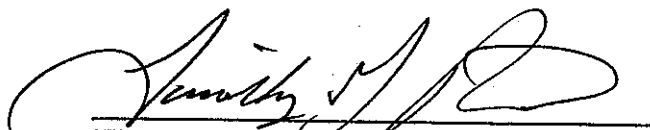


STATE OF ALASKA
PERSONNEL BOARD

In re Ethics Complaint
dated September 1, 2008

REPORT OF FINDINGS
AND RECOMMENDATIONS

November 3, 2008

A handwritten signature in black ink, appearing to read 'Timothy J. Petumenos', written over a horizontal line.

Timothy J. Petumenos
Independent Counsel
to the Personnel Board

TABLE OF CONTENTS

SCOPE OF THE REPORT	1
THE BRANCHFLOWER REPORT	3
THE EVIDENCE EXAMINED	6
SUMMARY OF PUBLIC FINDINGS AND RECOMMENDATIONS AND EXECUTIVE SUMMARY	8
DISCUSSION OF THE EVIDENCE AND THE LAW APPLICABLE TO ALLEGED GOVERNMENTAL CONDUCT RELATED TO ALASKA STATE TROOPER WOOTEN ...	9
1. Affirmative Acts Directly Attributed to Governor Palin	10
A. The Evidence	10
B. The Law	16
2. Affirmative Acts of Others and Governor Palin's Responsibility For Them	23
A. The Branchflower Report Misinterpreted and Misapplied the Ethics Act in Concluding that Governor Palin Abused Her Power in Violation of the Law Through Her Inaction	23
B. Analysis of Evidence Related to the Actions of Others	29
C. Legal Analysis Pertaining to the Acts of Others and any Duty Governor Palin Had to Curtail Them	44
3. The Dismissal of Commissioner Monegan	46
4. Limitation on the Evidence Reviewed in Support of These Conclusions	53
CONCLUSION	56

REPORT OF INDEPENDENT COUNSEL TO ALASKA PERSONNEL BOARD

This report is being issued with respect to three related and consolidated matters pending before the Alaska Personnel Board (Board). The first matter is before the Board as a consequence of Governor Palin's ethics disclosure pursuant to AS 39.52.210(a)(2) in which the Governor seeks the guidance of the Board as to whether the circumstances leading to her proposed transfer of the Commissioner of Public Safety to the position of Director of the Alcohol Beverage Control Board violated the Alaska Executive Branch Ethics Act. (Ethics Act) AS 39.52.010 - 965. The second consolidated matter before the Board concerns a complaint and amended complaint filed with the Board by the Public Safety Employees Association (PSEA) alleging that the Governor and others violated the Ethics Act by impermissibly accessing and disclosing confidential personnel and workers' compensation records of one of its members Trooper Michael Wooten. The PSEA's amended complaint added the allegation that the Ethics Act was violated by the Governor and others through engaging in continuous and systematic efforts to have Trooper Michael Wooten terminated from his employment. Finally, former Commissioner of Public Safety Walter Monegan filed a "Request for Due Process Reputational Hearing" before the Board seeking a public hearing in connection with these matters to clear his name and protect his reputation.

SCOPE OF THE REPORT

The first task of Independent Counsel is to review the legal sufficiency of the matters presented on their face. AS 39.52.310(d). In this case, after doing so, Independent Counsel found that the filing of the Governor was legally sufficient and merited review to determine from the evidence if there was probable cause to conclude that the Governor violated any provision of the Ethics Act in dismissing Commissioner Monegan from his position as

Commissioner of the Department of Public Safety. Though the filing was submitted by the Governor's attorneys on her behalf and not under oath, *see* AS 39.52.310(b), it is not clear whether the filing of an Ethics Disclosure pursuant to AS 39.52.210, as opposed to a complaint under AS 39.52.310, must be under oath. Instead of requiring that the Disclosure be resubmitted under oath or dismissed, Independent Counsel ascertained at the outset that the Governor was willing to submit to a plenary deposition under oath as to these matters making the issue moot. The Governor was deposed on October 24, 2008.¹

Independent Counsel also found that the amended complaint of the PSEA could, if supported by sufficient evidence, state a claim under the Ethics Act to the extent that state officials disclosed or improperly used confidential information of another state employee, or misused their official position to deprive the employee of the personal benefit of continued employment with the State. Alaska Statute 39.52.120, 140.²

With respect to the complaint filed by Commissioner Monegan, Independent Counsel finds that the request for a "reputational due process hearing" before the Board (or an appointed administrative law judge) does not state a legally cognizable claim within the jurisdiction of the Board and should be dismissed on its face pursuant to AS 39.52.310(d). There is no provision of the Ethics Act granting jurisdiction for the relief requested by Commissioner

¹ Contrary to some press reports suggesting that the Governor's attempt to "file on herself" was some sort of clever ruse, such a view materially misconstrues one of the purposes of the Ethics Act. AS 39.52.210 directly allows for, and encourages, public officials to ask the Board for guidance as to whether their conduct, contemplated or already taken, violates the Act. No negative connotation should be taken from this filing since public officials should be encouraged to seek such guidance. One of the duties of the Board, by statute, is to provide timely response to such requests and it should endeavor to do so.

² For purposes of dismissal for lack of legal sufficiency under AS 39.52.310(d), Independent Counsel assumed that depriving another of a personal benefit could state a claim. That is far from clear as discussed *infra*. The PSEA complaint was not under oath. However, the complaint attached in support a transcript of a tape recorded conversation the authenticity of which is not in dispute. Moreover, the complaint, as amended, so closely parallels the Governor's Notice to Attorney General, that it was accepted for review. See also, AS 39.52.310(a).

Monegan.³ The jurisdiction of the Board is to review and adjudicate violations of the Ethics Act. The Board has not been given jurisdiction to preserve reputations or hear defamation cases. The only authority cited by Commissioner Monegan in support of such jurisdiction does not support his claim.⁴

In addition to the matters specifically raised by the PSEA Amended Complaint and the Governor's Notice, the Attorney General or an Independent Counsel acting on his behalf, has a duty under the law to follow up and investigate any discovered violation of the Ethics Act and has a duty to report and refer to the appropriate state agency any potential violations of any criminal statute or elections-related statute. Additional provisions of the Ethics Act also direct the Independent Counsel to make recommendations to the government, where appropriate, if other potential violations of law have occurred or could be prevented in the future.

