



11625 HOUSE STATE AFFAIRS



IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARK EDWARDS,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

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)  
) Court of Appeals No. A- 8507  
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)

Trial Court No. 3AN-S99-1269CR

APPEAL FROM THE SUPERIOR COURT  
THIRD JUDICIAL DISTRICT  
HONORABLE ELAINE ANDREWS, JUDGE

OPENING BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Police officers responded to the home of M.E. after receiving a welfare call indicating that M.E. failed to report for work. [Tr. 758] Responding officers found M.E. and her friend, M.C., dead at the scene from gunshot wounds. [Tr. 285-290] Mark Edwards, M.E.'s ex-husband, was also found at the scene with a gunshot wound to the head. [Tr. 238-290] Officers found a .22 caliber Derringer pistol on the floor of the room in which Edwards and M.E. were located. [Tr. 290] Officers later found nine .22 caliber bullets in Edwards's pants pocket when the pants were processed into evidence. [Tr. 857]

Although Edwards suffered permanent brain damage and total blindness as a result of the gunshot wound, the trial court found him competent to stand trial. [R. 1829] Mark Edwards was subsequently indicted on two charges of first-degree murder. [Exc. 1-2; R. 1982-83] The state pursued the indictment under the theory that Edwards shot M.E. and M.C., then shot himself in retaliation for a domestic violence protective order obtained by M.E. against Edwards shortly before the homicide. [Exc. 90; G.J. 7-8] The state supported its request for a true bill with a single witness, Detective Branchflower. [Exc. 90-95; G.J. 9-29]

Edwards filed a motion to dismiss the indictment arguing that the indictment rested entirely upon improperly admitted hearsay evidence. [Exc. 3-14; R. 1713-29] Edwards also filed a motion to suppress the bullets found in his pants pocket arguing that they had been obtained through an illegal warrantless search. [Exc. 15-20; R.1732-37] The trial court denied Edwards's motions. [Exc. 55-82; R. 1646-1678]

ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in failing to dismiss the indictment where the state obtained a true bill based upon the uncorroborated and improperly introduced hearsay testimony of a single witness?
2. Did the trial court err in failing to suppress evidence obtained from an illegal warrantless search of Edwards's pants pocket?

Edwards was convicted at trial and received a sentence of ninety-six years to serve. [Exc. 83-87; R. 1977-1981] This appeal follows.

ARGUMENT

I. THE GRAND JURY'S VERDICT RESTS ENTIRELY UPON IMPROPERLY ADMITTED HEARSAY EVIDENCE

A. Introduction

No person shall be held to answer for a felony offense without the support of a grand jury indictment.<sup>1</sup> "[T]o obtain an indictment, the State must prove to the grand jury 'that the evidence ... establishe[s] a probability of [the defendant's] guilt.'<sup>2</sup> The Alaska Supreme Court has stated that this determination should be a reliable one.<sup>3</sup> Hearsay evidence that is inadmissible at trial is, therefore, only admissible before the grand jury under certain limited circumstances.<sup>4</sup>

The rationale for limiting hearsay testimony is based upon the view that a reliable determination of probable guilt is required "before the accused suffers any of the grave inconveniences which are apt to ensue upon the return of a felony indictment."<sup>5</sup> As the Alaska Supreme Court has stated, "[t]his can best be guaranteed when witnesses against the accused appear in person before the grand

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1 The Constitution of the State of Alaska, Article I, section 8.

2 State v. Ladd, 951 P.2d 1220, 1222-23 (Alaska App. 1998) (citations omitted).

3 State v. Gieffels, 554 P.2d 460, 465 (Alaska 1976).

4 Alaska Rule of Criminal Procedure 6(r)(1), (2), (3), & (6).

5 Gieffels, 554 P.2d at 465.

jury so that the panel can view their demeanor and subject them to cross-examination."<sup>6</sup> The Alaska Supreme Court has warned that "hearsay evidence, if unchecked, would erode the protective value of the grand jury so as to make it nothing more than an administrative arm of the district attorney's office."<sup>7</sup>

B. The State Improperly Introduced The Firearm And Toolmark Expert's Opinion Through Detective Branchflower

To strengthen the protective value of the grand jury, Alaska Rule of Criminal Procedure 6(r)(1) states that hearsay evidence is inadmissible before the grand jury absent a "compelling justification" that is stated on the record. The time and expense of presenting an expert to the grand jury may be a sufficiently compelling justification for presenting the expert's opinion through hearsay testimony if the opinion is based on "accepted scientific procedures that yield objective results."<sup>8</sup> If an expert's opinion, however, is "subjectively based or depend[s] on procedures the reliability of which has not been established," the time and expense of presenting the expert to the grand jury will not be a sufficiently compelling justification.<sup>9</sup>

Appellate courts in Alaska have held that drug testing results are objectively based on accepted scientific procedures and that the technician who

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6 Id.

7 Id.

8 Ingram v. State, 703 P.2d 415, 432 (Alaska App. 1985).

9 Id.

performs a drug test is not required to testify before the grand jury.<sup>10</sup> In so holding, the Alaska Supreme Court has reasoned that the competence of the technician and the reliability of the test would not likely be tested by vigorous cross-examination and that "the technician could do no more than affirm that he did perform the test reported, and that those tests did indicate the presence of a narcotic substance."<sup>11</sup>

Conversely, appellate courts in Alaska have held that the conclusions of handwriting experts and treating physicians are not excluded from the requirement that they testify.<sup>12</sup> In Metler v. State, for example, the state secured an indictment using hearsay testimony concerning the opinions of two handwriting experts. The state did not present a report from either expert or provide any information concerning their professional credibility. According to the Alaska Supreme Court, the method of proof employed by the state failed to provide a basis for showing the grand jury how the experts' reached their conclusions or for presuming that the comparisons were performed and reported accurately.<sup>13</sup> The

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<sup>10</sup> McKinnon v. State, 526 P.2d 18, 27-28 (Alaska 1974) (Holding that the laboratory analysis of cocaine was properly admitted through the hearsay testimony of a police officer.); Ingram v. State, 703 P.2d 415, 432 (Alaska App. 1985) (Holding that the chemical analysis of LSD was properly admitted through the hearsay testimony of an investigating officer.).

<sup>11</sup> McKinnon, 526 P.2d at 27-28.

<sup>12</sup> Adams v. State, 598 P.2d 503, 508 (Alaska 1979) (hearsay evidence concerning treating physician's opinion of victim's medical condition inadmissible before the grand jury without a showing of compelling justification); Metler v. State, 581 P.2d 669, 673-74 (Alaska 1978) (hearsay testimony concerning the results of handwriting analysis inadmissible before the grand jury absent a showing of credibility and reliability).

<sup>13</sup> Metler, 581 P.2d at 674.

court ultimately held that the state had failed to establish the reliability of the handwriting expert's opinion.<sup>14</sup>

Although the court's decision in Metler appears at first blush to turn on the state's failure to present a report to the grand jury, as this court's decision in Ingram v. State<sup>15</sup> indicates, such a limited reading of Metler would fail to account for the continued applicability of the "compelling justification" requirement. In Ingram, the defendant argued that the Alaska Supreme Court's earlier decision in McKinnon v. State,<sup>16</sup> which held that the state was not required to present a technician who performs a drug test to the grand jury, had been subsequently overruled by cases requiring the state to present handwriting experts and treating physicians to the grand jury. This court, however, held that McKinnon was still good law.<sup>17</sup> In so holding, this court stated that later cases simply distinguished between two classes of expert opinions: subjectively based and objectively based.<sup>18</sup> Thus, Ingram reiterates the necessity for a compelling justification when introducing an expert's subjective opinion through hearsay regardless of whether the hearsay method is in the form of a report, live testimony, or both.

In the present case, the trial court concluded that Robert Shem, the

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14 Id.

15 703 P.2d 415 (Alaska App. 1985).

16 Supra, n. 10.

17 Ingram, 703 P.2d at 432.

18 Id.

firearm and toolmark expert, issued a report that was "an expert opinion based on accepted scientific procedures that yield objective results" similar to drug testing results. [Exc. 75; R. 1666] The court reasoned that toolmark identification was based upon viewing tool marks that are objectively visible. [Exc. 75; R. 1666] The court further reasoned that because Shem's report was submitted to the grand jury, they were allowed to examine it for themselves. [Exc. 76; R. 1667] The court, therefore, concluded that Shem's testimony would not have added to the proceedings and his opinion, introduced through a written report and Branchflower's testimony, was not improperly presented to the grand jury. [Exc. 75-76; R. 1666-67]

The art of toolmark identification is, however, subjective and not objective. Toolmark identification typically involves microscopic examination of toolmarks to determine if the toolmarks have a sufficient number of microscopic features of sufficient clarity and definition for identification.<sup>19</sup> Identification is possible when unique surface contours are compared and are found to be in "sufficient agreement."<sup>20</sup> Sufficient agreement means that "the agreement is of a quantity and quality that the likelihood another tool could have made the mark is so

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<sup>19</sup> Alfred A. Biasotti & John Murdock, The Scientific Basis Of Firearms And Toolmark Identification, § 29-2.2 at 502, in Modern Scientific Evidence: The Law And Science Of Expert Testimony (David L. Faigman, David H. Kaye, Michael J. Saks, & Joseph Sanders eds., 2002).

<sup>20</sup> Id. at 504-05 (citing Theory Of Identification, Range of Striae Comparison Reports, and Modified Glossary Definition—An AFTE Criteria for Identification Committee Report, 24 Ass'n Firearm & Toolmark Examiners J. 336 (1992)).

remote as to be considered a practical impossibility."<sup>21</sup> The Association of Firearm and Toolmark Examiners recognizes that this process is "subjective in nature, founded on scientific principles and based on the examiner's training and experience."<sup>22</sup> At least one published expert has noted that "it would be the 'art' of the experienced examiners that would be the basis" for a quantifiable model, not the science, even if this process could be objectively quantified.<sup>23</sup>

In contrast to drug testing, firearm and toolmark identification does not involve a test result which once obtained could be confirmed by a technician or simply communicated by report. The analysis performed by a firearm and toolmark examiner is similar to comparing handwriting samples and involves the judgment of an expert who has sufficient training, experience, and skill. Artful decisions must be made at each step of the process, including what types of marks to look for, what marks are sufficiently definite and clear to form a basis for identification, and whether the compared surfaces are in "sufficient agreement" as to exclude other tools, rendering misidentification a practical impossibility.

Although Shem's report was presented to the grand jury, the subjective nature of firearm and toolmark identification renders this method of proof unreliable and insufficient. Shem's report consisted of a single page that merely listed the items submitted and Shem's opinion. [Exc. 83] Moreover, Shem's report is

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id. at 508 (quoting John E. Davis (author of An Introduction To Tool Marks, Firearms and the Striaograph (1958)) in a letter to John Murdock).

misleading because it reports his subjective opinion under the heading "Results." [Exc. 88] Shem's opinion is, however, not the result of a test; it is an opinion based upon his subjective judgment. Moreover, the report does not provide the grand jury with any information from which it could evaluate how Shem formed his opinion, whether he performed his analysis according to established and reliable procedures, or whether he was a qualified or credible expert.<sup>24</sup>

C. The State Improperly Relied on Detective Branchflower's Testimony Concerning The Investigation And The Scene Of The Crime.

As previously noted, Alaska Rule of Criminal Procedure 6(r)(1) states that hearsay evidence is inadmissible before the grand jury absent a "compelling justification." Rule 6(r) does permit otherwise inadmissible hearsay evidence to be presented to the grand jury if the evidence fits within an enumerated exception. One exception permits a police officer involved in an investigation to repeat the statements and observations of another officer if additional evidence is introduced to corroborate the statement.<sup>25</sup>

No reported opinions from Alaska's appellate courts have grappled with the extent to which hearsay testimony may be used under this exception or the level of corroboration required to permit its use. A legislative statement of findings and purpose for the rule provides some guidance, however. The 1994 legislature stated that the rule permitting police officer hearsay was enacted "to allow the grand jury to be fully informed about the evidence available on a criminal case through testimony

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<sup>24</sup> See Ingram, 703 P.2d at 432.

