

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

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1 REPRESENTATIVE TOOHEY: yes.
2 CHAIRMAN MAC NEILLE: Yes, but let's check that.
3 MR. SPAAN: Okay. Well, let's go through that.
4 HEARING OFFICER: I have Exhibit 1 being admitted, 2
5 being admitted, 3 being admitted, 4 being admitted.....
6 MR. SPAAN: I think 12, excuse me.
7 HEARING OFFICER: Six being admitted, 5 being admitted,
8 8 being admitted, 9 being admitted, 10 being admitted, 11 being
9 admitted, 12 I indicated uncertainty, 13 being admitted, 14
10 being admitted. I don't have a record of Exhibit 7.
11 MR. SPAAN: Seven or 12, I'm sorry?
12 HEARING OFFICER: Seven -- 7 and 12 I'm uncertain.
13 MR. SPAAN: Okay, 12, Your Honor, my notes reflect was
14 admitted when Ms. Schofield testified. And this was the one
15 that showed the computer was last used on March 4th at 10:43
16 a.m. And let me look at Exhibit 7 and I think if that's not
17 your memory, that Ms. Barnett could establish a foundation.
18 MS. MCCOY: I made a note that it was admitted.
19 HEARING OFFICER: Mr. Syren, on Exhibit 12 did you have
20 an objection?
21 MR. SYREN: As to foundation only, Your Honor.
22 HEARING OFFICER: Okay. I will do it.
23 (Committee's Exhibit 12 admitted)
24 HEARING OFFICER: And what is Exhibit 7?
25 REPRESENTATIVE TOOHEY: We don't have it.

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1 MS. MCCOY: I don't think we have one.

2 HEARING OFFICER: We don't have a seven yet, okay.

3 MR. SPAAN: Okay, then thank you.

4 HEARING OFFICER: So Exhibit 7 has not been admitted.

5 MR. SPAAN: Ms. Barnett, if you could resume the
6 witness stand.

7 **SUSAN BARNETT**

8 testified as follows on:

9 **REDIRECT EXAMINATION**

10 **MR. SPAAN:**

11 Q I'm going to hand you what's been marked as Exhibit 7
12 and ask you to identify this document.

13 A This is a document dated October 17th and I -- it is a
14 letter to me from Kevin Kempton.

15 Q Excuse me, can you identify Mr. Kempton?

16 A Mr. Kempton is the human resource manager or personnel
17 manager for the Legislative Affairs Agency.

18 Q Okay. And was this letter written at your request?

19 A This was a response to a subpoena.

20 Q Okay. And what information was asked for?

21 A I requested the payroll records, including leave time
22 for Ms. Jeanne Lovell from the period of time, January
23 29th through March 5th, 1996.

24 Q And did you receive a response of the payroll records?

25 A Yes, I did.

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1 MR. SPAAN: I'd move 7, Your Honor.
2 HEARING OFFICER: Is there objection?
3 MR. SYREN: I seemed to have misplaced mine, can I take
4 a look at this, Your Honor, real quick?
5 HEARING OFFICER: Sure.
6 MR. SYREN: No objection, Your Honor.
7 HEARING OFFICER: Exhibit 7 is admitted.
8 (Committee's Exhibit 7 admitted)
9 Q And does it indicate whether or not Ms. Lovell was on
10 leave status prior to March 5th, 1996?
11 A Between January 29th, 1996 and March 5th, 1996?
12 Q Right.
13 MR. SYREN: I'm sorry, can I interrupt, did everybody
14 get a copy of Exhibit 7?
15 HEARING OFFICER: No, we haven't yet.
16 MR. SPAAN: I'm sorry. I failed in my job.
17 HEARING OFFICER: Mr. Spaan was derelict in his duties.
18 (Off record comments)
19 Q Does it indicate -- I'm sorry, what was your testimony
20 about whether or not it indicated Ms. Lovell had taken
21 vacation?
22 A In the second paragraph of the letter, he clarifies,
23 during this period no leave was reported for Ms.
24 Lovell.
25 Q Ms. Barnett, there has been a statement made that when

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1 you contacted Ms. Perez that you had reason to believe
2 that she was represented by Lester Syren; is that
3 statement correct?

4 A No. That is not a correct statement.

5 Q And when you reviewed the interrogatory response, do
6 you know why Ms. Perez listed her address as in care of
7 Mr. Syren?

8 A That was an absolute precaution. I had never heard of
9 Patricia Perez before. I saw her listed from the March
10 1996 personnel listing under Representative Sanders. I
11 clearly recall the August 12th letter from Ms. Syren
12 and so, A, as a precaution I recommended that and
13 secondly, I had no idea where she was from.

14 Q Okay. And did you have any reason to believe that she
15 was, at that time, represented by Mr. Syren?

16 A I -- I had no idea, but to be safe I -- since she was
17 in March an employee.

18 Q And when -- did you finally locate a phone number for
19 Ms. Perez?

20 A Yes, I did.

21 Q And did you take steps to determine whether or not she
22 was currently employed, at that time by Representative
23 Sanders?

24 A Yes, I did.

25 Q And what was the results of your investigation?

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1 A That she was not employed by Representative Sanders at
2 the point at which I contacted her.

3 MR. SPAAN: Thank you. I have nothing further.

4 HEARING OFFICER: Mr. Syren, do you have anything
5 further?

6 MR. SYREN: Yes.

7 **SUSAN BARNETT**

8 testified as follows on:

9 **RECROSS EXAMINATION**

10 **BY MR. SYREN:**

11 Q Ms. Barnett, do you have any personal knowledge of any
12 of the information contained in Exhibit 9?

13 A No. I do not.

14 Q All right. You said that you -- did you actually draft
15 that answer to the interrogatory that said care of and
16 then my name or did someone else draft that for you?

17 A I don't recall.

18 Q As we sit here today, then you don't remember drafting
19 that answer?

20 A I certainly could have.

21 Q But as we sit here today, you don't have a recollection
22 of drafting that answer: is that right?

23 A Of creating the witness -- the potential witness list?

24 Q No. That answer to that interrogatory that states,
25 Patricia Perez is Number H -- or H, care of Lester

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1 Syren; you have no recollection of signing that -- or
2 of drafting that answer, right?
3 A I actually in -- in a draft early on, not in this
4 particular interrog -- I didn't type out the
5 interrogatory, the response.
6 Q Okay.
7 A But early on, I believe I put something referencing
8 that she had been an employee of Representative Sanders
9 in 1996.
10 Q Okay.
11 A And.....
12 Q Were you finished?
13 A Yes.
14 Q I'm asking, who drafted the care of Lester Syren?
15 A Well, I'm not trying to not answer you, Les.
16 Q I know and I just want to know if you have a specific
17 recollection of making that annotation?
18 A That c/o?
19 Q Yes. In any of your answers, draft or otherwise?
20 A I don't -- I honestly don't recall if I did that or
21 not.
22 Q All right. Are you aware of the letter dated August
23 12th that I sent to Mr. Spaan that advised him.....
24 A Very aware.
25 Q All right. And you said you put there care of just to

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1 be safe; is that right?

2 A Yes.

3 Q Okay.

4 A Because I did not know at the time of the response to
5 the interrogatory whether Patricia Perez was an
6 employee at that moment.

7 Q All right. To be safe, why didn't you call me before
8 you called Ms. Perez?

9 A The reason why is because I found out that Ms. Perez
10 was not an employee and I was not obligated by the
11 August 12th letter to contact you at that point.

12 Q Okay. But you asked her if she was represented by an
13 attorney, right?

14 A Yes, I did.

15 Q So you didn't know if she was represented by me or not,
16 right?

17 A And if she had said, yes, I would have said thank you
18 very much and I would have called you.

19 Q That's not the question. I'm just asking, why, to be
20 safe, you didn't contact me beforehand?

21 A I -- I don't believe it's my obligation to assume that
22 you represent everyone.

23 Q Even though you didn't know if she was represented by
24 an attorney at the time or not?

25 A Absolutely.

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1 Q All right.

2 MR. SYREN: No further questions, Your Honor.

3 HEARING OFFICER: Do members of the Committee have any
4 questions?

5 REPRESENTATIVE TOOHEY: Yes, I do have a question, Your
6 Honor.

7 **SUSAN BARNETT**

8 testified as follows on:

9 **INQUIRY**

10 **BY REPRESENTATIVE TOOHEY:**

11 Q Ms. Barnett -- Susie, was it under your -- were you --
12 was it your opinion that Ms. Perez had gone through the
13 ethics or had gone through the book that we all go
14 through and all the employees are supposed to go
15 through concerning what duties they can and cannot
16 perform during office hours?

17 MR. SYREN: And I'll object. This is outside the scope
18 of the -- foundational question. It's outside the scope. Ms.
19 Barnett can't know what Ms. Perez thought or did unless there's
20 some sort of foundational question.

21 HEARING OFFICER: The question was, did you have an
22 impression of whether she knew, do you have a basis of knowing
23 that or not?

24 A In response and I think you may feel comfortable with
25 this, I did not know Ms. Perez prior to the time -- I

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1 still don't know her, I wouldn't recognize her. Had I
2 seen her perhaps in the training session and knew her
3 -- but I -- I do not know.

4 Q One more quick question. Was the office -- was Ms.
5 Perez aware of why you were questioning her?

6 MR. SYREN: Objection. Foundation. She can't know
7 what's going on inside of her mind.

8 HEARING OFFICER: When you talked to her, did you tell
9 her that you were asking -- that what your job was and why you
10 were talking to her?

11 A Yes.

12 Q Did you ask her any other questions concerning her --
13 the letters -- the March 4th letters?

14 A Let me just look at my notes just to -- I may have
15 asked her where she sits or where her -- because I have
16 an impression in my mind that she and Jeanne may have
17 been in the same office. I feel as if I asked her,
18 were you in the same office, could you physically work
19 together or something like that. But I don't think I
20 asked her beyond that.

21 REPRESENTATIVE TOOHEY: Thank you.

22 HEARING OFFICER: Mr. Donahue? Any other questions,
23 Mr. Granger? Any follow-up Mr. Syren?

24 MR. SYREN: Nothing here, Your Honor.

25 HEARING OFFICER: Very well. Thank you, Ms. Barnett.

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1 Your next witness.

2 MR. SPAAN: Mr. White, at this time I call Donna
3 Daniels.

4 HEARING OFFICER: Would you please raise your right
5 hand.

6 (Oath administered)

7 MS. DANIELS: I do.

8 HEARING OFFICER: Please be seated.

9 DONNA K. DANIELS

10 called as a witness on behalf of the Committee, testified as
11 follows on:

12 DIRECT EXAMINATION

13 HEARING OFFICER: Would you state your full name,
14 please?

15 A Donna Katherine Daniels.

16 HEARING OFFICER: Your mailing address?

17 A Work or home?

18 HEARING OFFICER: Work is fine.

19 A 1031 West 4th Avenue, Suite 600, Anchorage 99501.

20 HEARING OFFICER: And your occupation, please?

21 A Legal secretary.

22 HEARING OFFICER: Thank you. Mr. Spaan.

23 MR. SPAAN: Thank you.

24 BY MS. SPAAN:

25 Q Donna, by way of full disclosure, where do you work?

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1 A Bogle & Gates.

2 Q And how many attorneys do you work for?

3 A Two.

4 Q And who are they?

5 A Michael Spaan and Peter Nosek.

6 Q Okay. Ms. Daniels, what is your background in
7 secretarial skills or duties?

8 A I started out civil service as a clerk typist for
9 different divisions. I went from there to the State of
10 Alaska as a word processing operator for the
11 Commissioners with the Alaska Public Utilities
12 Commission. Then was hired by a private attorney here
13 in Anchorage named Robert Stoller and was Mr. Stoller's
14 private secretary for six and a half years. He did
15 mainly public utility law, oil and gas law. And after
16 six and a half years of employment there left and went
17 into the envir -- an environmental field for 10 months
18 and then went back into the legal field with Bogle &
19 Gates.