THE BRANCHFLOWER REPORT

This report of Independent Counsel is issued under unique circumstances. The conclusions that are reached here cannot fully do justice to the parties or to the public interest without addressing in detail the conclusions contained in the Branchflower Report to the Legislative Council, Vol. 1 (October 10, 2008) (hereinafter Branchflower Report). The Board's investigation has been conducted against the backdrop of significant public interest and media attention that resulted in part from the legislative investigation and the substantial controversy that surrounded it.

The Ethics Act provides for various potential sanctions including most often imposition of a civil penalty or specific personnel action up to and including termination. AS

³ Mr. Monegan also requests that the Board rule as to whether Mr. Monegan has exhausted his administrative remedies by this filing. Independent Counsel recommends that the Board decline to give an advisory opinion on the issue. The matter is simply not within the jurisdiction of the Board. Whether an administrative remedy exists before some other state agency is for Mr. Monegan's attorney to analyze.

⁴ State, Dept. of Military and Veterans Affairs v. Bowen, 953 P.2nd 888 (Alaska 1998).

39.52.410 – 460. However, as a practical matter, at the higher levels of government, often the greatest sanction resulting from a finding of an ethics violation under the Ethics Act is public exposure, public approbation and the political cost that comes from a proven finding of the existence of a violation. Civil penalties or other sanctions likely to be imposed in the normal case are frequently less of a punishment than the public exposure to scrutiny.⁵ In this matter, there has already been a publically released finding by one lawyer, Stephen Branchflower, who was hired by the Legislative Council. However, Independent Counsel has confirmed that the legislative body has taken no action other than to release the Branchflower Report and has not taken a formal position on its merits or its validity and has not yet proposed to take any action. Thus, the findings of the Branchflower Report at this juncture are the findings of one attorney who was not subject to an adversarial proceeding in which his findings could be tested. Nevertheless, the findings have been widely disseminated and have had one of the more serious consequences (public exposure) which would normally attend a sustained finding by the Board after an adversary hearing at which there are important procedural safeguards.⁶

Chief among these safeguards is the requirement that the Attorney General, or the Independent Counsel, make a finding of whether there is probable cause that a violation has occurred before he can proceed with an accusation. When Independent Counsel makes this finding, he must be aware that upon filing an accusation he has the burden of substantiating the allegations by a preponderance of the evidence by calling witnesses in an administrative trial

⁵ Civil penalties are a maximum of \$5,000 per violation. AS 39.52.440.

⁶ Nothing written here is intended as a criticism or comment on the Legislature's clear right to conduct its investigations, as has been confirmed by the Alaska Supreme Court. The legislature obviously has just as important a role in conducting its investigations as does the executive branch. Legislative investigations can lead to legislative reform, can assist in holding officials from other branches of government publically accountable by exposing conduct when there may not be the motivation or the mechanism to provide that accountability within the executive branch. In extreme cases, the investigations can lead to, or be part of, constitutional impeachment proceedings which are adversarial and have procedural safeguards. The point made here is that the legislature, except in the narrowest of circumstances, (e.g., impeachment proceedings) is not an adjudicatory body and its findings, are not subject to being tested by the adversarial process.

presided over by a neutral administrative law judge, at which time the evidence is tested in the traditional way through cross examination by the party accused who has the right to be represented by counsel. AS 39.52.350, 360. The sufficiency of the evidence and any legal interpretation of the Ethics Act are addressed in the administrative hearing, are subject to subsequent review by the Alaska Personnel Board, thereafter by a constitutionally appointed judge of the Superior Court which hears any administrative appeal, and ultimately there is a right of appeal to the Alaska Supreme Court. AS 39.52.370.

The legislative investigator had no such burden and was not subject to further proceedings or review once the Branchflower Report was released. The Branchflower Report was merely written and released to the public. While the initial probable cause determination before the Board is similarly made by one attorney acting as an administrative prosecutor, this determination is made with the knowledge that following a filing of an accusation, the attorney must prove any accusation filed with admissible evidence and support his legal reasoning to an independent tribunal in an adversarial setting.

Because of the unique circumstance surrounding the Branchflower Report and its wide dissemination, Independent Counsel believes that the public interest, the credibility of these findings, and fairness to the Governor and the Respondents requires that the Branchflower Report be analyzed as the basis for these findings are explained. Some time and effort has been taken to do so. In a very real sense, public opinions about the matters before the Board have already been formed and conclusions about the matter have already issued about what the facts are and how the law applies. Moreover, because Independent Counsel has reached materially

different conclusions than those contained in the Branchflower Report, the public and the Respondents are entitled to know why.⁷

There is another reason to address the Branchflower Report in a detailed way in the course of these findings. Independent Counsel had available to it all of the information available to Mr. Branchflower due to the comity afforded by the Legislative Affairs Council to the Personnel Board. But this report is based upon substantially more evidence than was available to Mr. Branchflower. In addition to all of the sworn statements and other evidence that form the basis for the Branchflower Report provided to Independent Counsel by the Legislative Council, Independent Counsel had access to thousands of additional e-mails, files and other documents as well as the sworn deposition testimony of key officials that were not relied upon by Mr. Branchflower. Thus fairness dictates that this report, based on additional evidence, likewise be made public.

THE EVIDENCE EXAMINED

Independent counsel reviewed an extensive amount of evidence as part of this investigation. Tens of thousands of pages of relevant documents were sifted containing tens of thousands of e-mails and other communications from various state departments and from the private e-mail accounts of others. In the process of obtaining such evidence, the e-mail accounts of the following individuals were frozen and searched: Governor Sarah Palin, Chief of Staff Michael Nizich, Director of Boards and Commissions Frank Bailey, Special Assistant Ivy Frye, Deputy Chief of Staff Randy Ruaro, former Chief of Staff Michael Tibbles, Legislative Director

⁷ This report is being written with the expectation that the Board will authorize public release of this report. While the initial phase of the investigation has been done confidentially, that was done because there was no way to determine, in advance, the direction the investigation would take or whether the report could be written without doing violence to the rights of other potentially involved state officials to confidentiality pursuant to AS 39.52.340. But the rights of public officials to waive confidentiality are also implicated here, since findings contained in this report may serve to shed light on the claims, foster open government and clear the names of those against whom allegations have been made. Governor Palin has waived her right to confidentiality in these matters. As have all the named respondents in the PSEA complaint.