<sup>25</sup> Alaska Rule of Criminal Procedure 6(r)(3).

of lead peace officers, while allowing officers who played a minor role in the investigation not to personally appear and testify so that they can continue to perform their vital duties on the street to protect the public."<sup>26</sup>

One prior unreported opinion of this court does address of the level of corroboration required to justify the admission of police officer hearsay. In Wilson v. State,<sup>27</sup> the state established the location of a homicide victim's body through the hearsay testimony of an investigating officer. According to this court, the hearsay testimony concerning the location of the victim's body was properly admitted because photographs of the scene identified by the testifying detective corroborated his statement.<sup>28</sup>

In the present case, every material aspect of the state's case was introduced through Branchflower's hearsay testimony. Branchflower apparently did not investigate the scene of the homicide. [Tr.66] Branchflower, however, testified about both the report that lead officers to the scene and the responding officers' observations of the scene without stating the basis for her testimony. [Exc. 91-94; G.J. 11-14, 20-21, 24] Branchflower told the jury about a phone message from Edwards to M.E., but did not state who listened to the message or who wrote it down; she stated "I think they listened to the message." [Exc. 93; G.J. 20-21] The only observations of the scene that Branchflower testified to and also stated the

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<sup>26</sup> Alaska S.L.A. 1994, ch. 114, sec. 1: Findings and Purpose.

<sup>27</sup> Wilson v. State, 1998 WL 254000 (Alaska App. May 20, 1998).

<sup>28</sup> Id. at 2.

basis for were those of Lieutenant Gifford, the crime scene reconstruction and blood spatter expert. [Exc. 92-93; G.J. 14-18]

Branchflower's testimony included a hearsay account of the location of the Derringer, bullets, and expended shells found at the scene. [Exc. 92-93; G.J. 14-18] Her testimony also included a statement from an unnamed source indicating that nine bullets were found in Edwards's pocket. [Exc. 95; G.J. 26] The state introduced photographs of the scene through Branchflower without any statement indicating who took the photographs, when the photographs were taken, or whether the photographs accurately represented the scene or the evidence. [Exc. 93-94; G.J. 21-23] The only evidence provided to the grand jury that was not improperly admitted was Branchflower's testimony that she searched Edwards's residence and found an empty box of .22 caliber bullets and the sheath to a knife several, and photographs that she had taken at Edwards's residence. [Exc. 95; G.J. 27-28]

Branchflower's non-hearsay testimony, however, did not corroborate the hearsay testimony. The fact that Branchflower observed an empty box of .22 caliber ammunition does not corroborate the number of bullets found at the scene or the existence of a gun with a discharged shell. It merely shows that Edwards had an empty box of the most common type of ammunition sold in the United States in the most common quantity available. [Tr. 1862, 1878] Branchflower's observation of a knife sheath at Edward's residence, again, fails to corroborate any observation of the scene upon which the grand jury's verdict rested. The fact that a filet knife was found at the scene that could possibly fit a sheath found at Edwards's residence is not surprising and does not establish that Edwards's shot M.C. and M.E.

This court's unpublished opinion in Wilson appears to indicate that the existence of photographs would serve to corroborate Branchflower's testimony. Unlike Wilson, however, the photographs introduced through Branchflower were not properly identified and can not reliably corroborate her testimony. Photographs are inadmissible at trial unless they are properly authenticated.<sup>29</sup> Here, the state introduced photographs through Branchflower, but there is no basis for concluding that the photographs are a faithful representation of what they purport to depict. Branchflower does not indicate who took the pictures, when the pictures were taken, or whether they are an accurate representation of the scene and evidence.

The state's presentation of the evidence to the grand jury violated the plain language of Rule 6(r)(3) and the intent of the legislature. The state presented its entire case using the uncorroborated hearsay testimony of an officer who, though involved in the investigation, played only a minor role in the investigation. This reliance on hearsay evidence has eliminated any protection provided by the grand jury process and should not be countenanced here.

D. The Indictment Must Be Dismissed Because It Rests Entirely Upon Improperly Admitted Evidence

"In deciding whether the presentation of improper evidence requires dismissal of the indictment, it is first necessary to decide whether there is sufficient

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<sup>29</sup> Sheakley v. State, 644 P.2d 864, 870 (Alaska App. 1982) (stating that "[t]his court has held that a photograph is admissible in evidence in the discretion of the trial judge, as an aid to the court or jury, after it has been shown to be a faithful representation of whatever it purports to depict.")

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admissible evidence to support the indictment."<sup>30</sup> If there is insufficient admissible evidence remaining, the indictment must be dismissed.<sup>31</sup> If, however, there is sufficient admissible evidence then it is necessary to evaluate the challenged evidence to determine whether it "appreciably affect[ed] the outcome of the grand jury's deliberations." <sup>32</sup>

In the present case, the material facts upon which the grand jury's verdict rested were all improperly presented through hearsay testimony. Branchflower testified that when police arrived at M.E.'s residence they kicked in the door because the key provided by a friend of M.E.'s would not unlock the deadbolt. [Exc. 91; G.J. 12-13] This evidence supported the inference that whoever committed the crime was still in the house. Branchflower testified that Edwards, M.E., and M.C. appeared to have been shot with a gun that was found on the floor near where Edwards was shot. [Exc. 92-93; G.J. 14-18] Branchflower testified that one empty shell casing was found in the .22 caliber derringer, that two empty .22 caliber shell casings were found on the floor, and that nine .22 caliber rounds were found in Edward's pants pocket. [Exc. 94; G.J. 24] This evidence supported the inference that Edwards shot M.C. and M.E., then reloaded the gun and shot himself.

The opinions of the state's experts provided critical support for the lin'

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<sup>30</sup> Newman v. State, 655 P.2d 1302, 1306 (Alaska App. 1982)

<sup>31</sup> See Id.

<sup>32</sup> Oxereok v. State, 611 P.2d 913, 916 (Alaska 1980).

between the evidence located at the scene and the grand jury's verdict.<sup>33</sup> Branchflower testified that Gifford concluded that "the subject shot the victim while she was in bed" and then the "suspect shot himself" and laid on the floor. [Exc. 92; G.J. 16] And Shem's report indicated that the ammunition at the scene was the same type of ammunition as the ammunition box found in Edward's residence. [Exc. 95; G.J. 28] Shem's report also indicated that the three expended shell casings had been fired from the derringer found at the scene. [Exc. 94; G.J. 25] This evidence endorsed the state's conclusion that Edward's perpetrated the homicide.

Without the improperly presented hearsay evidence, the state's presentation to the grand jury is insufficient to support the indictment. Alternatively, if this court concludes that the testimony concerning observations of the scene made by other police officers was properly admitted, the improper testimony concerning the expert opinions of Gifford and Shem appreciably affected the grand jury's deliberations.

The evidence based upon Gifford's and Shem's report provided the grand jury with information that must have overwhelmed the deliberations. The state's experts concluded that the gun and bullets found near Edwards were used by Edwards to commit the homicide and then to attempt suicide. Branchflower communicated these conclusions without explanation and without an opportunity for the grand jury to inquire into the basis for these conclusions. This testimony was sufficiently powerful that the jury likely abandoned its role of fact-finder in favor of the

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<sup>33</sup> The trial court previously found that Lieutenant Gifford's report and

requirement of the Fourth Amendment."<sup>38</sup> Inventory searches may be considered reasonable and constitutional if they are conducted in accordance with the standard procedures of the agency conducting the search.<sup>39</sup> An inventory search of closed, locked or sealed luggage, containers or packages, however, is not within the scope of a reasonable warrantless inventory search.<sup>40</sup>

As constitutionally protected zones, the prohibition on closed container inventory searches extends to clothing pockets.<sup>41</sup> According to the California Court of Appeals:

Although the foregoing decisions have come to be known as "closed container" cases, it is of no help to us in our analysis to note that a vest pocket, unlike a lunch box, has no lid or, like a tote bag, cannot be locked. ... If a person were to be handed an article which he intended to keep safe from theft or secure from prying eyes, that person would almost certainly place the article in his pocket. No more reprehensible petty thief can be found than a pickpocket, not because he steals, but because he does so by intruding into an area where his victim most wishes to remain secure. We find that a vest pocket is a protected receptacle of personal effects and may not be searched

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<sup>38</sup> D'Antonio v. State, 926 P.2d 1158, 1162 (Alaska 1996)(citing Colorado v. Bertine, 479 U.S. 367, 373, 107 S.Ct. 738, 741-42, 93 L.Ed.2d 739 (1987)).

<sup>39</sup> State v. Daniel, 589 P.2d 408, 417 (Alaska 1979); Florida v. Wells, 495 U.S. 1, 3-4, 110 S.Ct. 1632, 1634-35, 109 L.Ed.2d 1 (1990).

<sup>40</sup> D'Antonio, 926 P.2d 1158, 1162 n. 5 (Alaska 1996)(citing Daniel, 589 P.2d at 417-18).

<sup>41</sup> See Sibron v. New York, 392 U.S. 40, 65, 38 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968) (holding that an officer's decision to invade a pocket was not permissible under the circumstances); State v. Gray, 793 P.2d 346, 350 (Alaska App. 1990)(holding that the emptying a suspect's pocket must be constitutionally justified).

except as permitted by the Fourth Amendment.<sup>42</sup>

The Ninth Circuit has also recognized that pockets are analagous to closed containers. In United States v. Ramos-Oseguera,<sup>43</sup> the police inventoried the defendant's car after arresting the defendant. The police searched the pockets of a pair of jeans found in the vehicle and discovered heroin. Police department policy required that all visible property be booked and inventoried for safekeeping. Judge Boochever, writing for the Ninth Circuit, noted that the applicable procedures did not specifically provide authority for looking inside containers to find valuable property.<sup>44</sup> The court accordingly held that the search violated the Fourth Amendment.<sup>45</sup>

In the present case, Officer Soto received Edward's pants from a hospital employee who indicated that the pants were provided to Soto as part of hospital procedure. [Exc. 98; Tr. 20-21, 26] Soto took possession of the pants intending to place them in "property and evidence" as a piece of evidence in the case. [Exc. 98, 105; Tr. 26, 54] Soto stated that he was required to separate multiple items, tag them, and put them in lockers. [Exc. 98; Tr. 28-29] Soto also stated that he had to do an inventory of every item and "check of all the, basically, pockets or anything that I, you know, basically, find, basically separate every item

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<sup>42</sup> People v. George, 168 Cal.Rptr. 44 (Cal.App. 1980).

<sup>43</sup> 120 F.3d 1028 (9<sup>th</sup> Cir. 1997) (overruled on other grounds).

<sup>44</sup> Id. at 1036.

<sup>45</sup> Id.

that I can find." [Exc. 98; Tr. 29] Soto further stated that this was the department policy. [Exc. 98; Tr. 29] Soto testified that he "processed the evidence as I was trained." [Exc. 99; Tr. 30] Soto found bullets and a BIC lighter. [Exc. 99; Tr. 30]

On cross-examination, Soto was asked specifically whether he was instructed on the procedure for taking the pants into evidence or whether he made the decisions on his own. [Exc. 101; Tr. 39] Soto responded:

No, sir. Well, basically, it goes -- you know, we learned this on training and also, basically, the procedures I learned also in training. And it's before this day and after this day, we basically, continue -- basically, continue doing the same procedure. And we had done this prior to this day as well. [Exc. 101; Tr. 39]

Then when immediately asked whether that meant that he made the decisions on his own, Soto responded: "Based on that procedure because I know it's--it's basically policy and procedures, yes, I -- I do it that way." [Exc. 101; Tr. 39]

The trial court recognized that the warrantless inventory search of closed containers is unreasonable and unconstitutional. [Exc. 64; R. 1655] The court also recognized that the routine emptying of a defendant's pockets upon arrival at a pretrial detention center has been held unconstitutional. [Exc. 64; R. 1655] The court, however, stated that a search of pants pockets is less intrusive than a search of a closed container. [Exc. 65; R. 1656] The court found that Soto testified he was "required to do an inventory of the evidence, that he was required to check the pockets, and separate every item found." [Exc. 66; R. 1657] According to the court, Soto had the right to "lift and move the evidence in order to book it into the evidence room." [Exc. 66; R. 1657]

The trial court's decision, however, was error. Soto did not testify that he was required to remove the items from pockets as a matter of established procedure. A closer reading of Soto's testimony reveals that Soto did not articulate any standard procedure. Soto merely stated that he needed to separate multiple items to tag them separately into evidence and had done it that way in the past. When asked specifically whether he was told to search pockets as part of the procedure of logging items into evidence or whether he made the decision on his own Soto did not specifically answer the question. Accordingly, the evidence does not support the trial court's conclusion that Soto was following an established inventory procedure.