20 Q And as a legal secretary, do you use a word processor
21 or a computer in your duties?

22 A Yes.

23 Q And could you tell the Committee what your typing speed
24 is if you've been tested?

25 A I've been tested and it's averaging about 100 words a

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1 minute.

2 Q And what about, if you have an impression of your
3 general speed that you do work, what would it be?
4 A Average to fast, depending on the project.

5 Q Were you asked, Ms. Daniels, to conduct a test for me?
6 A Yes.

7 Q And what were you asked to do?
8 A I was asked to recreate the form letter that was mailed
9 out to the District 19 Republican Party participants.

10 Q And what tools were you -- what were you given to do
11 this?
12 A The list from the straw poll, the mailing list.

13 Q I'm going to hand you what's been admitted as Exhibit 5
14 and ask whether or not you were given that document?
15 A Yes.

16 Q And what other documents were you given?
17 A The form letter.

18 Q I'll hand you what's been admitted as Exhibit 11 and
19 ask you whether or not that is the form letter?
20 A Yes, it is.

21 Q Were you given anything else?
22 A Some minor instruction from one of our computer people
23 in the office.

24 Q Okay. And what did you undertake to do?
25 A I basically took the list, handwritten list, typed it

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1 into our computer system in a format that would give me
2 the name, the mailing address, the city, state and zip
3 code and created that as a master document. Then I
4 took the form letter and created it as a secondary
5 document. And then using the computer equipment we
6 have at work, merged the two doing a mail merge and put
7 out 322 letters in a final format.

8 Q And once the letters came out in a final format, did
9 you undertake any other task as part of this test?

10 A Yes.

11 Q What?

12 A I was asked to fold and stuff and run them through a
13 postage machine.

14 Q And did you do that?

15 A Yes.

16 Q And did you then go to the post office or any place to
17 mail these letters?

18 A No.

19 Q Did you take -- keep a time log of how long it took you
20 to complete this task?

21 A Yes.

22 Q And how long did it take you to complete it?

23 A Approximately six and a half hours.

24 Q And did this include time where you attended to other
25 chores or was this six and a half hours on this

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1 specific task?

2 A This was six and a half hours over a two day period
3 during my normal working duties.

4 Q Did you work on -- perhaps I wasn't clear. Did you
5 work on any other matters during the six and a half
6 hours that you logged?

7 A Yes.

8 Q And was that then excluded from the time from the six
9 and a half hours or was that part of the six and a half
10 hours?

11 A I kept specific track of what I did for this particular
12 duty that you gave me.

13 Q Okay. Let me ask it this way. Assuming I had some
14 other chores, besides this one and asked you to write a
15 letter to a client or do a pleading.....

16 A Then I would.....

17 Qon another matter, would that be in the six and a
18 half hours?

19 A Yes.

20 Q I'm sorry?

21 A Okay, we're not.....

22 Q No, no.

23 A Okay.

24 Q What I'm asking is, if I told you to prepare an answer
25 in an absolutely different case, would that be included

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1 in this six and a half hours?

2 A No. I would stop the time for this project that I was
3 working on and pickup and do the other project.

4 Q Okay.

5 A Okay.

6 Q So the six and a half hours then would reflect the time
7 necessary to do the recreation?

8 A Yes.

9 Q Now, if Representative Sanders only sent 239 letters
10 and that's all you had sent, it would have taken less
11 than the six and a half hour period, I assume?

12 A Yes.

13 MR. SPAAN: I have no further questions.

14 HEARING OFFICER: Mr. Syren.

15 MR. SYREN: I'll move to strike all of her testimony if
16 it's being offered as expert testimony. She hasn't been
17 qualified as an expert and otherwise it's irrelevant.

18 HEARING OFFICER: Well, it is relevant in terms of the
19 fact that it took some period of time to do that work and I
20 think that's one of the allegations that State time was used.

21 MR. SYREN: Well, I understand that, Your Honor. He's
22 -- Mr. Spaan has listed her as an expert witness and there's --
23 unless I missed something there's been no qualification or voir
24 dire on that issue, on her qualifications.

25 HEARING OFFICER: You didn't object. He asked opinion

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1 -- he asked.....

2 MR. SYREN: He never -- he never offered her as an
3 expert and he hasn't done so yet.

4 MR. SPAAN: Why don't.....

5 HEARING OFFICER: The objection's overruled. There's
6 no formal words. If you had an objection you should have
7 raised it when he asked her for her first opinion. I
8 can't.....

9 MR. SYREN: He's never asked for her expert opinion, so
10 to the extent she's offered as an expert opinion I move to
11 strike because she hasn't been qualified as one. And that's --
12 that's how he's listed her, as one -- that's the only way he
13 can offer her one unless he wants to revise his witness list
14 now in the middle of the hearing.

15 HEARING OFFICER: Well, I recall seeing Ms. Daniels
16 name on the list as far as what she was going to be testifying
17 about. The objection's overruled. Members of the Committee
18 have any questions?

19 MR. SYREN: I have some questions; Your Honor.

20 HEARING OFFICER: I'm sorry, I apologize.

21 DONNA K. DANIELS

22 testified as follows on:

23 CROSS EXAMINATION

24 BY MR. SYREN:

25 Q You also sign certificates of service in this case as

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1 well; is that right?

2 A Yes, sir.

3 Q All right. And Mr. Spaan has the ability to hire or
4 fire you; is that right? Well, you're already hired,
5 he has the ability to fire you; is that right?

6 A I guess.

7 Q Were you -- well, I ask that question because normally
8 experts aren't in a position with the person who hired
9 them such that the person who hired them for this
10 particular piece of work can also fire them from their
11 regular job. My next question is, did you review any
12 documents to prepare for today's testimony?

13 A No.

14 Q Did you talk with anybody.....

15 A No.

16 Qprior to -- excuse me, prior to coming here today
17 about your testimony?

18 A No.

19 Q You never spoke with Mr. Spaan at all about what you
20 would say?

21 A We went through a short question and answer session
22 which was basically what he just asked me.

23 Q Okay. How long did that take?

24 A Ten minutes.

25 Q Okay. Did he tell you anything about the case?

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1 A No.

2 MR. SPAAN: I object, Your Honor.

3 HEARING OFFICER: Overruled.

4 A Okay.

5 Q He didn't tell you anything about the case?

6 A No.

7 Q Well, he told you to run this test, right?

8 A That's all.

9 Q That's all he told you?

10 A Um-hum. (Affirmative)

11 COURT REPORTER: Excuse me, you need to answer yes or

12 no, Ms. Daniels.

13 A Oh.

14 COURT REPORTER: So was that, yes?

15 A Could you repeat the question for me?

16 HEARING OFFICER: I think the question she didn't hear

17 an answer was, did he tell you anything about the case?

18 A No.

19 HEARING OFFICER: Okay.

20 Q And then you corrected that, I guess, to say that he

21 did tell you to, here's what we're dealing with, run

22 this test for me and see how long it takes; is that

23 right, I mean.....

24 A That was it.

25 Qhe told you that, right?

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1 A That's all.

2 Q Okay. What about during this rehearsal for today's
3 testimony, did he tell you anything else?

4 A No.

5 Q What questions did he ask you?

6 A The questions he just asked.

7 Q Okay. Did he ask you any other questions?

8 A No.

9 Q All right. Who supervised your test?

10 A Nobody.

11 Q Okay. So other than you, there's nobody else that can
12 verify how long it took for you to complete this task;
13 is that right?

14 A I have my handwritten notes if you'd like to see them.

15 Q Okay. But that's not my question. My question is,
16 whether or not there was anybody else supervising the
17 amount of time it took you to complete this task?

18 A No.

19 Q Okay. Do you know if you have the same words per
20 minute as Patricia Perez?

21 A I've never talked to Ms. Perez, I have no idea.

22 Q Okay. You don't know if you have the same.....

23 A No.

24 Qwords per minute? What about Jeanne Lovell?

25 A No.

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1 Q Okay. What about the computer, do you know if it's the
2 same as the computer used by Jeanne Lovell or Patricia
3 Perez?
4 A In doing the recreation of this test, our computer
5 person was able to look at the form letter and the list
6 here and say that it was in a Word format, not
7 Wordperfect, but Word, that's a different word
8 processing program and that's the program I used to
9 recreate this test.
10 Q Okay. Do you know if it was actually the same program?
11 A No.
12 Q You said you kept time slips for this?
13 A I have handwritten notes, yes.
14 Q All right. And were you paid to do this work today?
15 A No.
16 Q Okay.
17 MR. SPAAN: If I could interject. You didn't take
18 vacation to do this?
19 A No.
20 MR. SPAAN: Did you understand his question?
21 HEARING OFFICER: Mr. Spaan, why don't you.....
22 MR. SPAAN: Okay, okay.
23 Q This time that you spent with discussing with the
24 computer expert or the computer advisor, was that
25 included in the six and a half hours?

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1 A Yes.

2 Q Okay. How much time did you spend with him?

3 A Her.

4 Q Her, excuse me?

5 A Valerie helped me get the program going, showed me what
6 to do, then she went away and if I had questions I'd
7 call her. Maybe 10/15 minutes tops.

8 Q Okay. And do you have that in your notes as well?

9 A Yes.

10 Q Can I take a look at that please?

11 A sure.

12 Q Okay. I wonder if you could point to me exactly where
13 the notation is for the amount of time you spent with
14 the expert computer advisor?

15 A Right here on 10/30/96 from 2:10 to 2:30, handwritten
16 list, asked for assistance from V.Parlberg with merge
17 program in Word 6.

18 Q So it's actually 20 minutes.....

19 A Yes.

20 Qthat you spent getting advice about the computer
21 system?

22 A Yes.

23 Q Okay. Had you ever used that computer system before?

24 A It's a brand new one being offered at Bogle & Gates.
25 In two weeks they will rollover our Wordperfect 5.0 and

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1 5.1 programs into Word. So we have had no formal
2 training on the program.

3 Q Okay. And you've never used it before then?

4 A No.

5 Q All right. And do you know if Ms. Lovell or -- well,
6 do you know if Ms. Lovell has ever used that program
7 before?

8 A No.

9 Q Do you know if Ms. Perez has ever used that program
10 before?

11 A No.

12 Q Is there anything else that you did to prepare for
13 today's testimony?

14 A No.

15 Q Did you keep a file?

16 A No.

17 Q Where did you keep your notes?

18 A Right here.

19 Q Where did you keep them before today's preparation --
20 before today's testimony?

21 A They sat on my desk with a paper clip.

22 Q Okay.

23 MR. SYREN: No further questions at this time, Your
24 Honor.

25 HEARING OFFICER: Mr. Spaan, is there any redirect?

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DONNA K. DANIELS

testified as follows on:

REDIRECT EXAMINATION

BY MR. SPAAN:

Q Do you think the change in program, other than the time that you spoke to the computer person, Ms. Daniels, slowed you done considerably?

A No.

Q Okay.

MR. SPAAN: I have nothing further, Your Honor.

HEARING OFFICER: Any members of the Committee have questions.

MS. MCCOY: One quick question.

HEARING OFFICER: Okay.

DONNA K. DANIELS

testified as follows on:

INQUIRY

BY MS. MCCOY:

Q Ms. Daniels, is that.....

A Yes.

Q You testified that you type roughly a hundred words a minute?

A Yes, ma'am.

Q To your knowledge, is that above average?

MR. SYREN: Objection. I don't know what average is.

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1 MS. MCCOY: Well, most people.....

2 MR. SYREN: It calls for speculation.

3 HEARING OFFICER: I'm going to allow it to be answered.

4 A That's well above average. Average, my guess would be
5 between 85 and 90 words a minute. It's rare to find
6 somebody that types in excess of a hundred words a
7 minute.

8 Q That's my understanding.

9 MS. MCCOY: No further questions.

10 HEARING OFFICER: Any additional questions by members
11 of the Committee? Thank you, Ms. Daniels.

12 MR. SYREN: One more question.

13 DONNA K. DANIELS

14 testified as follows on:

15 RE CROSS EXAMINATION

16 BY MR. SYREN:

17 Q The folding and stapling process, do you know if that
18 was the same as was used by Representative Sanders?

19 A No.

20 MR. SYREN: No further questions, Your Honor.

21 HEARING OFFICER: You may be excused. Thank you very
22 much.

23 A Thank you.

24 MR. SPAAN: Your Honor, at this time the Committee's
25 last witness will be Ms. Lovell, who's under -- who is also

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1 represented by Mr. Syren.