Russ Kelly, Director of OMB Karen Rehfeld, Security Detail Officer Bob Cockrell, Director of Anchorage Governor's Office Kris Perry, Deputy Commissioner John Glass, Colonel Audie Holloway, Trooper Michael Wooten, former Commissioner of DPS Walt Monegan, Commissioner of DOA Annette Kreitzer, Director of Personnel and Labor Relations Dianne Kiesel, Director of Division of Risk Management Brad Thompson, Attorney General Talis Colberg, and DPS Special Assistant Kim Peterson.

Independent counsel questioned a number of public officials and state employees, as well as private individuals, mostly under oath. The persons who gave sworn depositions to independent counsel include: Quentin Algood (owner, ITS Alaska, LLC), Frank Bailey, Deputy Commissioner of DOA Kevin Brooks, Tails Colberg, Dianne Kiesel, Annette Kreitzer, Walt Monegan, Director of Personnel Nikki Neal, Michael Nizich, Governor Sarah Palin, Todd Palin, Kris Perry, Karen Refeld, Randall Ruaro, Brad Thompson and Michael Tibbles. In addition, Independent Counsel reviewed all the evidence gathered as support for the Branchflower Report including the material that was not publicly released. The following key officials and Todd Palin were subpoenaed as part of the legislative investigation but the subpoenas were not enforced: Todd Palin, Annette Kreitzer, Michael Nizich, Brad Thompson, Frank Bailey, Randall Ruaro, Ivy Frye, Dianne Kiesel, Kristina Perry, Nikki Neal and Governor's Executive Secretary Janice Mason. While some of these witnesses gave written statements, the statements were not used to draft the legislative findings, and the witnesses were not subject to questioning in the legislative investigation.⁸ All of the witnesses listed above except Ivy Frye and Janice Mason were deposed by Independent Counsel.

⁸ Inexplicably, the subpoenas were not enforced despite the fact that the Superior Court and the Alaska Supreme Court, sitting in an emergency session, affirmed the legislature's right to obtain this evidence. The written statements of some of these witnesses were supplied to the legislative investigation, but were not used in reaching the conclusions contained in the Branchflower Report.

In addition, Governor Palin was deposed on these matters for over three hours. All of the files gathered by the Attorney General in connection with its inquiry into this matter were also supplied to Independent Counsel. The sworn statements of Michael Monagle, Ronnie Kimball and Frank Bailey, which were given to Thomas Van Flein, counsel for Governor Palin and Todd Palin, were also provided to Independent Counsel and considered.

SUMMARY OF PUBLIC FINDINGS AND RECOMMENDATIONS
AND EXECUTIVE SUMMARY

1. There is no probable cause to believe that Governor Palin violated the Alaska Executive Ethics Act by making the decision to dismiss Department of Public Safety Commissioner Monegan and offering him instead the position of Director of the Alcohol Beverage Control Board.

2. There is no probable cause to believe that Governor Palin violated the Alaska Executive Ethics Act in any other respect in connection with the employment of Alaska State Trooper Michael Wooten.

3. There is no basis upon which to refer the conduct of Governor Palin to any law enforcement agency in connection with this matter because Governor Palin did not commit the offenses of Interference with Official Proceedings or Official Misconduct.

4. There is no probable cause to believe that any other official of state government violated any substantive provision of the Ethics Act.

5. There is no legal basis or jurisdiction for conducting a "Due Process Hearing to Address Reputational Harm" as requested by former Commissioner Walter Monegan.

6. The Amended Complaint by the PSEA should be dismissed.

7. Independent Counsel recommends that the appropriate agency of State government address the issue of the private use of e-mails for government work and revisit the record retention policies of the Governor's Office.

These findings differ from those of the Branchflower Report because Independent Counsel has concluded the wrong statute was used as a basis for the conclusions contained in the Branchflower Report, the Branchflower Report misconstrued the available evidence and did not consider or obtain all of the material evidence that is required to properly reach findings in this matter.

**DISCUSSION OF THE EVIDENCE AND THE LAW APPLICABLE TO ALLEGED
GOVERNMENTAL CONDUCT IN RELATION TO
ALASKA STATE TROOPER WOOTEN**

Though the issue as initially filed by the Governor may have been framed narrowly to ask the question whether the Governor's decision to dismiss Commissioner Monegan as Commissioner of Public Safety violated that Ethics Act, Independent Counsel is free under the law to reframe the issue presented as the evidence suggests it should be in order to properly dispose of the issue. Moreover, the amended complaint of the PSEA required such a review. In this case, the investigation included the circumstances surrounding the termination of Commissioner Monegan, but also examined all state official activity where Trooper Wooten was the subject of discussion or inquiry to determine if there was ever, by any state official, a violation of the Alaska Executive Ethics Act. In addition, Independent Counsel also considered whether it was appropriate to refer any aspect of this matter to any other law enforcement agency in accordance with AS 39.52.340, due to discovered evidence that any other pertinent state statute was violated.

For the reasons stated above, Independent Counsel also examined the basis for the conclusion in the Branchflower Report that the Governor violated AS 39.52.110(a), by failing to curtail the actions of her husband, Mr. Todd Palin or any other state official. In concluding that the Governor violated AS 39.52.110(a), the Branchflower Report aggregates a few affirmative acts directly attributable to the Governor and many more acts by others to suggest that, cumulatively, there was an unlawful “failure to act” on the part of the Governor that supports the conclusion that the Governor violated AS 39.52.110(a), a section entitled “Scope of Code.”⁹

Because of the legal analysis that follows, it is important that the evidence be segregated between what Governor Palin did personally, by affirmative act, and what is alleged to have been done by others. No specific evidence was cited in the Branchflower Report about what Governor Palin knew about the acts of others.