Even if Soto was following established procedures, opening the pocket was an unreasonable procedure for logging inventory. In Daniel v. State,<sup>46</sup> police officers who were lawfully impounding a vehicle found a briefcase in the back seat that had open latches. The officers opened the briefcase and found contraband. The Alaska Supreme Court concluded that no principled distinction between locked and unlocked containers could be drawn.<sup>47</sup> The court held that "it is sufficient, for routine inventory purposes, that the officer merely list the item as a closed or locked footlocker, briefcase, package, or container and, if deemed necessary remove the same for safekeeping."<sup>48</sup> Soto had lawful possession of the pants and could have

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<sup>46</sup> Daniel v. State, 589 P.2d 408 (Alaska 1979).

<sup>47</sup> Id. at 417.

<sup>48</sup> Id. at 418.

similarly taken them into evidence for safekeeping without violating the pockets.

Additionally, the search was impermissible because Soto was not conducting an inventory search, he was tagging evidence. In Newhall v. State,<sup>49</sup> a trooper obtained a search warrant to open a package that he suspected contained alcohol being shipped in violation of a local option law. The trooper opened the package and then opened a second package that he found inside the suspect package. The trooper, however, knew that the second package did not contain alcohol. This court held that the trooper was not permitted to search the second package without a warrant, even if he had abundant probable cause.<sup>50</sup> The court further held that with probable cause the police are permitted only to seize a closed container while they apply for a search warrant.<sup>51</sup>

Here, Soto had possession of pants and could have simply applied for a warrant if he wanted to inspect the interior of the pockets. Although Soto claimed that he had no reason to believe that there was evidence in the pockets, his stated purpose for inspecting the pocket was to take the pants into custody as evidence of a crime and separate items so that they would become "separate property evidence item[s]" [Exc. 98, 105; Tr. 28, 54] Soto's search can not be rendered permissible simply because he stated that he did not have an investigative purpose or by

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<sup>49</sup> Newhall v. State, 843 P.2d 1254 (Alaska App. 1992).

<sup>50</sup> Id. at 1257.

<sup>51</sup> Id. at 1258.

labeling the search an inventory search.<sup>52</sup>

B. Introduction At Trial Of The Illegally Obtained Bullets  
Was Not Harmless Beyond A Reasonable Doubt

The admission of evidence obtained in violation of a defendant's constitutional rights requires reversing the conviction unless introduction of the evidence was harmless beyond a reasonable doubt.<sup>53</sup>

In the present case, the state pursued a conviction under the theory that Edwards shot M.E. and M.C. then shot himself. [Tr. 258-59] The state presented expert testimony attempting to establish that Edwards's injuries were self-inflicted. [Tr. 509-10] This evidence, however, was not conclusive on the issue. [Tr. 593-94] The strongest evidence indicating that Edwards committed the homicides and then shot himself was the bullets that were found in his pocket. [Tr. 857] Without this evidence, the state had no direct physical evidence tying Edwards to the bullets used in the homicide. This evidence substantially undermined the defense theory that Edwards was shot by an intruder who had shot M.C. and M.E. [Tr. 2022] Accordingly, it can not be said that introduction of this evidence was harmless beyond a reasonable doubt.

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<sup>52</sup> C.f. State v. Gray, 799 P.2d 346, 350 (Alaska App. 1990). (holding that the routine emptying of an arrestee's pockets cannot be justified merely by labeling the procedure a "patdown").

<sup>53</sup> Ingram v. State, 703 P.2d 415, 429 (Alaska App. 1985).

CONCLUSION

For the reasons stated above, this court must reverse Edwards's conviction and grant him a new trial.

DATED at Anchorage, Alaska on June \_\_\_\_\_, 2004.

PUBLIC DEFENDER AGENCY

E/:

QUINLAN STEINER (98-11057)  
ASSISTANT PUBLIC DEFENDER

Edwards was convicted at trial and received a sentence of ninety-six years to serve. [Exc. 83-87; R. 1977-1981] This appeal follows.

## ARGUMENT

### I. THE GRAND JURY'S VERDICT RESTS ENTIRELY UPON IMPROPERLY ADMITTED HEARSAY EVIDENCE

#### A. Introduction

No person shall be held to answer for a felony offense without the support of a grand jury indictment.<sup>1</sup> "[T]o obtain an indictment, the State must prove to the grand jury 'that the evidence ... establishe[s] a probability of [the defendant's] guilt.'"<sup>2</sup> The Alaska Supreme Court has stated that this determination should be a reliable one.<sup>3</sup> Hearsay evidence that is inadmissible at trial is, therefore, only admissible before the grand jury under certain limited circumstances.<sup>4</sup>

The rationale for limiting hearsay testimony is based upon the view that a reliable determination of probable guilt is required "before the accused suffers any of the grave inconveniences which are apt to ensue upon the return of a felony indictment."<sup>5</sup> As the Alaska Supreme Court has stated, "[t]his can best be guaranteed when witnesses against the accused appear in person before the grand

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<sup>1</sup> The Constitution of the State of Alaska, Article I, section 8.

<sup>2</sup> State v. Ladd, 951 P.2d 1220, 1222-23 (Alaska App. 1998) (citations omitted).

<sup>3</sup> State v. Gieffels, 554 P.2d 460, 465 (Alaska 1976).

<sup>4</sup> Alaska Rule of Criminal Procedure 6(r)(1), (2), (3), & (6).

<sup>5</sup> Gieffels, 554 P.2d at 465.

jury so that the panel can view their demeanor and subject them to cross-examination."<sup>6</sup> The Alaska Supreme Court has warned that "hearsay evidence, if unchecked, would erode the protective value of the grand jury so as to make it nothing more than an administrative arm of the district attorney's office."<sup>7</sup>

B. The State Improperly Introduced The Firearm And Toolmark Expert's Opinion Through Detective Branchflower

To strengthen the protective value of the grand jury, Alaska Rule of Criminal Procedure 6(r)(1) states that hearsay evidence is inadmissible before the grand jury absent a "compelling justification" that is stated on the record. The time and expense of presenting an expert to the grand jury may be a sufficiently compelling justification for presenting the expert's opinion through hearsay testimony if the opinion is based on "accepted scientific procedures that yield objective results."<sup>8</sup> If an expert's opinion, however, is "subjectively based or depend[s] on procedures the reliability of which has not been established," the time and expense of presenting the expert to the grand jury will not be a sufficiently compelling justification.<sup>9</sup>

Appellate courts in Alaska have held that drug testing results are objectively based on accepted scientific procedures and that the technician who

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Ingram v. State, 703 P.2d 415, 432 (Alaska App. 1985).

<sup>9</sup> Id.

performs a drug test is not required to testify before the grand jury.<sup>10</sup> In so holding, the Alaska Supreme Court has reasoned that the competence of the technician and the reliability of the test would not likely be tested by vigorous cross-examination and that "the technician could do no more than affirm that he did perform the test reported, and that those tests did indicate the presence of a narcotic substance."<sup>11</sup>

Conversely, appellate courts in Alaska have held that the conclusions of handwriting experts and treating physicians are not excluded from the requirement that they testify.<sup>12</sup> In Metler v. State, for example, the state secured an indictment using hearsay testimony concerning the opinions of two handwriting experts. The state did not present a report from either expert or provide any information concerning their professional credibility. According to the Alaska Supreme Court, the method of proof employed by the state failed to provide a basis for showing the grand jury how the experts' reached their conclusions or for presuming that the comparisons were performed and reported accurately.<sup>13</sup> The

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<sup>10</sup> McKinnon v. State, 526 P.2d 18, 27-28 (Alaska 1974) (Holding that the laboratory analysis of cocaine was properly admitted through the hearsay testimony of a police officer.); Ingram v. State, 703 P.2d 415, 432 (Alaska App. 1985) (Holding that the chemical analysis of LSD was properly admitted through the hearsay testimony of an investigating officer.).

<sup>11</sup> McKinnon, 526 P.2d at 27-28.

<sup>12</sup> Adams v. State, 598 P.2d 503, 508 (Alaska 1979) (hearsay evidence concerning treating physician's opinion of victim's medical condition inadmissible before the grand jury without a showing of compelling justification); Metler v. State, 581 P.2d 669, 673-74 (Alaska 1978) (hearsay testimony concerning the results of handwriting analysis inadmissible before the grand jury absent a showing of credibility and reliability).

<sup>13</sup> Metler, 581 P.2d at 674.

court ultimately held that the state had failed to establish the reliability of the handwriting expert's opinion.<sup>14</sup>

Although the court's decision in Metler appears at first blush to turn on the state's failure to present a report to the grand jury, as this court's decision in Ingram v. State<sup>15</sup> indicates, such a limited reading of Metler would fail to account for the continued applicability of the "compelling justification" requirement. In Ingram, the defendant argued that the Alaska Supreme Court's earlier decision in McKinnon v. State,<sup>16</sup> which held that the state was not required to present a technician who performs a drug test to the grand jury, had been subsequently overruled by cases requiring the state to present handwriting experts and treating physicians to the grand jury. This court, however, held that McKinnon was still good law.<sup>17</sup> In so holding, this court stated that later cases simply distinguished between two classes of expert opinions: subjectively based and objectively based.<sup>18</sup> Thus, Ingram reiterates the necessity for a compelling justification when introducing an expert's subjective opinion through hearsay regardless of whether the hearsay method is in the form of a report, live testimony, or both.

In the present case, the trial court concluded that Robert Shem, the

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<sup>14</sup> Id.

<sup>15</sup> 703 P.2d 415 (Alaska App. 1985).

<sup>16</sup> Supra, n. 10.

<sup>17</sup> Ingram, 703 P.2d at 432.

<sup>18</sup> Id.

firearm and toolmark expert, issued a report that was "an expert opinion based on accepted scientific procedures that yield objective results" similar to drug testing results. [Exc. 75; R. 1666] The court reasoned that toolmark identification was based upon viewing tool marks that are objectively visible. [Exc. 75; R. 1666] The court further reasoned that because Shem's report was submitted to the grand jury, they were allowed to examine it for themselves. [Exc. 76; R. 1667] The court, therefore, concluded that Shem's testimony would not have added to the proceedings and his opinion, introduced through a written report and Branchflower's testimony, was not improperly presented to the grand jury. [Exc. 75-76; R. 1666-67]

The art of toolmark identification is, however, subjective and not objective. Toolmark identification typically involves microscopic examination of toolmarks to determine if the toolmarks have a sufficient number of microscopic features of sufficient clarity and definition for identification.<sup>19</sup> Identification is possible when unique surface contours are compared and are found to be in "sufficient agreement."<sup>20</sup> Sufficient agreement means that "the agreement is of a quantity and quality that the likelihood another tool could have made the mark is so

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<sup>19</sup> Alfred A. Blasotti & John Murdock, The Scientific Basis Of Firearms And Toolmark Identification, § 29-2.2 at 502, in Modern Scientific Evidence: The Law And Science Of Expert Testimony (David L. Faigman, David H. Kaye, Michael J. Saks, & Joseph Sanders eds., 2002).

<sup>20</sup> Id. at 504-05 (citing Theory Of Identification. Range of Striae Comparison Reports. and Modified Glossary Definition—An AFTE Criteria for Identification Committee Report, 24 Ass'n Firearm & Toolmark Examiners J. 336 (1992)).

remote as to be considered a practical impossibility."<sup>21</sup> The Association of Firearm and Toolmark Examiners recognizes that this process is "subjective in nature, founded on scientific principles and based on the examiner's training and experience."<sup>22</sup> At least one published expert has noted that "it would be the 'art' of the experienced examiners that would be the basis" for a quantifiable model, not the science, even if this process could be objectively quantified.<sup>23</sup>

In contrast to drug testing, firearm and toolmark identification does not involve a test result which once obtained could be confirmed by a technician or simply communicated by report. The analysis performed by a firearm and toolmark examiner is similar to comparing handwriting samples and involves the judgment of an expert who has sufficient training, experience, and skill. Artful decisions must be made at each step of the process, including what types of marks to look for, what marks are sufficiently definite and clear to form a basis for identification, and whether the compared surfaces are in "sufficient agreement" as to exclude other tools, rendering misidentification a practical impossibility.