2 HEARING OFFICER: Is she by telephone or is she live?

3 MR. SPAAN: I think she's downstairs. It would be my
4 intention to call her live.

5 HEARING OFFICER: Okay.

6 (Off record)

7 (On record)

8 HEARING OFFICER: Would you raise your right hand,
9 please.

10 (Oath administered)

11 MS. LOVELL: I do.

12 HEARING OFFICER: Please be seated.

13 **JEANNE LOVELL**

14 called as a witness on behalf of the Committee, testified as
15 follows on:

16 **DIRECT EXAMINATION**

17 HEARING OFFICER: Would you state your full name,
18 please?

19 A Jeanne Lovell.

20 HEARING OFFICER: How do you spell your first and last
21 name, please?

22 A J-e-a-n-n-e L-o-v-e-l-l.

23 HEARING OFFICER: Thank you. And your mailing address?

24 A 1125 I Street, Anchorage, Alaska 99501.

25 HEARING OFFICER: Your occupation, please?

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1 A I'm a Legislative Aide.
2 HEARING OFFICER: Thank you. Mr. Spaan.
3 BY MR. SPAAN:
4 Q Ms. Lovell, good afternoon.
5 A Hi.
6 Q Where are you currently employed?
7 A For Representative Jerry Sanders.
8 Q And how long have you been so employed?
9 A Four years.
10 Q And what is your position with Representative Sanders?
11 A I do all the constituent work and just manage his
12 office.
13 Q And during the Legislative session, Ms. Lovell, is your
14 duty assignment here or in Juneau?
15 A Both places.
16 Q In March of this year 1996, did you work for
17 Representative Sanders in his Juneau office?
18 A Yes, I did.
19 Q Okay. Do you remember whether or not you took leave
20 time during any period in March.....
21 A No.
22 Qin 1996?
23 A I did not.
24 Q Okay. And as part of your job duties on March 4th or
25 March 5th or around that time, did you participate in

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1 the preparation of a letter to Republicans who
2 participated in a Republicans Straw Poll?

3 MR. SYREN: I'll instruct my client not to answer on
4 the basis of the Fifth Amendment.

5 BY MR. SPAAN:

6 Q Is Lester Syren your lawyer?

7 A Yes, he is.

8 Q Are you going to follow his advice, Ms. Lovell?

9 A Yes, I am.

10 Q Okay. Did you have a co-employee by the name of Ms.
11 Perez during March of 1996?

12 A Yes, I did.

13 Q Do you know whether or not she participated in the
14 preparation of a letter thanking the public for
15 participating in a straw poll that was held in January
16 of 1996?

17 MR. SYREN: Objection. Same instruction. Fifth
18 Amendment.

19 MR. SPAAN: It's the same comment, Your Honor. That
20 that's not a proper assertion of the Fifth Amendment privilege.
21 I asked her if she had any knowledge regarding Ms. Perez.

22 HEARING OFFICER: Well, I think in this case it's
23 somewhat different than with Ms. Perez. There are initials
24 that are consistent with this witness on the letter itself, how
25 she obtained the knowledge about Ms. Perez' participation

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1 the preparation of a letter to Republicans who
2 participated in a Republicans Straw Poll?

3 MR. SYREN: I'll instruct my client not to answer on
4 the basis of the Fifth Amendment.

5 BY MR. SPAAN:

6 Q Is Lester Syren your lawyer?

7 A Yes, he is.

8 Q Are you going to follow his advice, Ms. Lovell?

9 A Yes, I am.

10 Q Okay. Did you have a co-employee by the name of Ms.
11 Perez during March of 1996?

12 A Yes, I did.

13 Q Do you know whether or not she participated in the
14 preparation of a letter thanking the public for
15 participating in a straw poll that was held in January
16 of 1996?

17 MR. SYREN: Objection. Same instruction. Fifth
18 Amendment.

19 MR. SPAAN: It's the same comment, Your Honor. That
20 that's not a proper assertion of the Fifth Amendment privilege.
21 I asked her if she had any knowledge regarding Ms. Perez.

22 HEARING OFFICER: Well, I think in this case it's
23 somewhat different than with Ms. Perez. There are initials
24 that are consistent with this witness on the letter itself, how
25 she obtained the knowledge about Ms. Perez' participation

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1 legitimately could be something for which there is a basis for
2 a Fifth Amendment claim.

3 MR. SPAAN: Okay.

4 HEARING OFFICER: And I will allow the Fifth Amendment
5 claim.

6 Q Ms. Lovell, does your initial appear on a letter dated
7 March 4th, 1996 addressed to people who participated in
8 a Republican Straw Poll?

9 MR. SYREN: Objection. Same instruction. Same
10 objection, Fifth Amendment.

11 Q Ms. Lovell, do the letters JS that appear on that
12 letter, do those represent Representative Jerry Sanders
13 as the author of the letter?

14 MR. SYREN: Same instruction. Don't answer the
15 question.

16 MR. SPAAN: I have no further questions of this
17 witness, Your Honor.

18 MR. SYREN: No further questions, Your Honor.

19 HEARING OFFICER: Do the members of the Committee have
20 any questions?

21 MS. MCCOY: I would like to ask a couple of questions
22 that I asked the earlier witness.

23 JEANNE LOVELL

24 testified as follows on:

25 INQUIRY

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1 BY MS. MCCOY:

2 Q Ms. Lovell, did you hire Les Syres to represent you in
3 this matter?

4 MR. SYREN: I'll object on attorney/client privilege
5 and instruct the witness not to answer that question.

6 HEARING OFFICER: Well, I'm -- for the record I'm going
7 to find that that's not her act of whether she hired Mr. Syren
8 or someone else is not something that's privileged.

9 MR. SYREN: Don't answer the question.

10 HEARING OFFICER: You can tell her whether to answer or
11 not.

12 MR. SYREN: Yeah, I'm going to instruct the client not
13 to answer the question.

14 HEARING OFFICER: And I'll leave it to the Committee
15 whether they want to follow through with the Legislature or
16 not.

17 BY MS. MCCOY:

18 Q Well, one other question then. Are you paying Mr.
19 Syres to represent you?

20 MR. SYREN: Same instruction. Don't answer the
21 question and same objection.

22 HEARING OFFICER: Do you want to be heard at all?

23 MR. SPAAN: I think it -- I think the source of the
24 payment, if it were from Representative Sanders, is directly
25 relevant and not protected by the attorney/client privilege or

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1 any other privilege. I think the Committee has a right to
2 know.

3 HEARING OFFICER: Ma'am, I want to make sure there's a
4 clear record and don't respond to this until Mr. Syren does. I
5 think so that there's a clear record as far as whether you
6 willfully fail to answer questions before this Committee, if
7 that comes up, I need to direct you to answer the questions of
8 the Committee member.

9 MR. SYREN: And I'm going to instruct her not to answer
10 the question. I'm also going to make the objection of
11 relevance.

12 HEARING OFFICER: I'm sorry.

13 MR. SYREN: Objection of relevance. All the same
14 objections that I had with respect to.....

15 HEARING OFFICER: Very well.

16 MR. SYREN:Ms. Perez.

17 HEARING OFFICER: Very well. The witness is refusing
18 to answer it after being directed by the Committee; is that
19 correct?

20 MR. SYREN: Yes, that's my understanding.

21 HEARING OFFICER: Do other members of the Committee
22 have questions? Mr. Granger.

23 JEANNE LOVELL

24 testified as follows on:

25 INQUIRY

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2 know.

3 HEARING OFFICER: Ma'am, I want to make sure there's a
4 clear record and don't respond to this until Mr. Syren does. I
5 think so that there's a clear record as far as whether you
6 willfully fail to answer questions before this Committee, if
7 that comes up, I need to direct you to answer the questions of
8 the Committee member.

9 MR. SYREN: And I'm going to instruct her not to answer
10 the question. I'm also going to make the objection of
11 relevance.

12 HEARING OFFICER: I'm sorry.

13 MR. SYREN: Objection of relevance. All the same
14 objections that I had with respect to.....

15 HEARING OFFICER: Very well.

16 MR. SYREN:Ms. Perez.

17 HEARING OFFICER: Very well. The witness is refusing
18 to answer it after being directed by the Committee; is that
19 correct?

20 MR. SYREN: Yes, that's my understanding.

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22 have questions? Mr. Granger.

23 JEANNE LOVELL

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25 INQUIRY

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1 BY MR. GRANGER:

2 Q Yes, I'm Ed Granger, ma'am, from the public side of
3 this. Would you say that your secretarial skills are
4 above average?

5 MR. SYREN: Objection. There's bee no definition of
6 what average is or above average.

7 HEARING OFFICER: Mr. Granger, you might rephrase the
8 question and just ask her to describe how her secretarial
9 skills are.

10 Q Yes. Do you type more than 80 words a minute?

11 A I haven't tested myself in a long time, but I used to.

12 Q Would you say it's 60 then perhaps?

13 A I would -- I would think I'm.....

14 MR. SYREN: Objection. Asked and answered. Before you
15 answer the question, I think the witness has said that she
16 hasn't tested herself in some time and so she doesn't know.

17 HEARING OFFICER: The objection's overruled. She can
18 answer it if she can. I believe she was answering it.

19 A Yes, 80 words a minute, I'm sure.

20 BY MR. GRANGER:

21 Q And the lady that assisted you in the office, would you
22 say the same of her?

23 MR. SYREN: Objection as to foundation.

24 HEARING OFFICER: Do you know about Ms. Perez' typing
25 skills?

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1 A No, I don't.

2 HEARING OFFICER: Okay. In relation to yours, do you
3 know how they are?

4 A No. I'm sorry, I don't.

5 HEARING OFFICER: Continue if you'd like, Mr. Granger,
6 I'm sorry.

7 MR. GRANGER: That's all, thank you.

8 JEANNE LOVELL

9 testified as follows on:

10 INQUIRY

11 BY MS. VORDERSTRASSE:

12 Q I have a question in reference to how your office is
13 setup. Where does Ms. -- where did Ms. Perez sit and
14 where did you sit.....

15 MR. SYREN: Okay. And I'll.....

16 Qwithin your office area at work?

17 MR. SYREN:object as -- excuse me, are you
18 finished?

19 MS. VORDERSTRASSE: Yes.

20 MR. SYREN: I'd like to know at what time of period are
21 we talking about. The objection is vagueness. I don't know
22 when this is or where this is even.

23 HEARING OFFICER: Are you asking about it in March of
24 '96?

25 MS. VORDERSTRASSE: Yeah.

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1 Q In March of '96, where is your work stations within
2 your office?

3 A Patricia is in the outer office and I have an office
4 behind hers, over off to the side of hers.

5 Q In the same -- in the same room or.....

6 A No, sperate rooms.

7 Qseparate rooms?

8 A Right.

9 MS. VORDERSTRASSE: Thank you.

10 HEARING OFFICER: Any additional questions by members
11 of the Committee? Mr. Spaan, any redirect?

12 MR. SPAAN: No.

13 HEARING OFFICER: Mr. Syren, anything?

14 MR. SYREN: Nothing by me, Your Honor.

15 HEARING OFFICER: Thank you very much, ma'am, you're
16 excused.

17 MR. SPAAN: Mr. White, members of the Committee, at
18 this time I'd rest the case for the Committee.

19 HEARING OFFICER: Ms. Syren, do you wish to take a
20 deposition of Ms. Barnett before tomorrow's session to do
21 anymore cross examination regarding the note?

22 MR. SYREN: I haven't -- I haven't decided that yet,
23 Your Honor. But I'd like to lodge a motion at this time for a
24 directed verdict for failure to satisfy Mr. Spaan's burden of
25 proof in this matter. Also I'd like to make it on the grounds

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1 that Representative Sanders has testified that he's away on
2 official government business. And so I'll -- well, we submit
3 that he's immune from prosecution under A.S. 24.40.010.