1. **Affirmative Acts Directly Attributed to Governor Palin.**

A. **The Evidence.** The first series of affirmative acts directly attributable to the Governor relate to the initial complaints made by Sarah Palin, Todd Palin and members of her family going back to 2005.¹⁰ These acts consisted of informing the Alaska State Troopers, through appropriate channels, of matters that concerned Sarah Palin and members of her family involving Trooper Wooten. At the time these matters were raised, Sarah Palin held no state office. By definition, since the Ethics Act does not apply to the actions of private citizens, Ms. Palin could not, under any circumstances, be considered to have violated the Act, since she had every right to report these matters to the Alaska State Troopers (AST) subject to the requirement that she does not make a knowing false report. There is no suggestion that she did. The actions by Sarah Palin, Todd Palin and members of her family in making citizen complaints, and asking

⁹ These acts are numbered “Events 1 – 18.” Branchflower Report at 52 – 65.

¹⁰ These are cited in the Branchflower Report as Event 1-3. Some do not involve the acts of Sarah Palin.

for the status of matters from AST before Sarah Palin took office are in no way illegal and cannot, as a matter of law, make out a violation of the Ethics Act.¹¹ These events have no bearing or relevance to the whether there has been a violation of the Act. Exhibit 1 attached is the e-mail in which Sarah Palin sought to document her concerns as a private citizen.

After the Governor's election in November of 2006, in preparation for her taking office, the Governor and Todd Palin met with AST security staff as part of the transition process. A routine inquiry was made by the security staff as to whether the Governor or her family knew of anyone they regarded as a security threat to the family. The Governor and Mr. Todd Palin responded that they were concerned about Trooper Wooten. This expression of concern was a privileged communication, part of the legitimate and proper function of government designed to prepare to protect the Governor and her family and cannot in any way be used to support a violation of any law Independent Counsel can find, and certainly not the Alaska Executive Ethics Act. The report to the AST security detail was for the purpose of providing for the safety of the Governor, a legitimate and important public function. When the purpose of the inquiry is to cover potential security issues, governors should be free to state even their slightest concern without fear of being second guessed or challenged as to the basis for their concern lest the process of providing security of our public officials be compromised. Moreover, this discussion had nothing to do with Trooper Wooten's continued employment, conferred no personal benefit on the Palins and did not threaten to deprive Trooper Wooten of any private benefit.

The next event concerning Trooper Wooten that is alleged to directly involve Governor Palin is said to have occurred when Governor Palin, according to Commissioner Monegan, called him in January of 2007 within days of the call described, infra, between

¹¹ The Ethics Act only applies to the acts of state employees and officials in the executive branch of state government and does not apply to the conduct of private citizens.

Commissioner Monegan and Todd Palin.¹² Commissioner Monegan has testified that the Governor called him to inquire as to why nothing had been done to discipline Trooper Wooten and to complain that he had received a slap on the wrist. Commissioner Monegan asserts that he informed the Governor that there had been a process, that it was completed and that nothing more could be done. He stated that he did not tell her the result of the proceeding because he did not believe he was authorized to tell her outcome of the proceeding.¹³

The testimony about this phone call cannot be used as evidence of a violation of the Ethics Act against the Governor for the following reasons:

1. The Governor denies that the conversation took place. Governor Palin asserts that this is more than a failure of recollection on her part. She believes that she would have remembered that such a conversation, given its content, had it taken place. Independent Counsel has found no evidence to corroborate or refute the contentions of either Commissioner Monegan or Governor Palin. There is no note or record of this conversation.
2. Even if the conversation had taken place precisely as Commissioner Monegan has described it, it is not a violation of the Ethics Act to make this inquiry. Commissioner Monegan does not allege that he was asked to do anything with respect to Trooper Wooten's employment. It is not a violation of the Ethics Act to inquire into the status of a matter or to express one's opinion about the merits of the decision made.

Another category of affirmative acts by Governor Palin disclosed by this investigation are a series of four e-mails sent by Governor Palin on February 7, 2007, May 5-6, 2007, July 17, 2007 and September 27, 2007.¹⁴ In the February e-mail, Governor Palin alludes to her difficulties with Trooper Wooten in the context of discussing proposed testimony on

¹² This is described as Event 6 in the Branchflower Report at 57.

¹³ This is incorrect. As the Governor and chief executive, Ms. Palin was entitled to know the results of the personnel action and to see the entire personnel file, if she wished, for any purpose other than to interfere with, or attempt to undo, the employment grievance proceedings. The information could be legitimately used, without contravening the Act, for example, to evaluate the effectiveness of DPS's discipline procedures generally, or to insure that future supervision of the employee was appropriate.

¹⁴ These e-mails are attached as Exhibits. 2-5.

pending legislation on a bill calling for a mandatory 99-year sentence for police officers who commit murder.¹⁵ Governor Palin discusses her personal experience with Trooper Wooten as an “example” of support for her position as contained in the e-mail. No request to take any action about Trooper Wooten is contained in the e-mail. In the May e-mail, Governor Palin cryptically mentions her difficulties with Trooper Wooten after being informed about the arrest of a state trooper for sexual assault. The Wooten reference appears as part of a discussion of her concern about the loss of public trust attendant when a law enforcement officer abuses trust. She then agrees with the assertion of Commissioner Monegan that most such employees are “good folks.” The final e-mail in which Trooper Wooten is specifically mentioned was written on July 17, 2007. The reference was in connection with a pending bill filed following the Virginia Tech killings which proposed restrictions on the sale of guns to the mentally ill or unstable. In the course of discussing the legislation, the Governor discussed her experience with Trooper Wooten, and pointed out that the provisions of the bill could apply, under such circumstances, to law enforcement officers. The final e-mail, sent on September 27, 2007 involved press coverage of a settlement of a civil matter involving the conduct of a state trooper in which the Governor was concerned that the report made it wrongly appear that she was involved in the decision to settle the matter. The Governor’s reference to Trooper Wooten is oblique, and appears to be used to elucidate her concern about law enforcers breaking the law.

These e-mails were written principally to discuss pending legislation and events not involving Mr. Wooten. For the reasons explained more fully below, discourse and debate between officials about matters, with references to other personal opinions and personal experiences, which themselves are unconnected with a personal interest, do not make out a violation of the Ethics Act as a matter of law.

¹⁵ This is Event 7 in the Branchflower Report at 57-58.