Although Shem's report was presented to the grand jury, the subjective nature of firearm and toolmark identification renders this method of proof unreliable and insufficient. Shem's report consisted of a single page that merely listed the items submitted and Shem's opinion. [Exc. 88] Moreover, Shem's report is

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id. at 508 (quoting John E. Davis (author of An Introduction To Tool Marks, Firearms and the Striagraph (1958)) in a letter to John Murdock).

misleading because it reports his subjective opinion under the heading "Results." [Exc. 88] Shem's opinion is, however, not the result of a test; it is an opinion based upon his subjective judgment. Moreover, the report does not provide the grand jury with any information from which it could evaluate how Shem formed his opinion, whether he performed his analysis according to established and reliable procedures, or whether he was a qualified or credible expert.<sup>24</sup>

C. The State Improperly Relied on Detective Branchflower's Testimony Concerning The Investigation And The Scene Of The Crime.

As previously noted, Alaska Rule of Criminal Procedure 6(r)(1) states that hearsay evidence is inadmissible before the grand jury absent a "compelling justification." Rule 6(r) does permit otherwise inadmissible hearsay evidence to be presented to the grand jury if the evidence fits within an enumerated exception. One exception permits a police officer involved in an investigation to repeat the statements and observations of another officer if additional evidence is introduced to corroborate the statement.<sup>25</sup>

No reported opinions from Alaska's appellate courts have grappled with the extent to which hearsay testimony may be used under this exception or the level of corroboration required to permit its use. A legislative statement of findings and purpose for the rule provides some guidance, however. The 1994 legislature stated that the rule permitting police officer hearsay was enacted "to allow the grand jury to be fully informed about the evidence available on a criminal case through testimony

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<sup>24</sup> See Ingram, 703 P.2d at 432.

<sup>25</sup> Alaska Rule of Criminal Procedure 6(r)(3).

of lead peace officers, while allowing officers who played a minor role in the investigation not to personally appear and testify so that they can continue to perform their vital duties on the street to protect the public."<sup>26</sup>

One prior unreported opinion of this court does address of the level of corroboration required to justify the admission of police officer hearsay. In Wilson v. State,<sup>27</sup> the state established the location of a homicide victim's body through the hearsay testimony of an investigating officer. According to this court, the hearsay testimony concerning the location of the victim's body was properly admitted because photographs of the scene identified by the testifying detective corroborated his statement.<sup>28</sup>

In the present case, every material aspect of the state's case was introduced through Branchflower's hearsay testimony. Branchflower apparently did not investigate the scene of the homicide. [Tr.66] Branchflower, however, testified about both the report that lead officers to the scene and the responding officers' observations of the scene without stating the basis for her testimony. [Exc. 91-94; G.J. 11-14, 20-21, 24] Branchflower told the jury about a phone message from Edwards to M.E., but did not state who listened to the message or who wrote it down; she stated "I think they listened to the message." [Exc. 93; G.J. 20-21] The only observations of the scene that Branchflower testified to and also stated the

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<sup>26</sup> Alaska S.L.A. 1994, ch. 114, sec. 1: Findings and Purpose.

<sup>27</sup> Wilson v. State, 1998 WL 254000 (Alaska App. May 20, 1998).

<sup>28</sup> Id. at 2.

basis for were those of Lieutenant Gifford, the crime scene reconstruction and blood spatter expert. [Exc. 92-93; G.J. 14-18]

Branchflower's testimony included a hearsay account of the location of the Derringer, bullets, and expended shells found at the scene. [Exc. 92-93; G.J. 14-18] Her testimony also included a statement from an unnamed source indicating that nine bullets were found in Edwards's pocket. [Exc. 95; G.J. 26] The state introduced photographs of the scene through Branchflower without any statement indicating who took the photographs, when the photographs were taken, or whether the photographs accurately represented the scene or the evidence. [Exc. 93-94; G.J. 21-23] The only evidence provided to the grand jury that was not improperly admitted was Branchflower's testimony that she searched Edwards's residence and found an empty box of .22 caliber bullets and the sheath to a knife several, and photographs that she had taken at Edwards's residence. [Exc. 95; G.J. 27-28]

Branchflower's non-hearsay testimony, however, did not corroborate the hearsay testimony. The fact that Branchflower observed an empty box of .22 caliber ammunition does not corroborate the number of bullets found at the scene or the existence of a gun with a discharged shell. It merely shows that Edwards had an empty box of the most common type of ammunition sold in the United States in the most common quantity available. [Tr. 1862, 1878] Branchflower's observation of a knife sheath at Edward's residence, again, fails to corroborate any observation of the scene upon which the grand jury's verdict rested. The fact that a filet knife was found at the scene that could possibly fit a sheath found at Edwards's residence is not surprising and does not establish that Edwards's shot M.C. and M.E.

This court's unpublished opinion in Wilson appears to indicate that the existence of photographs would serve to corroborate Branchflower's testimony. Unlike Wilson, however, the photographs introduced through Branchflower were not properly identified and cannot reliably corroborate her testimony. Photographs are inadmissible at trial unless they are properly authenticated.<sup>29</sup> Here, the state introduced photographs through Branchflower, but there is no basis for concluding that the photographs are a faithful representation of what they purport to depict. Branchflower does not indicate who took the pictures, when the pictures were taken, or whether they are an accurate representation of the scene and evidence.

The state's presentation of the evidence to the grand jury violated the plain language of Rule 6(r)(3) and the intent of the legislature. The state presented its entire case using the uncorroborated hearsay testimony of an officer who, though involved in the investigation, played only a minor role in the investigation. This reliance on hearsay evidence has eliminated any protection provided by the grand jury process and should not be countenanced here.

**D. The Indictment Must Be Dismissed Because It Rests Entirely Upon Improperly Admitted Evidence**

"In deciding whether the presentation of improper evidence requires dismissal of the indictment, it is first necessary to decide whether there is sufficient

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<sup>29</sup> Sheakley v. State, 644 P.2d 864, 870 (Alaska App. 1982) (stating that "[t]his court has held that a photograph is admissible in evidence in the discretion of the trial judge, as an aid to the court or jury, after it has been shown to be a faithful representation of whatever it purports to depict.")

admissible evidence to support the indictment."<sup>30</sup> If there is insufficient admissible evidence remaining, the indictment must be dismissed.<sup>31</sup> If, however, there is sufficient admissible evidence then it is necessary to evaluate the challenged evidence to determine whether it "appreciably affect[ed] the outcome of the grand jury's deliberations."<sup>32</sup>

In the present case, the material facts upon which the grand jury's verdict rested were all improperly presented through hearsay testimony. Branchflower testified that when police arrived at M.E.'s residence they kicked in the door because the key provided by a friend of M.E.'s would not unlock the deadbolt. [Exc. 91; G.J. 12-13] This evidence supported the inference that whoever committed the crime was still in the house. Branchflower testified that Edwards, M.E., and M.C. appeared to have been shot with a gun that was found on the floor near where Edwards was shot. [Exc. 92-93; G.J. 14-18] Branchflower testified that one empty shell casing was found in the .22 caliber derringer, that two empty .22 caliber shell casings were found on the floor, and that nine .22 caliber rounds were found in Edward's pants pocket. [Exc. 94; G.J. 24] This evidence supported the inference that Edwards shot M.C. and M.E., then reloaded the gun and shot himself.

The opinions of the state's experts provided critical support for the link

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<sup>30</sup> Newman v. State, 655 P.2d 1302, 1306 (Alaska App. 1982)

<sup>31</sup> See Id.

<sup>32</sup> Oxereok v. State, 611 P.2d 913, 916 (Alaska 1980).

between the evidence located at the scene and the grand jury's verdict.<sup>33</sup> Branchflower testified that Gifford concluded that "the subject shot the victim while she was in bed" and then the "suspect shot himself" and laid on the floor. [Exc. 92; G.J. 16] And Shem's report indicated that the ammunition at the scene was the same type of ammunition as the ammunition box found in Edward's residence. [Exc. 95; G.J. 28] Shem's report also indicated that the three expended shell casings had been fired from the derringer found at the scene. [Exc. 94; G.J. 25] This evidence endorsed the state's conclusion that Edward's perpetrated the homicide.

Without the improperly presented hearsay evidence, the state's presentation to the grand jury is insufficient to support the indictment. Alternatively, if this court concludes that the testimony concerning observations of the scene made by other police officers was properly admitted, the improper testimony concerning the expert opinions of Gifford and Shem appreciably affected the grand jury's deliberations.

The evidence based upon Gifford's and Shem's report provided the grand jury with information that must have overwhelmed the deliberations. The state's experts concluded that the gun and bullets found near Edwards were used by Edwards to commit the homicide and then to attempt suicide. Branchflower communicated these conclusions without explanation and without an opportunity for the grand jury to inquire into the basis for these conclusions. This testimony was sufficiently powerful that the jury likely abandoned its role of fact-finder in favor of the

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<sup>33</sup> The trial court previously found that Lieutenant Gifford's report and

state's experts who had endorsed a verdict of guilty.

**II. DETECTIVE SOTO CONDUCTED AN ILLEGAL WARRANTLESS SEARCH OF A CLOSED CONTAINER WHEN HE REMOVED EVIDENCE FROM EDWARDS'S PANTS POCKET.**

**A. Soto's Warrantless Search Of Edwards's Pants Pocket Was Not Justified Under Any Exception To The Warrant Requirement**

The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated.<sup>34</sup> No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.<sup>35</sup> A warrantless search is per se unreasonable unless it falls within one of the few specifically established and well-delineated exceptions to the warrant requirement.<sup>36</sup> "These exceptions have been 'jealously and carefully drawn,' and the burden falls upon the state to prove that 'the exigencies of the situation made the course imperative.'"<sup>37</sup>

"Inventory searches are now a well-defined exception to the warrant

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opinion were improperly presented to the grand jury. [Exc. 80-81; R. 1667-68]

<sup>34</sup> Alaska Constitution Art. 1§14; United States Constitution, Fourth Amendment.

<sup>35</sup> Id.

<sup>36</sup> Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967). Schraff v. State, 544 P.2d 834, 838 (Alaska 1975).

<sup>37</sup> Schraff v. State, 544 P.2d 834, 838 (Alaska 1975) (citing Jones v. United States, 357 U.S. 493, 499 (1958); Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971)).

requirement of the Fourth Amendment."<sup>38</sup> Inventory searches may be considered reasonable and constitutional if they are conducted in accordance with the standard procedures of the agency conducting the search.<sup>39</sup> An inventory search of closed, locked or sealed luggage, containers or packages, however, is not within the scope of a reasonable warrantless inventory search.<sup>40</sup>

As constitutionally protected zones, the prohibition on closed container inventory searches extends to clothing pockets.<sup>41</sup> According to the California Court of Appeals:

Although the foregoing decisions have come to be known as "closed container" cases, it is of no help to us in our analysis to note that a vest pocket, unlike a lunch box, has no lid or, like a tote bag, cannot be locked. ... If a person were to be handed an article which he intended to keep safe from theft or secure from prying eyes, that person would almost certainly place the article in his pocket. No more reprehensible petty thief can be found than a pickpocket, not because he steals, but because he does so by intruding into an area where his victim most wishes to remain secure. We find that a vest pocket is a protected receptacle of personal effects and may not be searched

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<sup>38</sup> D'Antonio v. State, 926 P.2d 1158, 1162 (Alaska 1996)(citing Colorado v. Bertine, 479 U.S. 367, 373, 107 S.Ct. 738, 741-42, 93 L.Ed.2d 739 (1987)).

<sup>39</sup> State v. Daniel, 589 P.2d 408, 417 (Alaska 1979); Florida v. Wells, 495 U.S. 1, 3-4, 110 S.Ct. 1632, 1634-35, 109 L.Ed.2d 1 (1990).

<sup>40</sup> D'Antonio, 926 P.2d 1158, 1162 n. 5 (Alaska 1996)(citing Daniel, 589 P.2d at 417-18).