4 HEARING OFFICER: 24?

5 MR. SYREN: .40.010.

6 MR. SPAAN: Mr. White, Representative Sanders requested
7 and was given the opportunity to participate by telephone
8 because of his schedule. And if, Your Honor, would like
9 argument on the directed verdict, I'm prepared to give it.

10 HEARING OFFICER: One moment, let me just read the
11 statute. First of all, I'll state that the statute clearly
12 doesn't apply even the first sentence. A Legislator may not be
13 held to answer before any other tribunal. I mean it excludes
14 being held to answer before the Legislature to start off with.
15 Aside from that, it regards statements, essentially it's -- the
16 State speech and debate clause which doesn't apply to this
17 proceeding.

18 As to the directed verdict, do you wish to give any
19 argument?

20 MR. SPAAN: Yes, Your Honor. I think based on giving
21 the inference most favorable to the Committee, that a panel can
22 find that Representative Sanders did violate the Ethics Law. I
23 think that's the standard you have and I don't think it's
24 appropriate and would argue against any granting of such a
25 motion.

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1 HEARING OFFICER: I'll explain to the Committee, that
2 in any case, after one side presents the evidence, the other
3 side can move for what's called a directed verdict. And in
4 evaluating a directed verdict, you are the factfinders in this
5 case, so you should disregard what I say as facts, this is just
6 one factual thing that I need to make a determination of. And
7 in making this, I make this considering the evidence in the
8 light most favorable to the Committee. That's the standard and
9 that's not the standard when you use when you decide the case.

10 I find that there is sufficient evidence to go forward.
11 That the Committee may draw inferences from many things. The
12 fact that it's on Representative Sanders' letterhead, the fact
13 that it shows up in the computer, the fact that the list from
14 which it was based had been obtained by Mr. Sanders' attorney
15 from the Republican Party, the fact that there are entries in
16 the postage -- I forget what you call it, the postage account
17 at or near that time, the statement by Ms. Perez to Ms. Barnett
18 as well as inferences that can be drawn by Representative
19 Sanders and the other witnesses or especially regarding
20 Representative Sanders' exercise of the Fifth Amendment which
21 can be drawn; I find that there's sufficient evidence by clear
22 and convincing evidence that the Committee has met its burden
23 and the motion for directed verdict is denied.

24 And again, I emphasize to the Committee that that is
25 taken in a standard with the evidence in the light most

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1 favorable to the Committee.

2 Mr. Syren, are you calling any witnesses?

3 MR. SYREN: No, I'm not, Your Honor.

4 HEARING OFFICER: Then why don't we.....

5 MR. SPAAN: Your Honor?

6 HEARING OFFICER: Go ahead.

7 MR. SPAAN: That leaves what to do with Ms. Barnett?

8 HEARING OFFICER: Well, that's what I was going to say,
9 why don't we go at ease for about five minutes and I want to
10 talk to both attorneys about scheduling. And Mr. Syren, at
11 that point, can decide what he's going to do with Ms. Barnett.

12 (Off record)

13 (On record)

14 HEARING OFFICER: The evidence in this matter is
15 probably concluded. Mr. Syren has reserved until tomorrow
16 morning deciding whether he wants to recall Ms. Barnett. He
17 will notify her between 8:00 and 8:15 tomorrow morning if he
18 wants to take a deposition of her, it will start by 8:30 and
19 presumably finish by 9:00. We'll be able to start at 9:00.
20 What will happen tomorrow, Ms. Barnett will either testify or
21 not testify, briefly, and then each of the attorneys will give
22 closing arguments to you, I'll give you a very brief
23 explanation of some of the applicable law, you will then have
24 the case to deliberate and decide.

25 REPRESENTATIVE TOOHEY: Okay.

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1 HEARING OFFICER: I'll remind you again, you shouldn't
2 talk to each other about it. This isn't a Legislative -- it is
3 a factfinding type issue and the case isn't over yet. So with
4 that, I wish everybody a good night and we'll go off record.

5 MR. SYREN: Excuse me, we're set to resume tomorrow at
6 9:00 o'clock?

7 HEARING OFFICER: At 9:00 o'clock. And I've asked, the
8 Court Reporter will be here at 8:30 in the event you do want to
9 take the deposition of Ms. Barnett.

10 MR. SPAAN: Thank you, Your Honor.

11 MR. SYREN: Thank you, Your Honor.

12 REPRESENTATIVE TOOHEY: Thank you.

13 HEARING OFFICER: Thank you all.

14 (Hearing recessed)

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SELECT COMMITTEE ON LEGISLATIVE ETHICS HEARING
BEFORE HEARING OFFICER MICHAEL WHITE

Anchorage, Alaska
November 15, 1996
9:30 o'clock a.m.

SUBCOMMITTEE MEMBERS PRESENT:

- Margie Mac Neille, Chairman
- Joseph P. Donahue
- Ed Granger
- Shirley McCoy
- Cynthia Toohey
- Edith Vorderstrasse

APPEARANCES:

FOR THE RESPONDENT:

MR. LESTER K. SYREN
Law Offices of Lester K. Syren
Attorney at Law
1351 Huffman Road, Suite 2A
Anchorage, Alaska 99515
(907) 345-3111

**FOR THE HOUSE SUBCOMMITTEE
OF THE SELECT COMMITTEE ON
LEGISLATIVE ETHICS:**

MR. MICHAEL R. SPAAN
Bogle & Gates
Attorneys at Law
1031 West 4th Avenue, Suite 600
Anchorage, Alaska 99501
(907) 276-4557

ALSO PRESENT:

SUSAN BARNETT
Staff to Ethics Committee

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P R O C E E D I N G S

(On record)

HEARING OFFICER: Are the parties ready to proceed?

MR. SYREN: Yes, Your Honor, we are.

HEARING OFFICER: Is the Committee ready to go?

CHAIRMAN MAC NEILLE: Yes.

HEARING OFFICER: We are back on record. It's Friday morning, all members of the Committee are present as are the attorneys for the parties. Mr. Syren, when we broke yesterday you were going to decide whether you wished to depose Ms. Barnett and take additional questioning of her today.

MR. SYREN: Yes. And I've decided not to do that, Your Honor.

HEARING OFFICER: Okay. So I take it you have no witnesses to present?

MR. SYREN: No.

HEARING OFFICER: At this point then, members of the Committee, we will head into the closing arguments of the parties. I'll remind you, as I did at the beginning of the case, the arguments of attorneys aren't evidence, but they are helpful in terms of interpreting the evidence.

MR. DONAHUE: Before we go to the closing I'd like to ask a procedural question?

HEARING OFFICER: Go ahead.

MR. DONAHUE: Is it possible, if the Committee desired

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1 to recall a witness that it could do that?

2 HEARING OFFICER: I would ask the parties position on
3 that, but I would not discourage you from doing that if you
4 feel that's necessary.

5 MR. DONAHUE: There's one witness that I would like to
6 ask at least one or two questions of as follow-up because of
7 testimony that came later.

8 HEARING OFFICER: I think it would probably be better
9 to do that now -- to ask to do that now.....

10 MR. DONAHUE: That's why I.....

11 HEARING OFFICER:and address that now before the
12 closing.

13 MR. DONAHUE:that's why I thought I'd bring it up
14 before you got into the closing argument.

15 HEARING OFFICER: What witness is it?

16 MR. DONAHUE: Ms. Perez.

17 HEARING OFFICER: Do the parties want to be heard on
18 that?

19 MR. SPAAN: I'd have no objection.

20 MR. SYREN: It's in my opinion, too late Your Honor. I
21 mean we're ready for closing arguments here and we're finished
22 so I would object.

23 HEARING OFFICER: Can you tell me in some way that
24 you're prejudiced by that? I mean it seems to me the Committee
25 wants to get at as many of the facts as it can.

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1 MR. SYREN: I understand that. And I think they had
2 their opportunity yesterday. And we -- I was ready, actually
3 to close yesterday and Mr. Spaan requested waiting until
4 tomorrow, but I guess the prejudice is that the Committee has
5 put on its case and -- the Committee's attorney has put on its
6 case and has rested. I think if anyone had any questions they
7 should have asked him yesterday or asked the witness.

8 HEARING OFFICER: Mr. Donahue, could you be a little
9 more specific.

10 MR. DONAHUE: Certainly, I'd be glad to. There was
11 testimony after we had the opportunity to question Ms. Perez
12 which appears to be in conflict with her testimony but the
13 specific answers or questions asked were not identical and so I
14 would like to try to ask the identical question of Ms. Perez
15 and she will, you know, either give me an answer or she'll be
16 able to take the Fifth or whatever. But, at least, I would
17 then be able to reconcile what appeared to be a discrepancy.
18 And the question had to do with Ms. Barnett's questions of her
19 in regards to whether or not she was represented by an
20 attorney. It seems that the question that was asked of her
21 yesterday was whether or not Mr. Syren represented her and she
22 said -- I'll get confused here, she stated that Susie Barnett
23 did not ask her if she was represented by Mr. Syren. Later Ms.
24 Barnett said that she had asked if she was represented by an
25 attorney or if she had an attorney, it's a different question.

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1 HEARING OFFICER: Right.

2 MR. DONAHUE: Ms. Barnett said that that's what she
3 asked her. I would like to reconcile between those two
4 testimonies whether or not she will say whether Ms. Barnett
5 asked her whether she had had an attorney or whether she was
6 represented by an attorney without the use of the name of the
7 specific attorney. So it's -- in my mind to try to clarify
8 that piece of fact, that's why I wanted to.

9 MR. SYREN: Right. And I can tell you now I think I'll
10 instruct -- I would instruct my client not to answer that
11 question. And I don't think it has anything to do with the
12 merits of this case, quite frankly. We're here to discuss
13 Jerry Sanders, not somebody's attorney/client relationship,
14 somebody who's a non-party.

15 The other fact is, Your Honor, I don't see a difference
16 between that question and any other questions that were asked
17 repeatedly yesterday.

18 HEARING OFFICER: I didn't hear the first part, what
19 you said?

20 MR. SYREN: I don't see the difference between the two
21 questions proposed here the Committee member wants to have
22 resolved, the difference between those questions he has now and
23 the questions that were asked yesterday and that he had the
24 opportunity to ask yesterday. It's a second bite of the apple.

25 HEARING OFFICER: In light of Counsel's assertion that

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1 he would instruct the witness not to answer that question, do
2 you want us to go ahead and try to reach her or do you want to
3 go ahead?

4 MR. DONAHUE: No. If that would be his instructions, I
5 am assuming that she would take those instructions, the same as
6 she did yesterday and there's no sense in putting us all
7 through that.

8 HEARING OFFICER: Okay.

9 MR. DONAHUE: I was only trying to direct a piece of
10 fact.

11 HEARING OFFICER: Yeah. If you'd like to do that, we
12 can, but it seems with Counsel indicating that she wouldn't
13 answer the question.

14 MR. DONAHUE: I have one more thing.

15 HEARING OFFICER: Sure.

16 MR. DONAHUE: Which is not discussing the recall of a
17 witness, but it's -- and you may do -- may tell us this before
18 you send us to deliberations.....

19 HEARING OFFICER: Yeah.

20 MR. DONAHUE:but a couple of times yesterday,
21 maybe two, maybe three, and with a couple of different
22 witnesses, after the large discussions on Fifth Amendments,
23 which as a lay person, you know, we're trying to understand,
24 but in a couple of instances, as I understood it, you basically
25 said you didn't like the Fifth argument and you were directing

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1 the witness to answer the question and then the attorney said
2 they were telling the witness not to answer the question and
3 then the witness didn't answer the question. And I just need
4 to know what that means to us different than the cases where
5 you agreed that it was a Fifth Amendment.....

6 HEARING OFFICER: The only.....

7 MR. DONAHUE:in terms of how we deal with that?

8 HEARING OFFICER: In the terms of evaluating the
9 evidence, you shouldn't deal with it any differently. The only
10 real difference is that if the Committee chose, the Committee
11 could seek censure of the witnesses or contempt citations of
12 the witnesses if -- and I'm not suggesting it, but if the
13 Committee chose to do that through the Legislature. And the
14 Legislature, you are a Committee of the Legislature, the
15 Legislature has the ability to compel people to testify unless
16 there's a legal basis for them not to testify.