Commissioner Monegan alleges that he had another conversation directly with Governor Palin on February 13, 2007 in a face to face meeting in Juneau.¹⁶ Commissioner Monegan states that he and the Governor were walking down some stairs. Mr. Monegan has the Governor raising the topic of Trooper Wooten. According to Mr. Monegan, Governor Palin began by stating she wanted to talk about Trooper Wooten and he interrupted her before she could say more. Mr. Monegan testified that the Governor did not get out more than the single sentence before he interrupted her. Commissioner Monegan testified that he assertively informed the Governor that he had to keep her "at arms length" about this matter because of her position as Governor, and because of her personal interest in the matter due to her family connection to Trooper Wooten. Commissioner Monegan asserts that he told the Governor that she should instead direct that her husband Todd Palin be the one to further communicate with him about Trooper Wooten, since he was a private citizen. Commissioner Monegan asserts that the Governor then stated, "That's a good idea." Commissioner Monegan indicated that she never spoke to Commissioner Monegan about the matter again.

This conversation cannot be used as evidence of a violation of the Ethics Act for the following reasons:

1. Governor Palin denies that this conversation took place. Though she remembers seeing Commissioner Monegan on that day, she does not believe they were ever alone and insists she would not raise a subject such as this in the presence of others. Governor Palin has also testified under oath that this is not a failure of recollection on her part since the nature of the conversation as described is such that she would remember having had it. There is no evidence to corroborate or refute whether this conversation took place or not. No notes or other record of the conversation have been produced.
2. Even if the conversation took place as Commissioner Monegan asserts, it provides no evidence of a violation of the Act.

¹⁶ This is Event 8 in the Branchflower Report at 58.

Commissioner Monegan admits that the Governor got barely a few words out before she was interrupted and was advised not to speak to him about the matter. No request to take action was made, according to Commissioner Monegan, and nothing further was said by the Governor in this conversation other than to agree that it was a good idea to allow Todd Palin to communicate with the Commissioner about the matter instead of her.

Like the other one on one conversations or contacts Commissioner Monegan alleges took place with the Governor, there were no witnesses, no notes, and no memorializing of the conversation. At any subsequent hearing asserting a violation of the Ethics Act, Independent Counsel would bear the burden of proof that these conversations in fact took place. It does not appear that the burden of proof could be met as to whether the conversations described herein in fact happened at all.

Moreover, even assuming they occurred just as Commissioner Monegan alleges, nothing about the description of this conversation by Commissioner Monegan sets forth the elements of a violation of the Ethics Act and any accusation would suffer from a complete lack of proof. Commissioner Monegan cannot state why Governor Palin was raising the issue of Trooper Wooten because he cut off any further conversation. Governor Palin would have had every right to speak to the Commissioner about Trooper Wooten about a number of aspects of the Trooper Wooten matter without violating the Ethics Act. She would be, for example, completely within her rights to obtain an explanation from the Commissioner of the reasoning for the decision, whether the system of discipline at DPS was effective or whether, going forward, the employee was being properly monitored. Neither does the fact that a public official brings their own experiences to bear in discussing such matters make the discussion unlawful.

No other direct act or communication initiated directly by Governor Palin, of any consequence, is alleged to have ever occurred. If there is any liability to Governor Palin under

the Ethics Act, besides these events, they must come from a theory that she is somehow liable for the act of others, or for her inaction, which we discuss below.¹⁷

B. The Law. The Ethics Act provides for severe penalties upon a finding of a serious violation. A state employee can be terminated from their position, and if a serious violation involves the Governor, the statute provides that a report to the president of the senate issue with a recommendation for impeachment. AS 39.52.410(d). Consequently, a violation of one of the substantive provisions of the Ethics Act must be accompanied by the mental state of “knowledge” that a material violation has occurred. AS 39.52.350(a).¹⁸ In addition, a pertinent regulation promulgated to clarify the Ethics Act makes clear that it is not sufficient to prove merely the existence of an appearance of impropriety, there must be an actual violation of the Ethics Act proved. 9 AAC § 52.010.

The substantive proscriptions and requirements of the Ethics Act focus on financial matters. Many of the sections deal with financial conflicts of interest and financial disclosure and the duty not to act in public matters while a financial conflict of interest exists. The principal substantive section entitled “Misuse of official position” devotes itself to matters of financial benefit to the state official in the form of outside contracts, compensation outside of government for official duties, use of state equipment for personal use or benefitting an outside personal financial interest through state official action. AS 39.52.120. The Ethics Act also covers and prohibits the use of state assets or power for partisan political purposes. Other sections prohibit the receipt or solicitation of improper gifts by public officials. AS 39.52.130. The use of confidential information gained through state employment may not be disclosed as

¹⁷ Other contacts and incidents relating to the Governor’s security are not further chronicled here since they are clearly outside of the ambit of the Alaska Executive Ethics Act.

¹⁸ Given the available sanctions of loss of employment and civil penalties and payment of twice any financial benefit obtained, this mental state is probably constitutionally required.

part of an effort to obtain a financial benefit for the public official or his or her immediate family if the information is not also available to the public. AS 39.52.140. Again, the focus is on pursuit of financial benefit.

Alaska Statute 39.52.150 addresses improperly influencing state grants, contracts, leases or loans so as to confer a financial benefit upon the public officer or his or her immediate family. AS 39.52.160 prohibits assisting a private party in a representative capacity in a matter before the administrative unit in which the public official serves for compensation, or without compensation, under certain circumstances. The final proscriptions under the Ethics Act relate to restrictions on private employment by public officials and restrictions on employment after leaving state service. AS 39.52.180.

It is evident that the facts alleged in the matters filed by the Governor and the PSEA do not, for the most part, neatly fit into the proscriptions of the Ethics Act since the gravamen of the matters brought before the Board are to the effect that the Governor, or other state officials, used their position to attempt to terminate a public employee, Trooper Wooten, or otherwise affect his employment status, outside of the normal state statutes and contracts by which such action may lawfully be taken. Neither the Governor's papers nor the PSEA's papers allege that a financial benefit was at stake for the Governor or any state official.

The application of the Ethics Act to these circumstances comes down to the analysis of a single provision of the Act, AS 39.52.120(b)(4). Section 120(b)(4) proscribes taking official action in order to affect a matter in which they have a personal or financial interest. Because the legislature has used both the words "personal" and "financial" a court could construe the section to include one's personal desire to affect an outcome for reasons that are other than financial but this is by no means clear. In this case, an attempt by a public official

to improperly deprive another of state employment that provides no financial benefit to the public official or her family would have to be covered by this section as every other substantive section of the Ethics Act speaks only of financial benefits.