<sup>41</sup> See Gibron v. New York, 392 U.S. 40, 65, 68 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968) (holding that an officer's decision to invade a pocket was not permissible under the circumstances); State v. Gray, 798 P.2d 346, 350 (Alaska App. 1990)(holding that the emptying a suspect's pocket must be constitutionally justified).

except as permitted by the Fourth Amendment.<sup>42</sup>

The Ninth Circuit has also recognized that pockets are analagous to closed containers. In United States v. Ramos-Osequera,<sup>43</sup> the police inventoried the defendant's car after arresting the defendant. The police searched the pockets of a pair of jeans found in the vehicle and discovered heroin. Police department policy required that all visible property be booked and inventoried for safekeeping. Judge Boocheever, writing for the Ninth Circuit, noted that the applicable procedures did not specifically provide authority for looking inside containers to find valuable property.<sup>44</sup> The court accordingly held that the search violated the Fourth Amendment.<sup>45</sup>

In the present case, Officer Soto received Edward's pants from a hospital employee who indicated that the pants were provided to Soto as part of hospital procedure. [Exc. 98; Tr. 20-21, 26] Soto took possession of the pants intending to place them in "property and evidence" as a piece of evidence in the case. [Exc. 98, 105; Tr. 26, 54] Soto stated that he was required to separate multiple items, tag them, and put them in lockers. [Exc. 98; Tr. 28-29] Soto also stated that he had to do an inventory of every item and "check of all the, basically, pockets or anything that I, you know, basically, find, basically separate every item

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<sup>42</sup> People v. George, 168 Cal.Rptr. 44 (Cal.App. 1980).

<sup>43</sup> 120 F.3d 1028 (9<sup>th</sup> Cir. 1997) (overruled on other grounds).

<sup>44</sup> Id. at 1036.

<sup>45</sup> Id.

that I can find." [Exc. 98; Tr. 29] Soto further stated that this was the department policy. [Exc. 98; Tr. 29] Soto testified that he "processed the evidence as I was trained." [Exc. 99; Tr. 30] Soto found bullets and a BIC lighter. [Exc. 99; Tr. 30]

On cross-examination, Soto was asked specifically whether he was instructed on the procedure for taking the pants into evidence or whether he made the decisions on his own. [Exc. 101; Tr. 39] Soto responded:

No, sir. Well, basically, it goes — you know, we learned this on training and also, basically, the procedures I learned also in training. And it's before this day and after this day, we basically, continue — basically, continue doing the same procedure. And we had done this prior to this day as well. [Exc. 101; Tr. 39]

Then when immediately asked whether that meant that he made the decisions on his own, Soto responded: "Based on that procedure because I know it's—it's basically policy and procedures, yes, I — I do it that way." [Exc. 101; Tr. 39]

The trial court recognized that the warrantless inventory search of closed containers is unreasonable and unconstitutional. [Exc. 64; R. 1655] The court also recognized that the routine emptying of a defendant's pockets upon arrival at a pretrial detention center has been held unconstitutional. [Exc. 64; R. 1655] The court, however, stated that a search of pants pockets is less intrusive than a search of a closed container. [Exc. 65; R. 1656] The court found that Soto testified he was "required to do an inventory of the evidence, that he was required to check the pockets, and separate every item found." [Exc. 66; R. 1657] According to the court, Soto had the right to "lift and move the evidence in order to book it into the evidence room." [Exc. 66; R. 1657]

The trial court's decision, however, was error. Soto did not testify that he was required to remove the items from pockets as a matter of established procedure. A closer reading of Soto's testimony reveals that Soto did not articulate any standard procedure. Soto merely stated that he needed to separate multiple items to tag them separately into evidence and had done it that way in the past. When asked specifically whether he was told to search pockets as part of the procedure of logging items into evidence or whether he made the decision on his own Soto did not specifically answer the question. Accordingly, the evidence does not support the trial court's conclusion that Soto was following an established inventory procedure.

Even if Soto was following established procedures, opening the pocket was an unreasonable procedure for logging inventory. In Daniel v. State,<sup>46</sup> police officers who were lawfully impounding a vehicle found a briefcase in the back seat that had open latches. The officers opened the briefcase and found contraband. The Alaska Supreme Court concluded that no principled distinction between locked and unlocked containers could be drawn.<sup>47</sup> The court held that "it is sufficient, for routine inventory purposes, that the officer merely list the item as a closed or locked footlocker, briefcase, package, or container and, if deemed necessary remove the same for safekeeping."<sup>48</sup> Soto had lawful possession of the pants and could have

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<sup>46</sup> Daniel v. State, 589 P.2d 408 (Alaska 1979).

<sup>47</sup> Id. at 417.

<sup>48</sup> Id. at 418.

similarly taken them into evidence for safekeeping without violating the pockets.

Additionally, the search was impermissible because Soto was not conducting an inventory search, he was tagging evidence. In Newhall v. State,<sup>49</sup> a trooper obtained a search warrant to open a package that he suspected contained alcohol being shipped in violation of a local option law. The trooper opened the package and then opened a second package that he found inside the suspect package. The trooper, however, knew that the second package did not contain alcohol. This court held that the trooper was not permitted to search the second package without a warrant, even if he had abundant probable cause.<sup>50</sup> The court further held that with probable cause the police are permitted only to seize a closed container while they apply for a search warrant.<sup>51</sup>

Here, Soto had possession of pants and could have simply applied for a warrant if he wanted to inspect the interior of the pockets. Although Soto claimed that he had no reason to believe that there was evidence in the pockets, his stated purpose for inspecting the pocket was to take the pants into custody as evidence of a crime and separate items so that they would become "separate property evidence item[s]" [Exc. 98, 105; Tr. 28, 54] Soto's search can not be rendered permissible simply because he stated that he did not have an investigative purpose or by

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<sup>49</sup> Newhall v. State, 843 P.2d 1254 (Alaska App. 1992).

<sup>50</sup> Id. at 1257.

<sup>51</sup> Id. at 1258.

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B. Introduction At Trial Of The Illegally Obtained Bullets  
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The admission of evidence obtained in violation of a defendant's constitutional rights requires reversing the conviction unless introduction of the evidence was harmless beyond a reasonable doubt.<sup>53</sup>

In the present case, the state pursued a conviction under the theory that Edwards shot M.E. and M.C. then shot himself. [Tr. 258-59] The state presented expert testimony attempting to establish that Edwards's injuries were self-inflicted. [Tr. 509-10] This evidence, however, was not conclusive on the issue. [Tr. 593-94] The strongest evidence indicating that Edwards committed the homicides and then shot himself was the bullets that were found in his pocket. [Tr. 857] Without this evidence, the state had no direct physical evidence tying Edwards to the bullets used in the homicide. This evidence substantially undermined the defense theory that Edwards was shot by an intruder who had shot M.C. and M.E. [Tr. 2022] Accordingly, it can not be said that introduction of this evidence was harmless beyond a reasonable doubt.

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<sup>52</sup> C.f. State v. Gray, 798 P.2d 346, 350 (Alaska App. 1990). (holding that the routine emptying of an arrestee's pockets cannot be justified merely by labeling the procedure a "patdown").

<sup>53</sup> Ingram v. State, 703 P.2d 415, 429 (Alaska App. 1985).

CONCLUSION

For the reasons stated above, this court must reverse Edwards's conviction and grant him a new trial.

DATED at Anchorage, Alaska on June \_\_\_\_\_, 2004.

PUBLIC DEFENDER AGENCY

By:

\_\_\_\_\_  
QUINLAN STEINER (98-11057)  
ASSISTANT PUBLIC DEFENDER

**CONFIRM.  
STATE  
COMMISSION  
FOR HUMAN  
RIGHTS,  
2005**



Official Business

# Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216  
Juneau, AK 99801-1182  
Phone: (907) 465-3725  
Fax: (907) 465-5334

## MEMORANDUM

Date: April 4, 2005

To: Representative Seaton, Chair  
State Affairs Committee

From: Suzi Lowell *SL*  
Chief Clerk

Subject: Governor's Appointments

Speaker Harris referred the following Governor's appointments to the State Affairs Committee:

### State Commission for Human Rights

Mr. Randy H. Eledge - Anchorage  
Appointed: 3/18/2005 Term Expires: 3/1/2006

Ms. M. Chris Hayes - Fairbanks  
Appointed: 3/18/2005 Term Expires: 3/1/2010

Mr. Lester C. Luncelord - Whittier  
Appointed: 2/19/2003 Reappointed: 3/18/2005  
Term Expires: 3/1/2010

Ms. Barbara J. (Tamic) Miller - Wasilla  
Appointed: 3/18/2005 Term Expires: 3/1/2009

The resumes and committee reports are attached for your use.

Attachments as noted

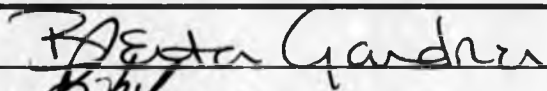
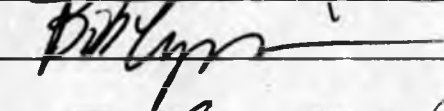
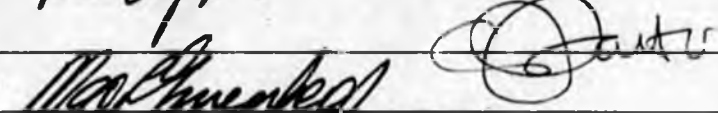
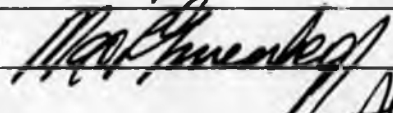
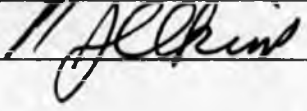
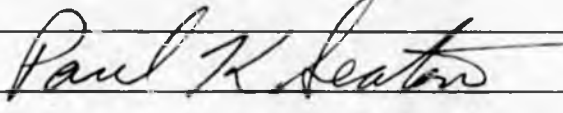
## CONFIRMATION COMMITTEE REPORT

Action date: \_\_\_\_\_

The State Affairs Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**State Commission for Human Rights**  
 Mr. Lester C. Lunceford - Whittier  
 Appointed: 2/19/2003 Reappointed: 3/18/2005  
 Term Expires: 3/1/2010

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	Gardner
	LYNN
	GATT
	Gruberberg
	ELKINS
Chair: 	SEATON
Chair:	

Please return to the Chief Clerk's office.

# CONFIRMATION COMMITTEE REPORT

Action date: 4/12/05

The State Affairs Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**State Commission for Human Rights**  
Ms. M. Chris Hayes - Fairbanks  
Appointed: 3/18/2005      Term Expires: 3/1/2010

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
<i>Bryan Gardner</i>	GARDNER
<i>Bob Lynn</i>	LYNN
<i>Gatto</i>	Gatto
<i>Elkins</i>	ELKINS
Chair: <i>Paul K. Seaton</i>	SEATON
Chair:	

Please return to the Chief Clerk's office.

## CONFIRMATION COMMITTEE REPORT

Action date: 4/12/05

The State Affairs Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**State Commission for Human Rights**  
 Mr. Randy H. Eledge - Anchorage  
 Appointed: 3/18/2005      Term Expires: 3/1/2006

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
<i>Berta Gardner</i>	Gardner
<del><i>Bob Lynn</i></del>	<del>LYNN</del>
<del><i>[Signature]</i></del>	<del>Gatto</del>
<del><i>Mr. [Signature]</i></del>	<del>Greenberg</del>
<del><i>[Signature]</i></del>	<del>ELKINS</del>
Chair: <i>Paul H. Keaton</i>	
Chair:	

Please return to the Chief Clerk's office.

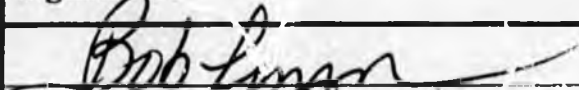

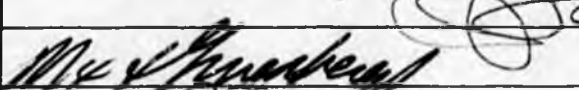
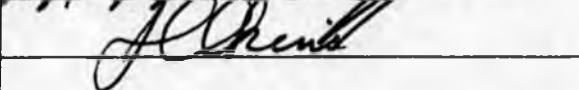
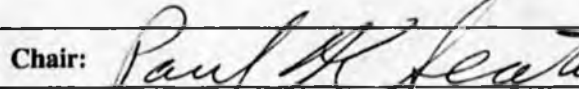

## CONFIRMATION COMMITTEE REPORT

Action date: 4/12/05

The State Affairs Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**State Commission for Human Rights**  
 Ms. Barbara J. (Tamie) Miller - Wasilla  
 Appointed: 3/18/2005      Term Expires: 3/1/2009

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	LYNN
	GARDNER
	GATTO
	ELIKINS
Chair: 	
Chair: 	

Please return to the Chief Clerk's office.