17 I disagreed with the witness on certain instances, on
18 most instances I felt it was an appropriate use, on certain
19 ones I didn't. If this was a court of law, I could have taken
20 action at the time. It's not -- it's up to the Legislature --
21 the House, as a whole, to take any action if it chooses to do
22 so. As far as your deliberations it shouldn't make any
23 difference at all.

24 MR. DONAHUE: Okay. I'm through.

25 MS. MCCOY: I appreciate you clearing that up because I

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1 had the same question.

2 HEARING OFFICER: Sure. I mean it should not have any
3 effect on how you view the testimony one way or the other.
4 That being taken care of, if there's nothing further, at this
5 point the attorneys will give closing arguments. Since the
6 burden of proof is on the Committee, is on Mr. Spaan, he has
7 two opportunities to talk to you, first, then Mr. Syren will
8 have an opportunity and then Mr. Spaan can rebut whatever he
9 says. The attorneys have been very efficient during this case
10 and I assume they will continue to do so and they've assured me
11 they won't be terribly wrong.

12 Mr. Spaan.

13 MR. SPAAN: Thank you, Mr. White, Chair members of the
14 Committee, Mr. Syren. At this time I think I'm tired of
15 arguing, I think what I'd like to share is some observations
16 with you before you deliberate this matter. And I think I'd
17 like to start on the uniqueness of this Committee in American
18 politics. It's not very old. It's still getting its legs.
19 It's the only one I'm aware of where the private citizens
20 outnumber the Legislators. It sets the tone of the conduct of
21 the people's elected representatives and they do this mainly
22 through cooperation. Through informational type of things.
23 From informal inquiries or informal advice. But the importance
24 of this is to raise the level of the public trust in its
25 elected representatives. It's important in what it does. And

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1 in order to do it efficiently, it's important that members of
2 the Legislature cooperate with the Committee, to give their
3 point of view and the Committee can consider that. The
4 Committee has a limited budget. It counts on the cooperation.

5 In preparing for these remarks, I once again, and you
6 have this, read 24.60.170 (k) and in that section it says, if
7 the Committee finds a violation, that's what you're going to
8 consider, or, there's a comma, lack of cooperation by the
9 subject, there's another comma, the decision shall recommend
10 what sanction, if any, the Committee believes are appropriate.
11 Now, I don't suggest that if you found that these charges had
12 no merit at all, that you could recommend a sanction. But I do
13 point that out that the Legislature did consider the importance
14 of the cooperation of the individual Legislators. And this
15 cooperation is important. In this instance there's been no
16 cooperation. Representative Sanders, from the beginning has
17 thumbed his nose at this Committee. He's stonewalled a
18 legitimate inquiry of the Ethics Committee.

19 I want to talk about what this case is not about.
20 We've heard the invocation of the Fifth Amendment by all Mr.
21 Syren's clients on any issue that related to this March 4th
22 letter. The inference was, if Representative Sanders or these
23 witnesses testified, responded to legitimate questions that
24 this could lead to a criminal prosecution under the Official
25 Misconduct Statute. I'd like to read you the Official

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1 Misconduct Statute; a public servant commits a crime of
2 official misconduct if, with intent to obtain a benefit or to
3 endure or deprive another person of a benefit, the public
4 servant is (1) performs an act relating to the public servants
5 office, but constitutes an unauthorized exercise of the public
6 servants official function, and this is important, knowing that
7 the act is unauthorized. It's a violation of law. He could
8 have answered that question, what do you know? He could have
9 said, geez, I didn't think I was doing anything wrong, but he
10 chose not to answer it. And this Committee's going to have to
11 draw what inferences they want from the invocation of the Fifth
12 Amendment by all the witnesses.

13 This case is not about the Republican Party holding a
14 straw poll. For the people who are in this room who are
15 Republicans or even if you're not Republicans, I think you
16 ought to be proud of the Republican Party getting that many
17 people to participate, getting Alaska issues on the map,
18 there's nothing wrong with that. And the Committee's cast no
19 aspersion on doing that. This case is not about the letter
20 that Representative Sanders wrote. The issue is whether that
21 letter should have been done with State funds and State
22 personnel on State time. Not whether Representative Sanders
23 could have sent that letter out of his campaign funds. Not
24 whether the Republican Party couldn't have sent a letter and
25 properly reported it and thanked those people for

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1 participating. There's nothing wrong with that. This case is
2 not about a conspiracy against Representative Jerry Sanders. A
3 complaint was made. The complaint was investigated by this
4 Committee. Representative Sanders was given every opportunity
5 to explain his side of these facts, he chose not to do it. The
6 Committee, based on the investigation done by the staff found
7 probable cause. After that time, a more investigation was
8 conducted, it was done by the books. Representative Sanders
9 was given every opportunity to tell his side, to tell us what
10 happened, why he sent that letter, what was his intent, what
11 was the official or the legitimate Legislative purpose to send
12 that letter? You're going to have to infer that now, because I
13 can't tell you what his purpose was, what was in his mind and
14 he wouldn't tell you and his staff wouldn't tell you, so you're
15 going to have to draw the inferences from the evidence or the
16 lack of the evidence. And I suggest to you that this
17 investigation was done by the book, without the cooperation of
18 the subject of the complaint. It was done brick by brick. We
19 put in the evidence.

20 And when you review the evidence, look at the exhibits.
21 Look at Exhibit 6, that's the letter. That's the letter. Read
22 that letter and say, what's the legitimate State purpose for
23 that letter. What other inferences can you draw? It was sent
24 during an election year where Representative Sanders was up, he
25 had a primary, he had a general election. It was sent to

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1 registered Republicans who attended the straw poll, people who
2 would be likely to vote for him. He talked about, you know,
3 the Republican Party. But take a look at the letter, what
4 inferences would you draw from that letter? What else do we
5 show? That letter itself shows, by the initials on it, that it
6 was prepared by Representative Sanders and it was typed by
7 Jeanne Lovell. That letter, on its face, said it was for
8 official business.

9 When you look at Exhibit 10 you'll show the Committee
10 proved to you by clear and convincing evidence that at least
11 230 of these letters were sent, that the cost was \$76 on an
12 accountable account that Representative Sanders took to be used
13 for business purposes. The Committee has shown you through
14 Exhibit 11 and 12 that a State computer was used. And I think
15 you could also infer that by Ms. Lovell's invocation of the
16 Fifth Amendment, Ms. Perez and by the testimony of Ms. Barnett
17 of what Ms. Perez told her before she realized that Mr. Syren
18 was her lawyer, okay. And I think you could consider and think
19 about these staff people whose economic future, whose very
20 being is dependent on working for Representative Sanders. And
21 think about who orchestrated this thing. Did they all of a
22 sudden realize that they might be charged with some crime, non-
23 existent crime? Did they, all of a sudden think of it, phone
24 Mr. Syren and say, what do you think and get some legal advice,
25 I don't think so. I don't think so. Who organized the

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1 stonewall?

2 The evidence did show you, by clear and convincing
3 standard, that Representative Sanders used his employees, State
4 employees during official working hours. We've got Exhibit 12
5 from the computer which shows that the last modification to the
6 letter was made at 10:00 a.m. on a work day. We had, what Ms.
7 Perez told Ms. Barnett, that we did this in between our other
8 Legislature duties. You also have the other inferences that
9 you could draw from the remainder of the exhibits and the
10 evidence. I think you could also find, by clear and convincing
11 evidence, that this was not a nominal use. This used State
12 employees during State time and State assets.

13 Since we got to the Code of Silence, I put my secretary
14 and I didn't try and tell you Donna Daniels was some sort of
15 independent, I tried to save you some bucks, she got on and
16 testified how long it took her to do a task that was similar.
17 It's not perfect, she wasn't in the room. But Representative
18 Sanders and his employees wouldn't tell us. They wouldn't tell
19 us. And I think that you could give that testimony
20 credibility. Exhibits 2 will explain to you the difference
21 between the accountable and the non-accountable, the options
22 that Representative Sanders had. Exhibit 4 shows you
23 Representative Sanders used the accountable funds and then
24 knew, knew that was for legitimate business purposes. The
25 Republican list, we had Ms. McKay testify that they kept this

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1 list, that she gave it to Mr. Syren, who was the district
2 chairman.

3 We've got the letter itself and we'll come back to
4 that, because that, at its core is what this case is about.
5 And then I want you to judge the defense to this and I think
6 there's a couple ways to cut this. I mean I guess if you
7 honestly think that somebody is going to prosecute you for
8 sending this letter you can invoke the Fifth Amendment, there's
9 no dispute between Mr. Syren, Mr. White, any of the lawyers in
10 this room, that's proper. But it's not proper for you not to
11 make an inference from why somebody would invoke the Fifth
12 Amendment on this issue.

13 And let's look at the inferences that I picked up from
14 the defense. One was by the cross examination of some of these
15 witnesses that Representative Sanders didn't sent this letter.
16 Somebody on a lark in detour using Representative Sanders'
17 name. That's not true, we showed it came out of his computer.
18 That somehow we tricked -- the Committee tricked Representative
19 Sanders' employees -- that somehow they didn't realize they had
20 a lawyer. Well, I submit that's not credible, it didn't
21 happen. That the Committee staff was somehow unfair. You
22 could judge the evidence.

23 This case, in the three issues I gave you, were the use
24 of the government resources, no question that government
25 resources were used. No question that these resources were not

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1 nominal. It was not picking up the phone for two minutes and
2 making one call. The purpose of the letter, since
3 Representative Sanders won't tell us, you're going to have to
4 look at that letter and say, what's a reasonable inference for
5 the purpose of that letter. Again, it was an election year.
6 Representative Sanders was a candidate. There's no evidence he
7 sent a letter to the Democrats who participated, to the
8 Libertarians, to the Alaska Independence Party out of some
9 thought that he wants to encourage participation. No, he sent
10 it to people that he thought would probably vote for him.

11 Was it political campaigning? Was there a private
12 benefit, in that Representative Sanders might get reelected,
13 that this might help his reelection campaign? Was it political
14 campaigning to send this letter? You're going to look at that
15 letter. Was it to assist the Republican Party about their
16 primary? And did he use his people? Did he require those
17 people to work on State time to benefit the Republican Party?

18 And I'm not going to tell you, you're going to
19 deliberate this matter. But I am going to ask you to remember
20 what Committee member Donahue said at a similar hearing held
21 several years ago, that when you analyze in fractions, if you
22 find an infraction of the Ethical Code, you got to look at the
23 spectrum of possible violations. And I am not going to tell
24 this Committee this is the most serious violation a
25 representative of the State of Alaska can make. I'm not going

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1 to tell you that, you know that's not true. So look at that.
2 But then, don't forget, if you do find there was a violation,
3 that this Committee is dictated by statute and should consider
4 the cooperation of Representative Sanders. That cooperation
5 was non-existent. So if any recommendations are made, I would
6 urge this Committee to take a look at the recommendation for
7 the violation, if a violation was found and then say what
8 recommendation for sanctions can be made for not cooperating
9 with this Committee.

10 I'm going to ask the Hearing Officer, prior to your
11 deliberation, to make available to you what are public
12 documents, the pleadings in this case and the correspondence
13 back and forth between Counsel, which we haven't shared with
14 you because the Committee had determined it did not want to
15 prejudice any of its members. If the Hearing Officer allows
16 that, I'm going to ask that in the interest of fairness, to
17 take up whether or not there's a violation. If you get past
18 that, I'm going to ask you to look at that and see what weight,
19 if any, that has to go on the cooperation or the lack of
20 cooperation. Now, I'm not going to ask for any notes or any of
21 my opinions, any of Susie Barnett's opinions, but the documents
22 that went back and forth and you judge whether Representative
23 Sanders cooperated in the way that you think is appropriate.
24 And what, if any effect, that would have on any recommendation.