If the personal interest that forms the basis for an accusation under AS 39.52.120(b)(4) does not have to be a financial, it also must not be an interest that is possessed generally by the public or to a large class of persons to which the public official belongs. AS 39.52.110(b)(1). This “safe harbor” analysis must be considered in reviewing an alleged violation under the Act.¹⁹

Therefore, the only way the Ethics Act can be violated here, as these facts present themselves, is if it can be construed to apply to an attempt to use public authority to attempt to terminate a state employee by taking unwarranted official acts to further a personal, though non-financial, agenda pertaining to oneself or a family member. If any other employee or official knowingly assists in this regard, that employee also commits a violation. AS 39.52.190. It is not at all clear that the Alaska courts would extend the reach of the Ethics Act this far.²⁰ Indeed, previous rulings of this Board support the proposition that the personal interest of the state official must be of significance and not speculative. *See In re Investigation of Ethics Complaint dated August 3, 2005*, Final Decision at 1.

Because the evidence adduced here does not support even this extended interpretation of the statute, the answer to the Governor’s Notice and the resolution of the PSEA amended complaint, does not depend upon a resolution of this issue of statutory interpretation.²¹

¹⁹ AS 39.52.110(c) expressly provides that the attorney general and designated ethics supervisors “must be guided by [section 110] when issuing opinions and reaching decisions.”

²¹ The PSEA’s initial complaint asserting a misuse of confidential information does not make out a claim for a violation of the Ethics Act and is legally insufficient on its face. A misuse of confidential information in violation of the Alaska Personnel Act, AS 39.25.080, or the confidentiality provisions related to the Workers’ Compensation system, AS 23.30.107 are not automatically violations of the Ethics Act. However, Independent Counsel does have

For purposes of this recommendation and report the elements of a potential violation against which the gathered evidence has been applied is AS 39.52.120(b)(4). For the reasons stated infra, relating to the discussion of the Branchflower Report's conclusion that Governor Palin violated the Ethics Act by not acting, the Branchflower Report's legal analysis has been rejected as a misreading of the Act because it improperly uses as its foundation AS 39.52.110(a).

Applying AS 39.52.120(b)(4) to the facts presented, it remains unsustainable that an indefinable personal interest of the Governor subjects her to an ethical violation. In addition, AS 39.52.110(b) provides that even where there is a personal interest in a matter, there is no violation of the Ethics Act if the action taken by the official is to effect an interest that is held by the public or a large class of persons to which the official belongs. As discussed above, there is considerable difficulty in articulating with specificity and certainty the personal interest that may have been the actual motivation for the Governor's conduct. For example, the suggestion of the Branchflower Report and statements of Commissioner Monegan and others is that the Governor was motivated by an improper personal vendetta or revenge in seeking the termination of Trooper Wooten. It is necessarily further implied by the Branchflower Report that therefore, every contact of the Governor in which Trooper Wooten was mentioned inherently included this underlying ill-intent.

The evidence, however, does not support this conclusion. The Governor has testified that she did not seek the termination of the Trooper Wooten after she became Governor. Also absent from the evidence reviewed is any assertion that the Governor directed anyone in the

an obligation to refer any criminal violation of the Alaska Personnel Act to the appropriate state agency. See AS 39.25.900 and AS 39.52.340. When such a referral is made, it must be confidential. No grounds for such a referral have been found because there is no evidence that confidential information was improperly disclosed. See, infra. Thus the PSEA original complaint relating to the misuse of confidential information should be dismissed on its face under AS 39.52.310(d). The amended complaint, by contrast, is recommended to be dismissed for lack of probable cause before formal proceedings under AS 39.52.320 based upon all of the evidence described herein because on its face the amended complaint could state a claim, though it would require a tortured reading of the Act.

Department of Public Safety to terminate Trooper Wooten, or directed anyone on her staff to seek the termination of Trooper Wooten.

Indeed, the events for which there is clear proof of direct action by the Governor, namely the e-mails, supports the alternate conclusion that the Governor's interest was to address concerns relating to matters of public policy. The Ethics Act prohibits official action to affect a matter related to one's personal, private interest, it does not go so far as to prohibit mentioning one's personal frustrations and experiences in the course of discussions about matters having nothing to do with such interests. These e-mails concerned other pending legislation or were in response to matters regarding alleged misconduct by other employees of AST, wherein the Governor refers to Trooper Wooten indirectly. None of these communications request or demand any action against Wooten be taken.

To suggest that a public official cannot engage in discourse or express disagreement regarding matters of policy would be wholly inconsistent with their role in government. Not only could it be argued that is an interest of every governmental official to retain broad latitude with respect to such matters, it is also of paramount interest to the public at large. In enacting the code of ethics, the Legislature recognized that State officials are drawn from the public cannot and should not be without personal and financial stakes in the affairs of the State of Alaska. What is at issue is whether those interests interfere with the full and faithful discharge of the officer's public responsibilities.²² It would be a dangerous application of the Ethics Act to find a violation of the Act which would prohibit the free exchange of ideas and full debate about matters of policy unconnected to any clear and direct financial interest alleged to

²² See Sectional Analysis of C.S.S.S.B. 391 (SA) am, 14 Leg., 2d Sess., at 1 (1986) (available in Finance and Conference Committee files).

have been held by the public official engaged in a policy discussion. It is common that public officials bring their personal experiences to such discussions.

The gravamen of any theory of liability for the direct actions by the Governor would have to rely upon the inference that there was a “hidden agenda” or “subliminal message” in these communications that reveal an improper and unlawful intent. When it comes to public debate and discourse about matters of policy, however, the Act is not implicated unless the private or personal interest is directly at issue. If public officials were to be subject to such inferences open and unfettered deliberation and discourse would be chilled.

Independent Counsel had the responsibility, pursuant to AS 39.52.340, to refer to the appropriate law enforcement agency any violation of the criminal law. Accordingly, an additional review of pertinent criminal statutes, potentially relevant, was conducted. Independent Counsel reviewed statutes prohibiting Interference with Official Proceedings, AS 11.56.510 and Official Misconduct, AS 11.56.850.

