jury.

IT IS ORDERED:

1. Criminal Rule 6 is amended to read as follows:

Rule 6. The Grand Jury.

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(i) **Preparing Indictments and Presentments.** The prosecuting attorney shall prepare all indictments and presentments for the grand jury, and shall attend ~~its~~^{their} sittings to advise ~~it~~^{them} of ~~its~~^{their} duties and to examine witnesses in ~~its~~^{their} presence.

(i) **Investigation of Crime Initiated by Grand Juror.** If a grand juror discloses to other grand jurors that he or she has reason to believe a crime has been committed that is triable by the court and proposes that the grand jury investigate that crime, the grand juror shall also disclose the belief to the prosecuting attorney. If approved by a majority of the grand jurors, the grand jury may investigate the facts and circumstances relating to the belief with the assistance and oversight of the prosecuting attorney, in accordance with Rule 6.1(d) and (e)(1)-(2).

[re-letter following subsections]

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or safety or welfare. An issue concerns the public welfare or safety, and therefore is within the scope of a grand jury's investigative authority, when

(1) the investigation of the issue could further a public policy of the state;

(2) the outcome of the investigation could reasonably be expected to benefit a large number of people, rather than to benefit only an individual or small group of individuals; and

(3) the issue involves a matter of general importance to a large number of people, rather than to an individual or a small group of individuals.

An issue that concerns primarily a private matter rather than one that concerns the general public is not generally an issue concerning the public welfare or safety within the scope of a grand jury's investigative authority. An indictment is not a "report" as used in this rule and Criminal Rule 6.

~~(2) A grand jury report may be made only upon the concurrence of a majority of the total number of grand jurors on the panel at the commencement of the proceedings resulting in the report. The report must be signed by the foreperson. A grand jury report may include allegations of criminal conduct.~~

COMMENTARY to Rule 6.1(a):

The grand jury is constitutionally authorized to investigate matters of public welfare or safety and to issue reports on the results of such investigations; subsection (a) generally describes the reasonable scope of that authority. Adherence to subsection (a) will ensure that an investigative grand jury is justified and that the

grand jury's use of State of Alaska resources is reasonable and appropriate.

To be investigated, a matter must concern the public welfare or safety; for example, systemic issues or an ongoing, recurring issue impacting the general public could be within the scope of a grand jury investigation. But purely private matters such as, for example, an investigation into any individual court case of any type (whether currently open or closed), or an investigation into the Department of Law's decision not to prosecute a particular incident as a crime, or an investigation into any private dispute between or among citizens that could appropriately be the basis for a civil or other court case, are not generally matters of public welfare or safety within the scope a grand jury's investigative authority.

(b) Grand Juror Requests to Investigate a Matter of Public Welfare or Safety.

(1) An individual grand juror may propose to the prosecuting attorney that the grand jury investigate a matter concerning the public welfare or safety. If the prosecuting attorney has a reasonable basis to believe that (A) the matter proposed concerns the public welfare or safety and is within the grand jury's authority as described in subsection (a), and (B) the proposal is not patently groundless, made for purposes of delay or harassment, or otherwise proposed in bad faith, the prosecuting attorney shall, within a reasonable period of time considering resources and Department of Law priorities, describe the proposal to the grand jury for its consideration. If a majority of the grand jurors, after a reasonable time for consideration, determines that the matter proposed should be the subject of an investigation, then the

COMMENTARY to Rule 6.1(c)(1):

The grand jury process may broadly be considered a function of both the judicial branch and the executive branch. The court system convenes a grand jury, provides a clerk for recording the sessions, and provides logistical support such as a physical space for the sessions. But grand jury sessions are led by and conducted by the Department of Law, i.e., the executive branch. The court system does not play a role in presenting evidence or moderating proceedings (except for the limited and rare situation in which a grand jury seeks a clarification of law, as provided in Criminal Rule 6(p)); a judge is not present for grand jury sessions while evidence is being presented or when any particular case or matter is being discussed or considered. This limited judicial branch role and expansive executive branch role with respect to grand jury proceedings is unchanged when the grand jury fulfills its investigative function. Decisions as to what to present to the grand jury, including whether to present a matter requested by a citizen to the grand jury for investigation, rest with the executive branch.

A grand jury has the constitutional authority to investigate appropriate matters when properly presented. This, in itself, does not mean that an individual citizen has a right to present any matter directly to the grand jury for consideration, or to seek a court order requesting or requiring that a grand jury conduct any investigation. A citizen seeking to have a grand jury investigate a matter of public welfare or safety may bring that issue to the attention of the Attorney General or his or her designee. It is up to the Attorney General or designee to review the matter and determine whether an investigation would be a valid and appropriate use of the grand jury's authority, as described in this