25 I thank you for your time and attention. Thank you for

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1 allowing me to present this case.

2 HEARING OFFICER: Mr. Syren.

3 MR. SYREN: With the Committee's permission, I prefer
4 to sit here?

5 HEARING OFFICER: That's fine.

6 MR. SYREN: Ladies and gentlemen, I don't envy the
7 position that you're in at this time. I think it's a very
8 difficult one. I think you've sort have been boxed into a
9 corner and it's not your fault. I think it's the fault of the
10 statute that we have which is a very, very unique statute.
11 Which in this case, allows you to be not only the plaintiff,
12 but also the judge and the jury in this case. And I've
13 observed your actions over the past day and a half and over at
14 the meeting that you had a few weeks ago and I've been very
15 impressed because this Committee gets along very, very well and
16 I wish all Committees got along as well, were as charitable
17 with each other and had as good a sense of humor. But that
18 sort of makes your decision a little bit more difficult because
19 you are friends and because you did file the complaint in this
20 matter.

21 These are the charges, you've all seen them. It says
22 here in the first paragraph, that the Committee finds probable
23 cause to accuse Jerry Sanders to charge him with these
24 violations, this is an actual charge. It's signed by Margie
25 Mac Neille. And therein lies the difficulty. Because what do

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1 you do now when you come back to rule on the merits of this,
2 when you come back to decide whether or not this is true, what
3 are you going to do? If you say it's not true, then you're all
4 a bunch of liars and you're not all a bunch of liars, you all
5 tell the truth. But if you say, this is false, what does that
6 do for you? What does that do to your credibility? Are you
7 the kind of Committee that runs around charging people and then
8 a month or two later says, oh, no, we were wrong, that was
9 false? No, you have no choice at this point but to convict,
10 you have to and it's not your fault. It's the fault of the
11 statute that allows you to file the complaint and then rule on
12 whether or not the complaint is true. And your Chairman is the
13 one who signed the complaint. What does that do to her
14 credibility if you decide that Jerry is innocent? What does
15 that do to your own credibility?

16 Again, it's as if you are, not only the person that
17 sued somebody, but you're also the judge and the jury. And I
18 think we can all imagine the horrible consequences if the laws
19 in our country allowed somebody to sue anybody that they wanted
20 to and then be the judge and then be the jury in that case.
21 You can imagine what the consequences would be and there are
22 good reasons why that's not the rule in this country.

23 The difficulty of your position doesn't stop there. We
24 need to take a look at the evidence and I'll do that in a
25 little bit. But before we do that, I want to point out that

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1 there are other people involved in this hearing who aren't
2 here, but you might as well assume they're here and they're the
3 people who, five of them who wear black robes and say what the
4 law is in the State of Alaska. We did file a petition for
5 review in this matter, it was accepted by Judge Murphy and set
6 on for a hearing and he granted the order stayed and he even
7 asked -- one of his questions at the hearing was going to be
8 whether or not this Committee broke the law. Whether this
9 Committee acted in accordance with the law. And I'm not sure
10 if you know about that order or not. But because of a
11 technical manoeuver and a change of judge, it got set before a
12 different judge, but we have reserved our right to appeal this
13 to the Supreme Court by filing a petition for review. So, in
14 terms of appeal and so on, that's no over yet. So you can
15 just, for purposes of today's hearing, assume that the Supreme
16 Court is here watching everything that you do. And they will
17 be very interested to know whether you have followed the law.
18 Whether you've understood what clear and convincing means. I
19 know certain members of the Committee have struggled with some
20 of the legal requirements and definitions and so on and I don't
21 blame you. Some people describe the process or discussing
22 matters with an attorney, they described it like wrestling with
23 a pig in the mud. You get covered with mud and after all you
24 realize that the pig likes it. It's very tricky stuff. Clear
25 and convincing evidence, I know very, very sharp attorneys who

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1 disagree over what that means. But the fact remains, there's a
2 very real likelihood that your actions today will be
3 scrutinized by the people who say what the law is in Alaska.
4 And I can assure you these folks don't suffer fools gladly and
5 they eat law for breakfast and they know exactly what clear and
6 convincing evidence means. So that's the other difficulty that
7 you face. You have to find Representative Sanders guilty,
8 otherwise you lose all your credibility. And yet if you do,
9 you have this other horn of the dilemma and that's the Supreme
10 Court who will be scrutinizing all of your actions and deciding
11 whether or not you have applied the law correctly. And there's
12 already been one judge who has raised the question of whether
13 or not this Committee has acted in accordance with the law.

14 I'd like to discuss the evidence in a little more in
15 detail a little bit. But before that, I want to tell you a
16 couple stories about two different men. The first man is a
17 community leader who some of you may or may not agree with. He
18 was elected to office and he holds certain issues very near and
19 dear to his heart. So near and dear to his heart, as a matter-
20 of-fact, that some months ago he wrote a letter to his
21 constituents, it was on official State letterhead, official
22 State business and it advocated a certain position. And I
23 think you are all familiar with the message that he sent. But
24 to be sure I want to hand out the letter he wrote to a very,
25 very focused group of individuals.

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1 MR. SPAAN: Could I inquire of the Hearing Officer, is
2 this new evidence or is it something that's before the
3 Committee?

4 HEARING OFFICER: I'd ask you not to pass it out yet.
5 Mr. Syren, has this been marked and admitted in evidence?

6 MR. SYREN: No, it hasn't. But I ask the Court to take
7 judicial notice of the fact, this was reported in all the
8 papers. A big, big controversy about this that I think
9 everybody's familiar with. What I'm trying to do is, the fact
10 that Tony Knowles wrote that very partisan message to people
11 who received the longevity bonus saying, gee whiz, the
12 Legislature failed in its duty and left this gaping hole, I'm
13 against that and.....

14 HEARING OFFICER: Members of the Committee, you are to
15 disregard argumentive comments about that. You're only to
16 consider exhibits that have been admitted into evidence.

17 MR. SYREN: Okay.

18 HEARING OFFICER: I will mark this for the record,
19 Respondent's Exhibit 1, but it will not be admitted.

20 MR. SYREN: Now, I want to tell you about another man
21 who you should have met yesterday, but you didn't. He was
22 subpoenaed to come here. Mr. Spaan listed him on his witness
23 list and wanted to have him testify and he didn't show up.
24 And, in fact, this man is the very reason that you're all here,
25 that we're all here. That gentleman, of course, is Mr. Mike

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1 Miller. Mr. Mike Miller ran against Representative Sanders a
2 couple of years ago and he lost and he apparently can't let go,
3 but this Committee can.

4 By now you've all seen his letter which starts out
5 innocently enough. I want to report what may be a violation,
6 but I want to keep your attention to the last page, the second
7 to the last paragraph, it's just kind of an offhanded comment,
8 but I think it really, really notes or says a great deal about
9 Mr. Miller. The paragraph reads, when investigating an earlier
10 publication of Mr. Sanders, I found the accounting, blah, blah,
11 blah. This man has apparently made it his life to investigate
12 Representative Sanders. This man apparently has an obsession.
13 He can't get over the fact that he lost the election. He won't
14 let it go, but I think this Committee should. And I would
15 beware of the person who cries wolf. The person who asks you
16 to do his dirty work for him. Who files a complaint and then
17 runs away. There's been a lot of discussion about taking the
18 Fifth and so on, well, not showing up when you're subpoenaed to
19 testify, I really don't see the difference between that and
20 taking the Fifth. And remember, this is the gentleman who
21 filed the complaint in the first place. This is the gentleman
22 who thought that there was a great violation and he did not
23 show up for the hearing yesterday.

24 The other point I think you need to recognize is that
25 now that the ball is in your hands, and Mr. Miller is gone, he

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1 doesn't face the same consequences you do. For example, when
2 Judge Murphy says that he wants to know whether this Committee
3 has broken the law, Mike Miller isn't around and it's a whole
4 different ball game at that point.

5 There's a reporter, I think that actually counted the
6 number of times Representative Sanders took the Fifth. He
7 didn't count the number of times that Representative Sanders
8 did not have the burden of proof and that is the critical fact
9 here. Representative Sanders does not have the burden of
10 proof. The reporter also failed to mention that the star
11 witness failed to show up, that's like taking the Fifth
12 Amendment as well.

13 We should talk a little bit about that star witness's
14 cooperation in this matter. I sent him discovery requests as
15 well and he refused to answer them. And it's true, I guess I
16 could have filed a motion to compel, but as Mr. Spaan said, we
17 should have trust in the system. If people have accusations,
18 especially if they're the ones bringing forth the accusation,
19 well, they should carry their burden of proof. They should
20 cooperate in the discovery process. They shouldn't be afraid
21 of my questions or anybody else's questions, but Mr. Miller
22 refused to answer those questions. So all I'm saying about Mr.
23 Miller is beware of the person who cries wolf. Beware of the
24 person who may be manipulating this Committee to do things, to
25 do his bidding, especially when you face the consequences and

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1 he doesn't. By the way, Mr. Miller, I'm not sure if any of you
2 are aware of this is the one who came up with the bumper
3 sticker, Annoy Prevo, Think for Yourself. That, I think, says
4 a lot about the character of the man. That he's just got an ax
5 to grind and he can't let go, but this Committee can.

6 Now, let's talk a little bit more about the evidence in
7 this case. Not one witness and go through all the testimony
8 yourself, but not one witness can testify on personal knowledge
9 about anything. About any of the elements in this case. And I
10 asked the witnesses, I don't know whatever the document was, do
11 you have any personal knowledge about the information contained
12 in this document? No. Well, then we might as well just pull
13 somebody off the street and we can ask them the same question.
14 They'll have just as good of an idea as the witnesses who were
15 called in this case. We don't know who wrote the letter. We
16 don't know who sent the letter. We don't know where the letter
17 came from. We don't know who paid for the letter. We don't
18 know that. And your job today, and you'll receive the
19 instruction on it, is to reach an opinion based on clear and
20 convincing evidence. Not based on hearsay. Not based on
21 something that's the lack of personal foundation. Mr. Spaan
22 claims that this case was built brick by brick. And it may
23 have been built brick by brick, but there was no glue holding
24 the bricks together, there's no personal knowledge whatsoever,
25 it's all hearsay.

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1 There's been some discussion as to whether or not
2 Representative Sanders has stonewalled the process. There's
3 also been discussion and you've heard testimony about the fact
4 that Representative Sanders also sent out discovery requests,
5 not all of which were answered. He sent discovery requests to
6 Mr. Miller, who refused to answer them. Keep in mind that the
7 cooperation does not mean that Representative Sanders has your
8 burden of proof. He does not have your responsibility or your
9 duty to investigate this matter and to prove that the
10 allegations are true. Cooperation does not mean that he has to
11 do your job. Representative Sanders, at least, and the other
12 witnesses, they at least showed up for yesterday's testimony.
13 Mike Miller, the star witness was nowhere to be found. Again,
14 you'll hear Mr. Spaan say, well, I could have filed a motion to
15 compel, I shouldn't have to file a motion to compel in this
16 matter. If everybody's cooperating, we should all have trust
17 in this system, people should cooperate themselves, especially
18 the person who's filing the complaint in the first place. So
19 when it comes to cooperation, I would just suggest that make
20 sure the beam is removed from your own eye before you look for
21 a splinter in someone else's eye.

22 Now, we can look at the letter a little more closely,
23 especially the last line which, you know, in law school, I
24 guess they told me was the most important part of any document
25 and it refers to your civic duty; thanks for doing your civic

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1 duty. It doesn't ask for money. It doesn't say vote for a
2 certain cause. It doesn't say the Legislature failed in their
3 duty of closing the budget gap and I don't want to do that and
4 I'm going to save your longevity bonus, it doesn't make any
5 comments like that. Mr. Spaan has briefly alluded to the
6 purpose of the letter and he's admitted that he doesn't know
7 what the purpose of the letter is. And if he doesn't, then I
8 can't imagine that anybody else could. Make sure you
9 understand the purpose of the statute, the purpose of the
10 letter, the exceptions contained in the statute. I'm sort of
11 an idiot and that's why I've read the statute a thousand times,
12 but you need to read the statute, too, several times and make
13 sure you understand it. And when you read it, pretend the five
14 people who eat law for breakfast and say what the law is in the
15 State of Alaska, pretend that they are watching and listening
16 and scrutinizing everything that you do.