Interestingly, these criminal statutes have a broader potential reach than the Ethics Act under these circumstances. The grievance procedure that resulted in Trooper Wooten’s five day suspension qualifies under the law as an “official proceeding.” AS 11.81.900(a)(41).²³ A state official interferes with official proceedings if the official threatens to affect the outcome of an official proceeding by threatening to take or withhold official action as a public servant. See AS 11.56.510(a)(1)(D); AS 11.81.900(b)(61) and AS 11.41.520(a)(4). No requirement of the receipt or deprivation of a personal benefit, financial or otherwise, is required. A state official commits the crime of Official Misconduct, AS 11.56.850, if with intent to obtain a benefit, or

²³ “official proceeding” means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath. Alaska Statute 11.81.900(a)(41).

deprive another of a benefit, he or she uses official position to deprive another of a benefit, by engaging in an unauthorized official function, or refraining from officially acting.²⁴

These criminal statutes do not require the broad construction that the Ethics Act requires in order to potentially apply to the facts presented because the criminal statutes are not so narrowly focused on the pursuit of financial gain by the state official. They proscribe depriving another of a benefit, (which would include the loss of employment), or interference with an official proceeding relating to employment. It is apparent, however, that even under these broader proscriptions, the evidence does not come close to establishing an Interference With Official Proceedings or Official Misconduct by the Governor. At no point does Commissioner Monegan, or anyone else, suggest that the Governor ever attempted or suggested that the official result in connection with the Wooten grievance proceeding be altered, changed or reopened, let alone threaten to take or withhold official action to achieve that result. Indeed, no witness has stated that they ever told the Governor what the result of the grievance proceeding was. Governor Palin did not interfere with that proceeding.

The affirmative acts of Governor Palin, even the Monegan version, also do not come close to making out a case for Official Misconduct. Inquiry, without more, into the status of Trooper Wooten's employment status violates no law. Neither does disagreeing with the result, or expressing one's opinion about the result, constitute official misconduct. If that were to be actionable, the free flow of ideas and discourse within government would be threatened. Instead what is required is some affirmative material act, coupled with an intent to directly

²⁴ The language of the statute follows:

Official Misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant:

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servants official function, knowing that such an act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

deprive another of a benefit, or a refusal to take a specific official action, that directly results, or is intended to result, in the loss of a benefit to another. Neither discourse about pending legislation, disagreeing with official action or inquiring into the status of it violates either of these statutes. The affirmative acts of Governor Palin violated no statute.

2. **Affirmative Acts of Others and Governor Palin's Responsibility For Them.**

A. **The Branchflower Report Misinterpreted and Misapplied the Ethics Act in Concluding that Governor Palin Abused Her Power in Violation of the Law Through Her "Inaction."**

Having determined that the few affirmative actions described above by the Governor did not violate the Ethics Act, the next question to be addressed is whether any violation of the Ethics Act can be attributed to the Governor for failing to curtail the acts of others. Suggestion has been made in the Branchflower Report that the acts of others, which the Branchflower Report asserts the Governor knew or should have known about (citing AS 39.25.900), make out a case for violation of AS 39.52.110(a). AS 39.52.110(a) is a statute entitled "Scope of code." The Branchflower Report concludes that because of the Governor's inaction in failing to stop certain conduct, she has violated the section entitled "Scope of Code."

Reliance upon AS 39.52.110(a) as a basis for concluding the Governor violated the Ethics Act is legally flawed under any set of facts. It ignores basic statutory construction. The purpose Section 110 was intended to serve, when read in accordance with its legislative history, and in pari materia with the other sections of the Act, was to provide interpretive insight into the construction of other sections of the Act which set forth the elements that can form the basis for a substantive accusation under the Act.

Statutes are structured and organized into various parts, which serve as categories for provisions that are similar in nature or have some logical relationship to other provisions in

the same category or seeking to regulate the same kinds of conduct.²⁵ The substantive sections of a statutory scheme set forth the rights, powers, privileges and immunities (or prohibitions) or confer power.²⁶ It is common that related statutes which are part of the same act or chapter contain other provisions that state more general legislative intent or are interpretation aids. Preambles to statutes are not considered substantive but are explanatory and therefore do not determine rights, create duties or confer power.²⁷ A preamble to an act, such as the Ethics Act, does not enlarge the scope or effect of its substantive parts and is limited to being used as a guide in construing or clarifying other ambiguous sections or stating overall legislative intent.²⁸ Section 110(a) is clearly not substantive and may not be properly used to provide the basis for determining rights, creating duties or enlarging the scope of the Act's substantive parts. The non-substantive provisions, such as Section 110(a) are there to provide context, reasons for a legislative bill's enactment, and state policy. Specifically, Section 110(a) is in the Ethics Act is, by its terms, to describe the intended scope of the legislation.

The Ethics Act is divided into various categories, each represented by a different article. See AS 39.52.010 -- .965. Article 1 consists of a single section that communicates the Act's statement of policy as its title, "Declaration Policy" states. AS 39.52.010. Article 2, which is entitled "Code of Ethics" begins with Section 110(a). Section 110 is the very first section in the code and, as its title suggests, is intended to provide a scope explanatory note, containing explanation of legislative intent and purpose, as to how succeeding substantive prohibitions and provisions are to be interpreted.

²⁵ See 1A Norman J. Singer, Sutherland Statutes and Statutory Construction §§ 20:1 – 20:2 (6th ed. rev. 2002).

²⁶ See *id.* § 20:3, 12:12.

²⁷ See *id.* 20:3, at 121, 123.

²⁸ *Id.* and § 20:12.

Though the section may contain some mixed language suggesting a more substantive role for the provision, the section by section legislative history removes any doubt that Section 110 was not intended to define a substantive prohibition. The Ethics Act was before the legislature as SB 391. The sponsor's sectional analysis to Section 110 stated the following:

Sec. 39.52.110. Scope of Code. To clarify the intent behind the code of ethics, this section describes its scope. One of the major criticisms heard is that it is difficult to get qualified people to serve in public office. This section of the bill makes clear that the legislature, in enacting the code of ethics, recognizes in a representative democracy, which draws its public officers from society, that those officers cannot and should not be without personal or financial stake in Alaska, so long as those private interests do not interfere with the full and faithful discharge for the officer's public responsibilities. Additionally, this section clarifies the intent to distinguish between those minor and insignificant conflicts that are unavoidable in our free society and those conflicts that are substantial and material and must be prohibited.