7854 Highlander Dr.  
Anchorage, AK 99518

Phone 907-529-0112  
E-mail rheledge@gci.net

# Randall H. Eledge

BOARDS & COMMISSIONS  
FEB 02 2005

## EDUCATION

1972-1975                      Angelo State University      San Angelo, TX  
**BBA-MGMT**                      **Dean's List, IFC, PIKAPPA ALPHA**

1971-2004                      **Professional trainings and Continuing**  
(See p.2 for detailed list)

## PROFESSIONAL EXPERIENCE

1999-Present                      **MRO SALES INC**                      Anchorage, AK  
*Product Manager*

Manufacturer Representative for value enhanced products for Alaskan Industry. Responsible for purchasing and personnel management. Oversee product management.

1990-1999                      **MRO SALES INC**                      Anchorage, AK  
*President/Owner*

Manufacturer Representative for valued enhanced products to service the oil industry in Alaska. Supervised all aspects of business including AR, AP Personnel, Safety, Sales, Inventory Control and Service.

1982-1990                      **NATIONAL SUPPLY CO/**      Anchorage, AK  
**NATIONAL OILWELL**

*Alaskan Operations Manager*

Directed company's efforts in Alaska, including sales/service/repair of own make products, customer sales and personnel development.

1975-1982                      **NATIONAL SUPPLY COMPANY**

Worked in three states for National Supply Co. Began as a floor clerk trainee in San Angelo and Big Springs TX. Promoted to field salesman in 1977 and transferred to Woodward OK. In 1978 was promoted to store manager and transferred to Kansas. In 1980 was promoted again and transferred to Denver CO as city sales representative. Duties included shipping, receiving, repairing various pumps, solicitation of businesses on location and field offices to management of store. Also included sales of OCTG, pumping units, multiples pumps, drilling components and commodity items.

1970-1972                      **US ARMY**                      Viet Nam  
*Sgt. E-5*

Non-Commissioned Officer Candidate School-Honor Graduate. Viet Nam-Squad Leader & Platoon Sgt/Infantry.

**COMMUNITY  
SERVICE**

2000-Present	<b>BETTER BUSINESS BUREAU BOARD OF DIRECTORS</b>	Anchorage AK
1984-Present	<b>IADC ANCHORAGE/AK CH.</b>	Anchorage AK
1987-1995	<b>SUSTINA GIRL SCOUT BOARD OF DIRECTORS</b>	Anchorage AK

• **PROFESSIONAL TRAINING AND CONTINUING EDUCATION**

Rolls Royce Power and Pump Training-Mt. Vernon, OH  
BP Contractor Toolbox EMS-Anchorage, AK  
Russian Language Course-Anchorage, AK  
Lotus 1-2-3-Anchorage, AK  
Gulf Coast Filter Seminar-Gulf Port, MS  
Atlas Bradford Service Training-Houston, TX  
OCTG Seminar USS-Fairfield, AL  
Interpersonal Skills Workshop-Houston, TX  
Time Management-Denver, CO  
Alaskan Task Force-Denver, CO  
Used Equipment Seminar-Great Bend, KS  
Market Share Task Force-Houston, TX  
Union Wire Rope Seminar-Kansas City, MO  
Amico Seamless Tubular Seminar-Canadian, TX

(More detailed information and references on request.)

**Resumé**  
**M. Chris Hayes**  
**313 Droz Drive, Fairbanks, Alaska 99701**  
**(907) 456-7698**



**Educational History**

Jones International University – Completed Graduate Courses toward MBA in Communications

LaSalle University – Bachelor of Science in Business Management

University of Alaska – Fairbanks

TVC – Small Business Management & Grant Writing

Healing in Racism

Understanding the Doctrine of the COGIC; Theological Study – Licensed Evangelist

Alaska Airlines – Transportation Industry Certification

Atlantic Airline – Transportation Industry Certification

Austin E. Lathrop High School – Diploma General Studies

**Professional Organizations/Community Organizations History**

Current U. S. Committee Member *U.S. Commission on Civil Rights – Western Region/Alaska*

Current Board Member *Boys and Girls Club, Fairbanks*

Current Women's Department Director/Church Mother – *Lily of the Valley Church of God in Christ*

Current District Missionary – *District COGIC, Northern District*

Current Executive Director – *LOVE Social Services Center, Inc.*

Founder/Board Member *AAAMECC Alaskan African-American Museum, Education & Cultural Center*

Former Board Member *Salvation Army*

Former Board Member *Head Start/ALPA Adult Learning Programs of Alaska*

Former Board Member *Private Industry Council (PIC) Workforce Investment Committee*

Former Board Member *WTCCA – Women in Crisis Counseling & Assistance*

Former Board Member *Fairbanks Arts Association*

Former Board Member *Fairbanks Historical Museum*

Former Board Member and Officer *NAACP Present Lifetime Member*

Former Member, *State of Alaska Department of Education Qualifying Exit Examination Committee*

## **Skills**

- ❖ Proven knowledge base in administration, human resources skills, interviewing and hiring practices.
- ❖ Proven clerical, computer and technical skills
- ❖ Accustomed to performing efficiently under deadlines, stress and handling multiple tasks assignments.
- ❖ Competent in filling out neatly and accurately office related paperwork.
- ❖ Good knowledge background in professional development, counseling and discipline.
- ❖ Experience in administering and monitoring budgets.
- ❖ Competent in negotiations and resolving disputes between parties.
- ❖ Experienced aptitude level in understanding financial documents.
- ❖ Proven communications ability, communicate effectively, both orally and in writing
- ❖ Experienced in researching and preparing summary documents and briefings.
- ❖ Experienced in purchasing procedures.
- ❖ Proven public relations experience and ability. Experienced in public speaking, and group presentations, excellent written and verbal skills.
- ❖ Proven customer service experience and skills
- ❖ Proven ability to work independently and make decisions.
- ❖ Proven ability to interpret and apply policy, procedures, and company regulations.

## **Professional References:**

- ❖ Charles Smelcer, PO Box 210705, Auke Bay, Alaska 99821 (907) 790-2648
- ❖ Don Thomas, Board President, LOVE Social Services Center, 2316 South Barnette Street. Fairbanks, Alaska 99701 (907) 458-8400
- ❖ Gladys Jenkins, Oklahoma City, Oklahoma (405) 844-8882

*Other References available upon request.*

## **Chronological Employment History**

### **January 1, 2000 – Present – Executive Director**

LOVE Social Services Center Inc. – Fairbanks – A Non Profit organization dedicated to the assistance of disadvantaged youth and adult education. Responsibilities include the management of the facility, which includes scheduling workshops, lectures, youth and adult educational events. Responsible for recruitment of staff personnel and volunteer helpers, along with providing Board of Directors with completed federal and state reports. Works with the program directors to ensure the operation of programs meet with the overall mission of LOVE Social Services Center, Inc. goals and objectives.

### **August 9, 1999 -- April 19, 2002 - Human Resources Associate**

ACS/PTI – Fairbanks - Provides paraprofessional assistance in and support of Human Resources. Recruiter. Processes and maintain records and data regarding employee recruitment. Maintain data required for compliance with federal and state statute and regulations: CDL; OSHA; Department of Labor; FMLA; ADA. Assisted company employees with compliance of federal and state family leave and workers' compensation. Planned, organized workload and coordinates work in accord with complex written guidelines with limited supervision. Maintain confidentiality of information, including labor relations strategy. Job transferred to Anchorage.

### **August 23, 1992-August 1, 1999 - High School Registrar**

FNSBSD - Fairbanks – Registrar with the Alternative learning System. Worked with students to develop their potential as skilled workers in the labor force. Individual follow-up with family and students regarding academic grades, course completion etc. Familiarization of students with the AKCIS (Alaska Career Information System) Provided Career information and job placement opportunities; Coordinated tutoring programs, coordinated registration sequences and assisted counselors with scheduling. Planned and developed students four-year educational plan. Organized test sites and materials; coordinated and compiled layout/printing of ALS newsletter. Verified student academic credit accumulation, updated student portfolios. Informed and notified students of available scholarship opportunities and helped them in applying for scholarships and financial aid. After three and one-half years as Executive Secretary to the Superintendent I had a personal desired to work directly with the students of the ALS program. When an opening became available, I transferred to ALS for the remaining two and one-half years that I worked with the district.

### **March 1996 - Present – Women's Department Director (Local and District)**

COGIC- Fairbanks – Coordinates with various agencies for jobs, housing, financial and emotional needs. Work with church members to provide authoritative leadership and guidance. Responsible for the research and development of new and revised program guidelines and strategies for achieving overall objectives in securing healthy relationships and securing personal needs of individuals. Provide advice to pastor and his staff in most aspects of the departments and related activities. Provide assistance in completing paperwork associated with governmental agencies. Work with Northern District Superintendent and auxiliary presidents, providing assistance to coordinate district conference for annual meeting. Administer one local church and five district churches.

**August 1981-November 1992 – Administrative Assistant**

City of Fairbanks/FMUS Assisted Controller in department procedures. Responsible for providing advanced secretarial assistance. Relieved administrator technical administrative tasks related to planning authorization and execution of department programs. Responsible for drafting correspondence, scheduling department meetings, special projects and proofreading forms for thoroughness. Responded to private and governmental institutions with requests and inquiries reverece statistical reports pertaining to the Utility. Processed Indemnity Bonds, Thrift Plan documents, Governmental Bonds and coupons.

**1976-1981 – Owner Operator – Retail Store**

*Christique's* Fairbanks – Proprietor of retail store. Responsibilities included tracking inventory, inventory purchases, budgeting, and capital expenses. Buyer, attended market shows, developed marketing strategies, determined mark-up value formula for merchandise. Produced advertising layouts, developed copy for newspaper, radio and television advertisements. Calculated cash flow forecast, cost projections, payroll and tax submissions. Responsible for all personnel related matters, screening, hiring and terminations.

**1974-1981 – Ticket/Reservation Agent**

*Alaska Airlines* Fairbanks – Responsible for passenger reservations, ticketing and determining transportation tariff routing. Later promoted to CSR (Coordinator Service Representative) taking care of passengers, operations agents, weight and balance of aircraft. During the last two years was voted as Shop Steward under the Internaticnal Brotherhood of Machinist Union.

**1972-1974 – Clerk/Receptionist**

FNSBSD Fairbanks – Clerk/Receptionist for the school district. Filed student records, typing of correspondence, operated printing press, steno machine and answered telephones.

**1969-1972 – Telephone Operator**

ACS/RCA/Alascom Fairbanks – Long distance telephone operator. Connected long distance telephone calls on Operator Board. Put through emergency phone calls. Gave time and charges

# Lester Charles Lunceford

Post Office Box 795  
Whittier, Alaska 99693-0795

Telephone: (907) 472-2570  
[llunceford@wukontel.com](mailto:llunceford@wukontel.com)

## HIGHLIGHTS OF QUALIFICATIONS

- Twenty nine years law enforcement and investigative experience
- Eight years experience as a homicide or felony assault investigator
- Five years experience as a crimes against property investigator
- Five years experience in police/safety administration
- Experienced in all areas of computing, trouble-shooting and repair
- Experienced in Microsoft Office and other Windows software applications
- Goal oriented, highly motivated and committed to top quality service
- Accustomed to working in high risk, fast pace environments
- Skillfully organized, able to work independently, meet or beat deadlines
- Owned and operate a small private security and investigation business
- Experience in Federal and State grant acquisitions
- Specialized in government contracts
- Knowledgeable in industrial safety and security issues
- Experienced in hazardous materials (Haz-Mat) operations

## PROFESSIONAL EXPERIENCE AND SKILLS

### LAW ENFORCEMENT, PRIVATE SECURITY / INVESTIGATIONS AND COMPUTER SKILLS

#### LAW ENFORCEMENT

- Law enforcement management and supervision, recruitment and hiring of police personnel, staff training, developed a standard operating procedural manual for various police departments, prepared revisions to city codes and restored public confidence in communities with little or no respect for law enforcement.
- Extensive experience in criminal investigation, interviewing witnesses, interrogating suspects, collection and preservation of evidence, writing detailed police reports, provided sworn depositions for attorneys, testified in court, and worked closely with other Federal, State and local law enforcement agencies.
- Served as field training officer for newly hired recruits. Conducted both classroom instruction and field training to over 50 new police officers.
- Obtained numerous Federal and State grants for law enforcement personnel, equipment and training.