17 During Ms. Barnett's testimony I asked the question
18 about whether she believed this particular statement was true;
19 the statement was and I'll repeat it again, it is extremely
20 difficult to distinguish between official and campaign
21 activities of an incumbent. This was taken from an opinion of
22 the Attorney General in 1986 and I'll repeat it again, this is
23 Alaska's Attorney General and he says; it is extremely
24 difficult to distinguish between official and campaign
25 activities of an incumbent. The lawyer for the State of Alaska

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1 thinks that it's extremely difficult to distinguish between
2 campaign activities and official activities. Keep in mind that
3 Representative Sanders had not declared his intentions to run
4 for office at the time this letter was allegedly sent out. He
5 hadn't told anybody in the newspaper, told anyone that he was
6 going to run for office, so we're not even talking about
7 campaigning.

8 I guess to sum up, I'd just like to emphasize that,
9 don't take a risk for somebody else. Don't take the risk that
10 should be taken by Mike Miller. This Committee has already
11 sort of dodged a bullet once for him. And I mean that in the
12 sense that Judge Murphy wanted to know whether or not this
13 Committee had violated the law. And that's one bullet, I don't
14 think you need to risk it again. Mr. Miller, I would compare
15 to an arsonist, somebody who sneaks in under the cover of
16 darkness, lights a match and then runs off and refuses to
17 answer questions, but wants you guys to carry his water for
18 him. Mr. Miller, unfortunately, can't let go and I think even
19 under the very impossibly difficult circumstances that face you
20 now, circumstances in which you have no choice but to say that
21 you were right all along, even under those circumstances, I
22 still think you can let go, even if Mr. Miller can't.

23 Thank you.

24 HEARING OFFICER: Rebuttal argument?

25 MR. SPAAN: Thank you, Mr. White, I'll be brief.

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1 Ladies and gentlemen, I bit my tongue, I thought some of these
2 statements were objectionable, but I wanted to get
3 Representative Sanders every chance, but I must reply to some
4 of them. Number one, some of the people in this room were at a
5 hearing that was held two years ago where the Committee Chair
6 found probable cause, but when the evidence was evaluated by
7 clear and convincing evidence, the Committee did not return
8 charges on at least several of the cases. So to impugn that
9 because you signed it, you're going to do it, is wrong. It's
10 wrong historically. It's not correct. Two, Judge Murphy did
11 what Judge Murphy did without hearing any reply from the Ethics
12 Committee. Another judge evaluated it and kicked
13 Representative Sanders out of court. So if you're thinking of
14 five people with robes on, men and women who are sitting here
15 watching you, Mr. Syren, bring it on and we'll litigate that.
16 So don't be intimidated.

17 To call Mike Miller the key witness and to accuse,
18 impugn his character and to accuse him of hiding from this
19 Committee is wrong. When I looked on how I was going to
20 present this case, I wanted to do it efficiently. Mike Miller
21 brought nothing to the party. He got the letter from Mr.
22 Woods. He didn't even attend -- he didn't even attend this --
23 I mean I don't even know if he's a Republican, he didn't get
24 the letter, he got it from Mr. Woods and he wrote a complaint
25 to the Committee. Does he like Representative Sanders, he

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1 might not, but it's irrelevant. The letter is the letter. I
2 mean it could have been Attila the Hun who made the complaint,
3 but you still look at what the complaint was. Did this letter
4 violate any Ethics laws.

5 Mr. Syren knows that the subpoena power runs both ways.
6 If he wanted Mr. Miller, he could have subpoenaed him, he
7 didn't do it. And to complain -- and that's why I want this
8 evidence in front of you, to complain that Mr. Miller wouldn't
9 ask (sic) his discovery, now, we're outside the record, but I'm
10 going to tell you, you cannot send written interrogatories to a
11 non-party and compel their answers. But I want you to look at
12 those interrogatories. I want you to look at what information
13 he wanted from Mr. Miller and determine whether or not what it
14 had to do with the price of tea in China or this case.

15 That's all I have to say. Thank you very much for your
16 attention.

17 HEARING OFFICER: That concludes the evidence and the
18 arguments in the case. Yes, Representative.

19 REPRESENTATIVE TOOHEY: Thank you, Mr. White.
20 Yesterday I asked a question of you whether I would be able to
21 question Mr. Syren as being part of this case, I felt, because
22 his name was on a document that was presented to us and you
23 said that yes that would happen today or later. I have not had
24 that opportunity, I would like that opportunity if it isn't
25 going to throw this circus into more of a third ring.

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1 MR. SPAAN: Mr. White, with all due respect, I would,
2 on behalf of the Committee, recommend against that. The
3 evidence is closed. Mr. Syren is the attorney for
4 Representative Sanders, I just don't think it's a good idea.

5 REPRESENTATIVE TOOHEY: Okay.

6 HEARING OFFICER: I agree with that. He wouldn't be
7 able to answer.

8 REPRESENTATIVE TOOHEY: All right.

9 HEARING OFFICER: Not on Fifth Amendment grounds, but
10 attorney/client privilege. And that's a privilege that you
11 cannot draw any adverse inference based on the assertion.

12 REPRESENTATIVE TOOHEY: Okay, thank you.

13 HEARING OFFICER: I'm going to read you one
14 instruction. The parties have agreed that unlike a normal
15 trial that, I guess because you are a sophisticated body as
16 opposed to a jury that's in for one case, that we're not going
17 to go through a half hour of jury instructions and both parties
18 agreed to that. I am going to read you the basic Alaska
19 Standard Pattern Jury Instruction on clear and convincing
20 evidence just to give a definition of the frame work under
21 which you're working.

22 This is a form, so I will now define to what it means
23 to prove something by clear and convincing evidence. An
24 alleged fact is established by clear and convincing evidence if
25 the evidence induces belief in your minds that the alleged fact

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1 is highly probable. It is not necessary that the alleged fact
2 is certainly true or true beyond a reasonable doubt or
3 conclusively true. However, it is not enough to show that the
4 alleged fact is more likely true than not true.

5 In a moment we will all leave, I guess you're going to
6 deliberate here and my understanding is that the Committee will
7 issue a written decision when it's done, it won't be coming out
8 and issuing an oral decision today. I want to thank all of you
9 for this opportunity, I've enjoyed it and I'm impressed with
10 the Committee's work and dedication and it's been an honor for
11 me and thank you very much.

12 MR. DONAHUE: The definition you.....

13 CHAIRMAN MAC NEILLE: Before we let you off the
14 hook.....

15 MR. DONAHUE:the definition you read will be here
16 for us to re-look at and study?

17 HEARING OFFICER: Yes.

18 MR. DONAHUE: Thank you.

19 CHAIRMAN MAC NEILLE: I would like to ask you and I
20 guess certainly the attorneys can complain or make suggestions,
21 to also give the Committee some instruction on hearsay. Mr.
22 Syren brought up a point in closing argument that we should
23 consider the evidence hearsay and I would like to ask you to
24 give us some instruction on that. And also perhaps repeat for
25 us things I think you've said as we went along yesterday about

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1 what inference, if any, we can or shouldn't take from a witness
2 taking the Fifth Amendment.

3 HEARING OFFICER: Okay. Well, first I'll start off
4 with hearsay. There are a lot of exceptions to hearsay.
5 Sometimes in a court proceeding, you are allowed to relate what
6 someone else says, so you need not immerse yourself in the
7 technical aspects of hearsay. As to all of the evidence that's
8 been -- that you've been allowed to hear in this case, you
9 should give it the weight you feel is appropriate based upon
10 how it was presented. If you have somebody that was an event,
11 you might give it more weight than someone who heard that from
12 someone who was at an event. All of you make important
13 decisions in your life and you should weight the evidence in
14 light of the standards of how you normally consider things. If
15 something has been testified to in this case or an exhibit
16 admitted, you are allowed to consider it. The weight that you
17 give it should depend on the circumstances of the evidence and
18 what you think.

19 As to the Fifth Amendment, I've given you some oral
20 instructions. Since there was a request made, I will read --
21 there's a boiler plate instruction from Alaska to answer your
22 question.

23 MR. SYREN: I thought this was not going to happen.

24 HEARING OFFICER: The Committee had a specific -- the
25 parties -- Mr. Syren had asked that there not be formal jury

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1 instructions, the Committee has a specific question.....

2 MR. SYREN: They do, Your Honor, but it's -- you've
3 already ruled, I think outside there when Mr. Spaan and I were
4 chatting with you that there would not be any jury
5 instructions.....

6 HEARING OFFICER: Right. But.....

7 MR. SYREN:aside from clear and convincing.

8 HEARING OFFICER: Right. And there's a specific
9 question by the Committee and I don't see that it's in the
10 benefit of the Committee or the public to have the Committee's
11 questions unanswered.

12 MR. SYREN: I understand under any other circumstances
13 here, although, Your Honor, you've already ruled that you
14 weren't going to read any jury instructions except clear and
15 convincing. And for purposes of the record, I'd just like to
16 know the basis for the reversal of your decision? I mean they
17 can ask a number of -- I mean they can ask me what my -- things
18 about my attorney/client privilege, that doesn't mean they get
19 to know.

20 HEARING OFFICER: Well, I think they should be able to
21 know the law under which they're deciding the case.

22 CHAIRMAN MAC NEILLE: Excuse me, Mr. Syren, we have
23 retained Mr. White to be our Hearing Officer and to provide us
24 assistance in this hearing. It's my judgment, as Chairman,
25 that in this instance we want the benefit of his advice to us

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1 and I have asked him for it, please give it to us.

2 MR. SYREN: All right. So just so the record's clear,
3 I want it to be clear that the Committee is overruling the
4 Judge's decision five minutes ago outside that door in which he
5 said he was not -- and you weren't privy to that conversation.

6 HEARING OFFICER: Well.....

7 CHAIRMAN MAC NEILLE: It doesn't matter. I want to
8 hear from Mr. White.

9 MR. SYREN: I understand, but I just want the.....

10 HEARING OFFICER: Okay. And let me just clarify.....

11 MR. SYREN:record to be clear.

12 HEARING OFFICER: Let me just clarify the record. Mr.
13 Syren, the parties indicated they didn't wish any additional
14 instructions, I didn't make a ruling based on argument, I said
15 I'd go along with what the parties had agreed. And there's
16 been a question and I'm going to answer it.

17 The defendant has the right not to answer any questions
18 that might possibly be used against him in a future criminal
19 case. His refusal to answer does not signify either that there
20 actually will be a future criminal case or that he is guilty.
21 It means only that he does not want to say something that might
22 possibly be used against him later. By not answering
23 questions, the defendant leaves the plaintiff without the
24 answers that it seeks. In evaluating the plaintiff's or
25 defendant's testimony, you're entitled to consider that the

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1 defendant did not answer questions because of the possibility
2 that the answers would be used in a subsequent criminal case,
3 even though you do not know what the answers would have been.

4 And I can leave a written copy of this for you all.

5 CHAIRMAN MAC NEILLE: Thank you. I appreciate it,
6 thanks.

7 HEARING OFFICER: Are there any additional questions
8 before you deliberate?

9 MR. DONAHUE: For purposes of that definition.....

10 HEARING OFFICER: Yes.

11 MR. DONAHUE:the same would apply to the word
12 defendant in there, in this case, I guess would be
13 Representative Sanders, but the same -- the concept of the
14 defendant would also apply to the other people who used the
15 Fifth, even though they are not in front of us in terms of any
16 question?

17 HEARING OFFICER: You may consider anybody's exercise
18 of the Fifth, not as a penalty against them, not that they
19 should be punished or their testimony is less credible because
20 of that, but you can consider the circumstances under which
21 they're giving it to conclude what the answer may have been or
22 may not have been to the answer to the question. Mr. Granger.