#### PRIVATE SECURITY / INVESTIGATIONS

- Eight years experience owning and operating a small successful private security and investigation agency specializing in government contracts and security consulting.
- Experienced with industrial safety and security on the North Slope (Alaska) oil fields.
- Conducted numerous private investigations for attorneys in matters of personal injuries, wrongful deaths, marital and property disputes and criminal defense cases.
- Specialized in obtaining government contracts, providing law enforcement services and consulting to various communities in Alaska.

PROFESSIONAL EXPERIENCE AND SKILLS CONTINUED

**COMPUTER SKILLS**

- Experienced in Microsoft Windows, Office, Word, Outlook and Publisher. Also knowledgeable with many other productive type software applications.
- Experienced in Web Page designing.
- Knowledgeable in areas of computer trouble-shooting and repair, installation of various systems hardware, experienced in recovering lost data in hard drive crashes and restoring system after hard drive failures.

**PUBLIC RELATIONS**

- Trained in areas of public relations, problem-solving policing, community oriented policing and media relations. Conducted many interviews with news media regarding homicide investigations and other law enforcement issues.
- Served as police department spokesperson.
- Wrote press releases for news media regarding major incident cases.

EMPLOYMENT HISTORY

May 1998 to Present	<b>City of Whittier, Department of Public Safety</b> Director of Public Safety (Police, Fire, and EMS)
April 1991 to May 1998	<b>L. Charles Lunceford Security and Investigations</b> Private Security, Consulting and Investigations (Contractual Positions)
July 1987 to April 1991	<b>Bristol Bay Borough Police Department (Alaska)</b> Acting Chief of Police, Investigator and Field Training Officer
August 1984 to June 1987	<b>North Slope Borough Department of Public Safety (Alaska)</b> Police Officer, Investigator and special assistant to Mayor
April 1981 to July 1984	<b>Pasco County Sheriff's Office (Dade City, Florida)</b> Deputy Sheriff and Field Training Officer

EDUCATION

<b>University of Louisville, Kentucky</b>	<b>Graduate of the Southern Police Institute</b> (Police Administration and Management)(Certificate Program)
<b>University of Alaska, Fairbanks</b>	<b>Bachelor of Criminal Justice</b> (Anticipating completion in fall 2002)

TRAINING

<b>U. S. Drug Enforcement Administration</b>	<b>Drug Investigation School</b>
<b>Anchorage Police Department</b>	<b>Homicide Investigation School</b>
<b>State of Florida</b>	<b>Police Management and Supervisor School</b>
<b>Kenai Peninsula Emergency Services</b>	<b>Hazardous Materials Operations (Haz-Whooper)</b>

APP/Human/048



# THE CITY OF WHITTIER

Gateway to the Western Prince William Sound

P.O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

November 28, 2002

Mr. James Clark  
Murkowski Administration Transition Team  
Boards and Commissions  
Governor's Mailroom  
P.O. Box 110001  
Juneau, AK 99811-0001

BOARDS & COMMISSIONS  
DEC 20 2002

RE: Human Rights Commission Board Position

Dear Mr. Clark,

Please find the attached application and resume' for consideration of my request to set on the board of commissions for the State of Alaska's Human Rights Commission.

With almost 30 years of law enforcement and police administration experience, nearly twenty years in rural Alaska and after graduating among top in my class from the University of Louisville, Kentucky's, Southern Police Institute, it is clear that I have devoted my life to fighting for the constitutional rights of the public. Now, as the Mayor for the City of Whittier I have the training, education and experience in resolving conflicts of discrimination as well as other areas of conflict resolution as described in the State of Alaska's Human Rights Commission.

Please consider me for this board position, as I strongly believe in Governor Murkowski's commitment of the rights of all Alaskans.

Sincerely,

Lester C. Luncford  
Mayor

# **Lester Charles Luncelord**

Post Office Box 795  
Whittier, Alaska 99693-0795

Telephone: (907) 472-2570  
[llunceford@vukontel.com](mailto:llunceford@vukontel.com)

## **HIGHLIGHTS OF QUALIFICATIONS**

- **Twenty nine years law enforcement and investigative experience**
- **Eight years experience as a homicide or felony assault investigator**
- **Five years experience as a crimes against property investigator**
- **Five years experience in police/safety administration**
- **Experienced in all areas of computing, trouble-shooting and repair**
- **Experienced in Microsoft Office and other Windows software applications**
- **Goal oriented, highly motivated and committed to top quality service**
- **Accustomed to working in high risk, fast pace environments**
- **Skillfully organized, able to work independently, meet or beat deadlines**
- **Owned and operate a small private security and investigation business**
- **Experience in Federal and State grant acquisitions**
- **Specialized in government contracts**
- **Knowledgeable in industrial safety and security issues**
- **Experienced in hazardous materials (Haz-Mat) operations**

## **PROFESSIONAL EXPERIENCE AND SKILLS**

### **LAW ENFORCEMENT, PRIVATE SECURITY / INVESTIGATIONS AND COMPUTER SKILLS**

#### **LAW ENFORCEMENT**

- Law enforcement management and supervision, recruitment and hiring of police personnel, staff training, developed a standard operating procedural manual for various police departments, prepared revisions to city codes and restored public confidence in communities with little or no respect for law enforcement.
- Extensive experience in criminal investigation, interviewing witnesses, interrogating suspects, collection and preservation of evidence, writing detailed police reports, provided sworn depositions for attorneys, testified in court, and worked closely with other Federal, State and local law enforcement agencies.
- Served as field training officer for newly hired recruits. Conducted both classroom instruction and field training to over 50 new police officers.
- Obtained numerous Federal and State grants for law enforcement personnel, equipment and training.

#### **PRIVATE SECURITY / INVESTIGATIONS**

- Eight years experience owning and operating a small successful private security and investigation agency specializing in government contracts and security consulting.
- Experienced with industrial safety and security on the North Slope (Alaska) oil fields.
- Conducted numerous private investigations for attorneys in matters of personal injuries, wrongful deaths, marital and property disputes and criminal defense cases.
- Specialized in obtaining government contracts, providing law enforcement services and consulting to various communities in Alaska.

## PROFESSIONAL EXPERIENCE AND SKILLS CONTINUED

### COMPUTER SKILLS

- Experienced in Microsoft Windows, Office, Word, Outlook and Publisher. Also knowledgeable with many other productive type software applications.
- Experienced in Web Page designing.
- Knowledgeable in areas of computer trouble-shooting and repair, installation of various systems hardware, experienced in recovering lost data in hard drive crashes and restoring system after hard drive failures.

### PUBLIC RELATIONS

- Trained in areas of public relations, problem-solving policing, community oriented policing and media relations. Conducted many interviews with news media regarding homicide investigations and other law enforcement issues.
- Served as police department spokesperson.
- Wrote press releases for news media regarding major incident cases.

### EMPLOYMENT HISTORY

May 1998 to Present	<b>City of Whittier, Department of Public Safety</b> Director of Public Safety (Police, Fire, and EMS)
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### EDUCATION

University of Louisville, Kentucky	<b>Graduate of the Southern Police Institute</b> (Police Administration and Management)(Certificate Program)
University of Alaska, Fairbanks	<b>Bachelor of Criminal Justice</b> (Anticipating completion in fall 2002)

### TRAINING

U. S. Drug Enforcement Administration	<b>Drug Investigation School</b>
Anchorage Police Department	<b>Homicide Investigation School</b>
State of Florida	<b>Police Management and Supervisor School</b>
Kenai Peninsula Emergency Services	<b>Hazardous Materials Operations (Haz-Whooper)</b>

## **Lester Charles Lunceford**

---

Post Office Box 795  
Whittier, Alaska 99693-0795

Telephone: (907) 472-2570  
[llunceford@vukontel.com](mailto:llunceford@vukontel.com)

### **Personal/Professional References**

**Gordon S. Burton**

Facility Manager, Anton Anderson Memorial Tunnel  
Alaska Department of Transportation and Public Facilities  
5620 East Tudor Road  
Anchorage, Alaska 99507  
Telephone: (907) 472-2584  
Cell: (907) 441-6268

**Steven J. Priddle**

Attorney  
310 K. Street, Suite 200  
Anchorage, Alaska 99501  
Telephone: (907) 264-6668

**Nicole McCullough**

Senior Planner  
Arctic Slope Regional Corporation  
301 Arctic Slope Ave, Suite 100  
Anchorage, Alaska 99518-3035  
Telephone: (907) 267-6237

**Cheryl A. Dalena**

Whittier Community School  
Post Office Box 638  
Whittier, Alaska 99693  
(907) 472-2575



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
P.O. Box 110001  
Juneau, AK 99811-0001

## BOARDS AND COMMISSIONS APPLICATION/RESUME FORM

### INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission for which I am applying: Alaska Human Rights Commission ID #048

Please list any other State Boards or Commissions on which you currently or previously have served:

N/A

Name: Lester C. LUNCEFORD

Mailing Address: Post Office Box 795

Residence Address: 100 Kenai Street, #1406

City, State and Zip Code: Whittier, AK 99693

Home Telephone: (907) 472-2570

Business or Message Telephone: (907) 632-4951

Fax Number:

Cell Phone: (907) 632-4951

Email address : llunceford@yukontel.com

AS 39.05.100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter? YES X NO

Voter Registration Number (Optional):

Social Security Number (Optional): 265-08-5317

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO X If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?

YES X NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES NO X

If "YES", explain:

**TRAINING AND EXPERIENCE: ... resumé attached, it is not necessary to complete items A-D)**

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:  
Please see attached Resume'

B. List both formal and informal education and training experiences: (Use additional paper if necessary)  
Graduate of the University of Louisville, Kentucky's Southern Police Institute (Police Administration School)

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time served.

Currently serving as Mayor of the City of Whittier. Elected to office October 2002. Prior to political office, served as director of public safety for the City of Whittier with nearly 30 years of law enforcement experience.

D. Employment work history - paid, unpaid or voluntary: (Use additional paper if necessary)  
Please see attached resume'

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH: 04/20/1952

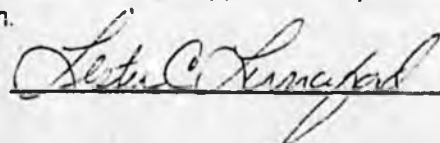
SEX: Male X Female

ETHNICITY: Alaska Native      American Indian      Asian or Pacific Islander      Black      Hispanic  
White X

MILITARY SERVICE (if applicable, give dates): N/A

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employees or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature: \_\_\_\_\_



Date: 11/28/02

6-10-1998 2:14PM

FROM

US 10-05 08-45 OFFICE of the Governor Boards

ID-9874658110

App/048  
ed  
3/18/05

P. 1

F01



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
P.O. Box 110001, Juneau, AK 99811-0001  
Phone: (907) 465-3500 Fax: (907) 465-3532

**BOARDS AND COMMISSIONS APPLICATION FORM**

**INSTRUCTIONS**

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resume. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Human Rights  
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served:

Name: Barbara J. Miller (TAMIS)  
Mailing Address: P.O. Box 870151  
Residence Address: 1450 Edlund Road  
City, State and Zip Code: Wasilla Ak. 99687-0151  
Home or Message Telephone: 907-376-5636 Business Telephone: 907-376-5636  
Fax Number: 907-376-5609 Cell Phone: 907-232-4488  
Email address: Tamulonis@gei.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES  NO  Voter Registration Number (Optional): 00188651

Social Security Number (Optional, required if appointed for travel reimbursement etc.): 548-48-8609

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES  NO  If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recency, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you will to do so?

YES  NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES  NO

If "YES", explain:

TRAINING AND EXPERIENCE (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria.

Teacher - 1961 - 1985  
NRECA Certification - 15 years - 1985 - 2000

B. List both formal and informal education and training experiences. (Use additional paper if necessary).

University of San Diego - College for Women - B.A. Economics & Elementary Ed.  
University of Alaska - Anchorage - MA in Education  
NRECA - Director & Certified Director

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time serviced.

MAS-SU Republican Women's Club - V.P. - 1 year;  
President MEA Board of Directors - 6 yrs; Mat-Su Homemakers - Pr. - 3 yrs.  
Vice-President - MEA Board of Directors - 6 yrs;  
Secretary/Treasurer - MEA Board of Directors - 6 yrs;  
Board of Directors - Mat-Su Property Owners - 1 yr;

D. Employment work history - paid, unpaid or voluntary. (Use additional paper if necessary).

Anchorage School District - Teacher & Reading Specialist  
Antique & Collectible Dealer - self employed  
Miller Investments - self employed

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH: 9/24/38      SEX: FEMALE  MALE

ETHNICITY:  
Alaska Native  American Indian  Asian or Pacific Islander  Black  Hispanic  White

MILITARY SERVICE (if applicable, give dates): NA

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employees or other persons who know me to obtain an additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information. Except for Social Security Number

Signature (in ink): Barbara J. Miller      Date: 3-18-05

Please attach a current resume with your application.

**CONFIRM.  
STATE  
COMMISSION  
FOR HUMAN  
RIGHTS,  
R. ELGEE,  
2006**


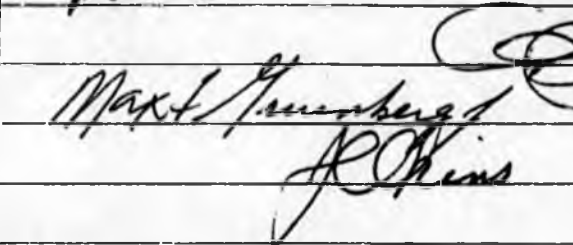
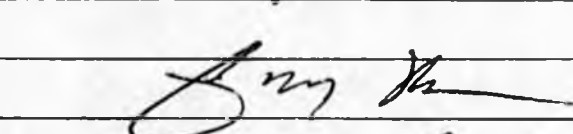
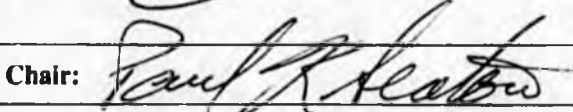
## CONFIRMATION COMMITTEE REPORT

Action date: 3/21/08

The State Affairs Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

**State Commission for Human Rights**  
 Mr. Randy H. Eledge - Anchorage  
 Reappointed: 2/20/2006 Term Expires: 3/1/2011

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	Gardner LYNN
	Elkins ELKINS
	RAMIERS
Chair: 	SEATON
Chair:	

Please return to the Chief Clerk's office.

279-5710

Human Rights  
Eledge  
eld  
3/18/05

Anchorage, AK 99518

E-

# Randall H. Eledge

BOARDS & COMMISSIONS

FEB 02 2005

*1 yr. on Human Rights Commission*

## EDUCATION

1972-1975 Angelo State University San Angelo, TX  
**BBA-MGMT** Dean's List, IFC, PIKAPPA ALPHA

1971-2004 **Professional trainings and Continuing**  
(See p.2 for detailed list)

## PROFESSIONAL EXPERIENCE

1999-Present **MRO SALES INC** Anchorage, AK  
*Product Manager*

Manufacturer Representative for value enhanced products for Alaskan Industry. Responsible for purchasing and personnel management. Oversee product management.

1990-1999 **MRO SALES INC** Anchorage, AK  
*President/Owner*

Manufacturer Representative for valued enhanced products to service the oil industry in Alaska. Supervised all aspects of business including AR, AP Personnel, Safety, Sales, Inventory Control and Service.

1982-1990 **NATIONAL SUPPLY CO/** Anchorage, AK  
**NATIONAL OILWELL**

*Alaskan Operations Manager*

Directed company's efforts in Alaska, including sales/service/repair of own make products, customer sales and personnel development.

1975-1982 **NATIONAL SUPPLY COMPANY**

Worked in three states for National Supply Co. Began as a floor clerk trainee in San Angelo and Big Springs TX. Promoted to field salesman in 1977 and transferred to Woodward OK. In 1978 was promoted to store manager and transferred to Kansas. In 1980 was promoted again and transferred to Denver CO as city sales representative. Duties included shipping, receiving, repairing various pumps, solicitation of businesses on location and field offices to management of store. Also included sales of OCTG, pumping units, multiples pumps, drilling components and commodity items.

1970-1972 **US ARMY** Viet Nam  
*Sgt E-5*

Non-Commissioned Officer Candidate School-Honor Graduate. Viet Nam-Squad Leader & Platoon Sgt/Infantry.

**COMMUNITY  
SERVICE**

2000-Present	<b>BETTER BUSINESS BUREAU BOARD OF DIRECTORS</b>	Anchorage AK
1984-Present	<b>IADC ANCHORAGE/AK CH.</b>	Anchorage AK
1987-1995	<b>SUSTINA GIRL SCOUT BOARD OF DIRECTORS</b>	Anchorage AK

**PROFESSIONAL TRAINING AND CONTINUING EDUCATION**

Rolls Royce Power and Pump Training-Mt. Vernon, OH  
BP Contractor Toolbox EMS-Anchorage, AK  
Russian Language Course-Anchorage, AK  
Lotus 1-2-3-Anchorage, AK  
Gulf Coast Filter Seminar-Gulf Port, MS  
Atlas Bradford Service Training-Houston, TX  
OCTG Seminar USS-Fairfield, AL  
Interpersonal Skills Workshop-Houston, TX  
Time Management-Denver, CO  
Alaskan Task Force-Denver, CO  
Used Equipment Seminar-Great Bend, KS  
Market Share Task Force-Houston, TX  
Union Wire Rope Seminar-Kansas City, MO  
Armco Seamless Tubular Seminar-Canadian, TX

(More detailed information and references on request.)

279-5710  
907-2584

6 AAC 30.410 is amended to read:

**6 AAC 30.410. COMMENCEMENT OF HEARING PROCESS.** (a) If the executive director certifies to the commission's chairperson that conciliation efforts are unsuccessful, the chairperson shall appoint at least three commissioners and one alternate to hear and decide the case. The chairperson may replace a hearing commissioner at any time before issuance of a final order.

(b) The commission shall request that the chief administrative law judge appoint an administrative law judge to preside as the hearing examiner at the hearing. [IF THE HEARING COMMISSIONERS DETERMINE THAT DELAY MAY BE AVOIDED OR SPECIAL EXPERTISE IN THE SUBJECT MATTER IS REQUIRED, THEY MAY APPOINT A QUALIFIED, IMPARTIAL HEARING EXAMINER WITH EXPERIENCE IN THE GENERAL PRACTICE OF LAW TO TAKE EVIDENCE AND RULE ON ITS ADMISSIBILITY AT A HEARING.]

*what does  
this mean?  
or bad? good?*

[(1) NOTHING IN THIS SECTION PRECLUDES THE HEARING COMMISSIONERS FROM CONDUCTING A HEARING JOINTLY WITH THE EXAMINER, OR FROM EXERCISING THE POWERS DELEGATED TO THE EXAMINER IN THIS CHAPTER.]

- (2) Repealed 7/3/96.
- (3) Repealed 7/3/96.
- (4) Repealed 7/3/96.
- (5) Repealed 7/3/96.
- (6) Repealed 1/2/2004.

(c) The hearing examiner may conduct a prehearing conference to hear motions as provided in 6 AAC 30.435, to establish a schedule for discovery, briefing, and exchange of witness lists, and to set the hearing date. The examiner shall permit prehearing briefs in all cases and allow posthearing briefs only for good cause shown, or by stipulation of the parties.

(d) Repealed 7/3/96.

(e) The original pleadings, motions, stipulations, briefs, and other documents must be filed with the examiner, and served on the parties.

(f) Repealed 7/3/96.

(g) The executive director, or the executive director's designee, may amend the complaint as a matter of right within 30 days after certification is made that conciliation efforts were not successful. The examiner will permit amendments to the complaint after that period only upon motion and a showing that it would be in the interests of justice to grant the motion.

(h) Repealed 7/3/96.

(i) The respondent shall file and serve an answer within 20 days after service of the complaint. The answer must fairly meet the substance of the complaint and must contain a general or specific admission or denial of the allegations in the complaint. If the respondent lacks knowledge or information, a statement of that lack has the effect of a denial. The answer must state any matter which is a defense. Any allegation in the complaint which is not denied or admitted in the answer will be considered admitted.

(j) Respondent shall file an answer to an amended complaint within 20 days after service of the amended complaint. (Eff. 12/7/63, Reg. 13; am 11/2/74, Reg. 52; am 6/6/75, Reg. 54; am 12/17/76, Reg. 60; am 1/14/77, Reg. 70; am 3/12/81, Reg. 77; am 7/3/96, Reg. 138)



Official Business

# Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216  
Juneau, AK 99801-1182  
Phone: (907) 465-3725  
Fax: (907) 465-5334

## MEMORANDUM

Date: February 27, 2006  
To: Representative Seaton, Chair  
State Affairs Committee  
From: Suzi Lowell *sl*  
Chief Clerk  
Subject: Governor's Appointments

Speaker Harris referred the following Governor's appointments to the State Affairs Committee:

**State Commission for Human Rights** → 276-7474  
Mr. Randy H. Eledge - Anchorage  
Reappointed: 2/20/2006 Term Expires: 3/1/2011

**Personnel Board**  
Mr. Alfred L. Tamagni, Sr. - Anchorage - 349-1736  
Appointed: 3/1/2006 Term Expires: 3/1/2012

8:30 in  
276-7474

→ 276-7474  
562-3939

work  
349-1736

The resumes and committee reports are attached for your use.

Attachments as noted

**OVERSIGHT  
DEPT. OF  
ADMIN.,  
STATE HEALTH  
CARE PLAN,  
PROCUREMENT  
PROCEDURE,  
5/1/06**

## Alaska State Legislature

State Capitol, Room 102  
Juneau, AK 99802  
Phone: 465-2689  
Fax: 465-3472  
Toll Free (800) 665-2689  
Representative\_Paul\_Seaton@legis.state.ak.us



345 W. Sterling Highway  
Suite 102B  
Homer, AK 99603  
Phone: 235-2921  
Fax: 235-4008

### House State Affairs Committee Rep. Paul Seaton, Chair

**May 1, 2006**

**Below are a number of questions posed by the House State Affairs Committee to the Department of Administration regarding the Premera Blue Cross/ AENTA procurement process:**

- What is the justification for assigning different evaluators (with the exclusion of one) to the two bidders?
- Why were no expert health care consultants hired to advise the state, as had occurred in previous contract awards?
- Don't these types major procurement procedures typically take 6-9 months? These bids were submitted late December and the decision was made late February. How did this shortened time allow for an adequate review process? Doesn't this compromise the ability for a smooth transfer of insurers for employees in July? Why didn't the State start the bid process earlier?
- What is the State's responsibility for losing a portion of AETNA's bid when the documents were in the possession of the State?
- What will be the implication to the employees of the State and the State of Alaska if the appeal by AETNA is upheld?
- Why did the State not take AETNA's offer to extend the process a few months while the appeal process was underway?
- In the absence of a consultant, can you demonstrate that you have taken all costs into consideration to show an accurate comparison of the Premera Blue Cross and AETNA bids?

---

Representative Paul Seaton, Chair, House State Affairs Committee

May 2nd 2006 - EXECUTIVE SESSION - HOUSE STATE AFFAIRS

- Jane Pierson

- Cody Rice

- Louise Flota

- Iris Matthews

-

→ checklist

→ key change to rule committee chair

→ policy decision

**Sec. 24.25.060. Oath and penalty for violation of oath.**

The president of the senate and speaker of the house of representatives and the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies. A person who wilfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years.

Within the scope of size and complexness of procurement made while you are acting commissioner:

1. ~~What was your personnel knowledge of the process?~~
2. How big was this State Active and Retiree Health Plan?
3. Discussed at Staff meetings?
4. Did you talk with the contract procurement personal about the process?
5. Who made the decision not to use health contract specialist to analysis the proposals?
6. When did you first become aware that one of the major proposals – the current contract holder – bid was incomplete?
7. Who made the decision to declare the bid non-responsive?
8. During staff of informal meetings, telephone conversations or email was it discussed by or with you if Aetna should be informed before starting private negotiations with the other bidder? Did you or someone else make a decision to negotiate privately with Premera Blue Cross to align their bid with any terms of the non-responsive Aetna bid to yield a better contract for the State?

Iris Mathis  
Cody Rice  
Ann Peskoe  
Joni Pearson