23 MR. GRANGER: In our deliberations, if we feel that
24 there's a need to have a handwriting expert examine the 5 March
25 '96 letter that was or was not, I don't know, supposedly signed

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1 by Representative Sanders, would that be out of the realm of
2 possibility?

3 HEARING OFFICER: I think you're getting into the realm
4 of deliberations now and I would prefer that you talked amongst
5 yourselves and if, as a body, you want to ask a question about
6 that, then you bring it up and contact me and I'll contact the
7 parties. I just hesitate that you get into -- you know, you're
8 a public body now and get into deliberations. But if you have
9 questions like that, as a Committee, I encourage you to call
10 and ask.

11 MR. SYREN: Judge, you said that they were going to --
12 the Committee was going to deliberate today and issue a
13 decision, was that today or some other time.

14 MR. DONAHUE: Whenever we're done.

15 MR. SYREN: I understand that. It sounded like that
16 was going to not occur today and I'm just.....

17 CHAIRMAN MAC NEILLE: Mr. Syren, we deliberate in
18 private, we do our own work and we try to do it as
19 expeditiously as possible with or without the assistance of
20 others. And we will do the best we can to have a prompt
21 decision for your client.

22 MR. SYREN: Thank you. The only request I have is that
23 somebody, either Ms. Barnett or somebody else inform me as soon
24 as a decision is reached.

25 CHAIRMAN MAC NEILLE: Yes. You'll be amongst the first

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1 to know.

2 MR. SYREN: Thank you.

3 CHAIRMAN MAC NEILLE: I want to, at this point, thank
4 Mr. White and thank the attorneys for presenting the case to us
5 in an efficient and prompt fashion. And when I say to Mr.
6 Syren, I know it's lonely to be here without a client and it
7 must have been a difficult situation for you. I thank the
8 Committee attorney and staff for the work they've done and now
9 it's our turn.

10 MR. DONAHUE: Are we going to take a short break before
11 we do this?

12 CHAIRMAN MAC NEILLE: We're going to take a break,
13 we're going to cleanse the room so we only have the things
14 before us that we're allowed to have before us.

15 HEARING OFFICER: I think during deliberations you'll
16 be given the exhibits that have been admitted and then if you
17 would like -- if you get to a stage where you're considering a
18 sanction, Mr. Spaan mentioned the public documents, you'll then
19 have them.

20 CHAIRMAN MAC NEILLE: Okay.

21 (Hearing recessed)

22 * * * * *

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C E R T I F I C A T E

UNITED STATES OF AMERICA)) ss.
STATE OF ALASKA)

I, Salena A. Hile, Notary Public in and for the State of Alaska, and Reporter for R&R Court Reporters, do hereby certify:

That the foregoing Select Committee on Legislative Ethics Hearing was taken before me on the 14th and 15th day of November 1996, commencing at the hour of 11:00 o'clock a.m. in Anchorage, Alaska;

That the Hearing was transcribed by me to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 21st day of November 1996.

Salena A. Hile

Notary Public in and for Alaska
My Commission Expires: 11/5/98



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ATTN:
Mike Spain

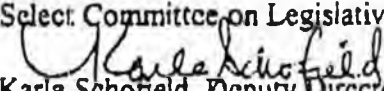
STATE OF ALASKA
Alaska State Legislature

7 pages

*Administrative Services Division
130 Seward Street, Suite 313
Juneau, Alaska 99801-2197
Ph. 465-3852 - Fax 465-3234*

DATE: October 16, 1996

TO: Susie Barnett, Staff
Select Committee on Legislative Ethics

FROM: 
Karla Schofield, Deputy Director
Administrative Services
Legislative Affairs Agency

SUBJ: Information Request

You have requested copies of any rules, policies, or guidelines concerning legislative office accounts and use of legislative postage meter machines.

I have attached pages from the Guide to Legislative Staff relating to the allowance accounts and an informational sheet which is given to each Legislator choosing an accountable allowance account. Legislators may only submit expenses for payment from the allowance account which meet the criteria for a business expense.

Legislative postage machines are used to meter official legislative business. In addition, Legislators are allowed to post personal or constituent mail on legislative postage meters as long as they pay for the postage. In Juneau, Legislators may set up an account for this purpose. Relevant pages from the Guide to Legislative Staff relating to the Juneau Mailroom personal postage accounts is attached. If Legislators use the postage meters in the Legislative Information Offices for personal mail they are billed for the postage.

Enclosures



ACCOUNTING

Business Expense Allowance

Legislative Council policy provides that Legislators are entitled to receive a \$6000 annual allowance administered as an accountable or nonaccountable plan at their option. The allowance is for postage, stationery, stenographic services and other expenses. A nonaccountable plan means the Legislator allowance is issued in a lump sum from which taxes, SBS, and Medicare deductions are withheld. An accountable plan means that an allowance account is set up in the Legislative Affairs Agency from which business expenses are paid. Business expenses are the normal and current costs of carrying on a trade, business, or profession. Accountable plan expenses have a business connection and are substantiated by receipts. Deductions by the federal and state government are not required with an accountable plan.

Legislators receive an option form (Exhibit A) prior to the beginning of session. They complete the form and return it to the Accounting Office.

If the nonaccountable plan is chosen, a lump sum check will be issued to the Legislator on the first day of session.

If the accountable plan is chosen, the Accounting Office will set up the account and issue instructions and forms to the account holder on the first day of session. Legislators will submit bills and reimbursement requests to the Accounting Office and the Legislator's allowance account will be charged.

Accountable plan expenditures are on file in the Accounting Office and are public information.

Annual allowances are administered on a calendar year. Any remaining balance in an accountable plan on December 15 will be issued through the payroll system with the appropriate taxes and deductions withheld.

Legislators who wish to draw a portion of their accountable allowance account as personal cash may do so. Any cash disbursement will be issued through the payroll system and designated as a nonaccountable allowance payment.

Any allowance amounts issued through the payroll system are reported on the W-2. Any allowance amounts administered as an accountable plan are not reported on the W-2.

Business Expense Allowance

Legislators may not add funds from a campaign account to a legislative allowance account.

Legislators may request that a portion of their allowance be issued as an accountable allowance account and a portion be issued as a nonaccountable allowance account.

Common Allowance Questions

1. **I requested a nonaccountable allowance plan. When will I receive my check, less taxes and state deductions?**
 - A. On the first day of session. Checks for new Legislators who have not completed personnel documents will be delayed until the paperwork is complete.
2. **I requested an accountable allowance plan. How do I get reimbursed for my expenses?**
 - A. Submit an original invoice to the Accounting Office.
 - B. The original invoice needs to be signed by the Legislator or designee.
3. **How do I deposit money from my allowance account to the Mail Room for postage or to Supply for the purchase of flags or state seals?**
 - A. Complete the Allowance Account Request Form (Exhibit B) or send a memo to the Accounting Office requesting the transfer.
4. **How do I get an advance check to cover US Postmaster charges or election district list charges?**
 - A. Send a completed Allowance Request Form or a memo to the Accounting Office requesting a check.
 - B. Save the postage or election district list receipts as you are required to submit them to the Accounting Office.
5. **How soon can I expect check turn around?**

Business Expense Allowance

- A. 2-3 days from receipt of the request by the Accounting Office. If the check must be available sooner, notify the Accounting Office as soon as possible. Remember, if you are not in Juneau, allow transit time in both directions.
6. What is the current balance in my allowance account?
- A. Call the Accounting Office at 465-3852 to request the information.
 - B. The balance is also available on the monthly Legislator Salary and Business Expense Report which is issued once a month. The balance on the monthly report will show items paid, not items in transit or items paid after the date of the report.
7. Who can sign on my allowance account?
- A. The Legislator or their designee.

Business Expense Allowance

Annual Allowance Option Form, Exhibit A

LEGISLATIVE AFFAIRS AGENCY
130 Seward Street, Suite 313, Juneau, AK 99801-2197

LEGISLATORS' \$6,000 ANNUAL ALLOWANCE OPTION FORM
Return this form to the Accounting Office by January 1st of each year.

Please check one of the options below on how you would like your \$6,000 annual allowance payment processed:

Option 1 - Nonaccountable Plan (unvouchered)

— Withhold per W-4 on file in Personnel along with medicare & SBS deductions; reportable on W-2.

Option 2 - Accountable Plan (vouchered)

— Legislators submit receipts or bills to Accounting up to \$6,000 for expense reimbursement; no withholding; not reportable on W-2.

Signature _____

Legislator Name _____
(Please Print)

Date _____

Nonaccountable plan allowance checks or accountable plan forms and instructions will be delivered the first day of session if this form is received in the Accounting Office by January 1st.

Form A-1

STATE OF ALASKA
The Legislature
Legislative Affairs Agency



Administrative Services
130 Seward Street, Suite 313
Juneau, Alaska 99801-2197
Phone 465-3852 Fax 465-3234

MEMORANDUM

TO: Mindy Lobaugh, Accounting Technician Account Number: _____
FROM: _____ Signature Date: _____
OFFICE: _____ Printed Name

1. Please reimburse the following individual(s) from my allowance account. *The original receipt is attached to this request.*

Name _____	Name _____
Address _____	Address _____
City, State, Zip _____	City, State, Zip _____
Item _____	Item _____
Amount \$ _____	Amount \$ _____
Mail Check _____ Return Check _____	Mail Check _____ Return Check _____

2. Please transfer \$_____ to:

_____ Postage Account Juneau Mailroom
_____ Supply Office State Seal \$_____
_____ Supply Office Alaska Flag (3x5) \$_____ (5x9) \$_____
_____ Supply Office U.S. Flag (3x5) \$_____ (5x8) \$_____
_____ Division of Elections \$_____ Election District List - District Number _____

Use this form to order lists from Elections and forward a copy of your request to Accounting.

3. Please issue a warrant in the amount of \$_____ made payable to:

_____ U.S. Postmaster @ _____ for
_____ Bulk Mail City Address/Station
_____ Stamps
_____ Other Mail Check _____ Return Check _____

A receipt must be requested at the time of purchase and forwarded to Accounting.

Information Sheet
Accountable Allowance Expenses

Expenses submitted to the Accounting Office under the Accountable \$6,000 Allowance Plan will be paid if they meet the criteria for a business expense. Business expenses are the normal and current costs of carrying on a trade, business, or profession. Legislators may have private vendors bill the Legislative Affairs Agency directly or may submit receipts to the Accounting Office for reimbursement.

If an expenditure is a combined business and personal expense, only the business portion of the expenses will be paid by the Accounting Office. It is the responsibility of the Legislator to indicate which portion of a particular expense is personal and which portion is business with a receipt of this type.

The allowance expense definition is "Postage, stationery, stenographic services and other expenses." The types of expenses which would fall under "other" could include airline tickets, coffee for the office, business lunches, a computer for the office, office supplies, etc.

Legislators should be aware that although an expense is a legitimate business expense and will be paid, all expenses related to the \$6,000 allowance vouchered through the Legislative Affairs Agency are public information.

Mail Service

The following sites receive DHL pouch service:

Anchorage	Kenai	Mat-Su
Fairbanks	Ketchikan	Sitka
Homer	Kodiak	

The following sites receive express mail:

Barrow	Dillingham	Nome
Bethel	Kotzebue	

The following sites receive first class mail:

Cordova	Petersburg	Valdez
Delta Junction	Seward	Wrangell
Giennallen	Tok	

Interdepartmental Mail

Official Juneau state business mail may be sent interdepartmentally via the Central Mail Room in the State Office Building without postage. The Central Mail Room requires mail to be in an interdepartmental envelope addressed with the department mail stop numbers which are listed in the Directory of State Officials. The Legislature's mail stop number is 3100. All mail not in interdepartmental envelopes with mail stop numbers will be returned by the Central Mail Room.

If interdepartmental mail is not placed in an interdepartmental envelope, it may get mixed with outgoing mail to be posted. The postage machine cannot differentiate and postage will be added to your postage account. Your correspondence will end up at the post office and subsequently returned to you marked "incomplete address".

Personal Postage Account

A personal postage account can be set up for any Legislator for the purposes of posting personal and/or constituent mail that is not charged to a committee.