Sectional Analysis of C.S.S.S.B 391 (SA) am, 14th Leg. 2nd Sess., at 1 (1986) (emphasis added).

Thereafter, the substantive provisions of the Code of Ethics itself proceed, wherein the elements of eight specific violations are described in the succeeding sections. The sectional analysis of Section 110 describes its relationship to the rest of the Code by stating that, though the Code is to be interpreted consistent with Section 110, the individual prohibitions beginning with AS 39.52.120 and ending with AS 39.52.190 are the "stern prohibitions on conduct."²⁹ The sectional analyses that accompany the legislation describe in detail the eight types of ethical violations in the Act and does not reference AS 39.52.110 among them.

The Branchflower Report relies exclusively on Section 110(a) to justify a substantive violation of the Ethics Act on the basis of inaction by the Governor.³⁰ The legal

²⁹ See *Id.* at 122.

³⁰ The Branchflower Report relies upon a single sentence of AS 39.52.110(a). See, Branchflower Report, Vol. 1, at 49. The entire section clearly establishes its goal in setting for legislative intent and policy rather than setting for the elements of a violation of the Act.

analysis of the Branchflower Report finding that the Governor violated AS 39.52.110(a) is flawed since as a matter of law, a public official or employee cannot directly violate Section 110(a). A claim of violation (an accusation in Personnel Board parlance) must be based instead upon one of the eight specific prohibitions passed by the legislature. The actus reus required for a violation cannot be based upon explanatory legislative intent provisions.

Second, the Branchflower Report goes further and states that violation of the scope of code provision may be based on the governor's inaction as opposed to the governor's affirmative acts.³¹ The Branchflower Report concludes that the Governor violated an ethical obligation by failing to take action to curtail the advocacy of her husband, a private citizen, and others in state government who disagreed with how DPS had handled the Wooten matter. Specifically, the Branchflower Report broadly asserts, "[Governor Palin] had the authority and power to require Mr. Palin to cease contacting subordinates, but she failed to act."³² To support its finding that such failure to take action violates the Ethics Act, the Branchflower Report relies on the words "including inaction" in the definition of official action under AS 39.52.960(14).

But such reliance on the phrase "including inaction" is misplaced for several reasons. First, the Ethics Act does not require a person subject to its provisions to police the behavior of third parties who are not subject to its provisions. To find that the Governor violated the Ethics Act by failing to control her husband's behavior would require one to add language to the Ethics Act that does not exist. If the Branchflower Report's expansive construction of the term "inaction" were adopted, a public official could be sanctioned or punished for failing to take action to prevent persons outside state government from taking action who are not even covered by the Act. Although the Ethics Act encourages in its policy provisions that public servants have

³¹ Branchflower Report, at 50, 65-66.

³² *See Id.*

a responsibility to prevent improper behavior by subordinates and colleagues, see AS 39.52.010(a)(7), no substantive provision or prohibition makes failing to prevent another's improper behavior a violation of the Act.

The first step in construing a statute is to look to its plain meaning, if it can be readily ascertained. The term "inaction" is contained in a statute listing enumerated actions that are taken by a public official.³³ "Inaction" refers, in context, to a public official's choice not to take one of the actions specifically listed in AS 39.52.960(14) and others like those listed. The phrase "including inaction" is situated so that it modifies the immediately preceding phrase "similar action," so that the term "similar action" includes within it the concept of inaction. Because the phrase "similar action" refers directly to the particular types of actions that are enumerated before it, the term "inaction" must mean only those choices not to take actions that are similar to the actions enumerated in the statute. The plain meaning of the statute, therefore, indicates that the term was included in the definition of official action to discourage and prohibit the type of unethical conduct resulting from a public official's choice not to take official actions must be of the type listed in the statute when such a choice is based on a conflict of interest. For example, it would cover a failure to sign a piece of legislation for an improper motive. Or the failure to approve a state contract in order to cause a contract to be issued to some other entity in which the state official has a financial interest. This interpretation is bolstered by the requirement that any such action must be "knowing."

The Branchflower Report, however, takes the concept of inaction far beyond the point of failing to take a specific official action when a specific opportunity to do so is presented. Instead the concept is applied to vague and amorphous circumstances. If this expansive

³³ AS 39.52.960(14) provides: "official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

definition of "inaction" were adopted, a state official could be punished for failing to take an action unconnected with any specific duty presented to the state official. Indeed, no better illustration need be sought than the facts presented in this case. The notion is that a public official can be found to violate the Act because a private citizen, even someone close to the official, was not compelled to cease his disagreement with government action and was not stopped from petitioning his grievances. It is made more troubling since the act that supposedly should have been taken was to stop another from conduct that would appear to be constitutionally protected, even if the actor is the Governor's spouse.

Moreover, to the extent that the omitted failure to act is read to be a failure to supervise other government officials, an analysis of these acts, set forth below, sets a burden of responsibility to act so high as to seek to regulate the conduct of a supervisor of the state bureaucracy to truly unreasonable levels. The construction of AS 39.52.960(14) is that it is intended to be tied to the failure to take a specific official act which is presented to the public official in the course of his or her official duties, as the rest of the section describes.

The discussion of the evidence which precedes and follows this section of the report discloses that there is no evidence of a pattern of actions by state officials in this saga (had the Governor known about them) that constitute prohibited conduct under the Act. To read AS 39.52.960(14) to proscribe official inaction unconnected to any specific or defined official act is beyond the clear intent of the statute, and is, in the writer's view, dangerous. It invests counsel to the Personnel Board with far too much, and unintended, discretion in second guessing state official for failure to act without the anchor of an official act which can be tied to the allegation at a specific point in time, and for which a personal benefit can be pinpointed and proved.

B. Analysis of Evidence Related to the Actions of Others.

There is insufficient evidence to support a finding of probable cause that any other official of state government violated the Ethics Act in connection with this matter. Consequently, the Governor did not knowingly violate any duty under the Act, under either the legal construct posited by Independent Counsel or the Branchflower Report. The important evidence is set forth here, chronologically.³⁴

Just after Governor Palin's election, Todd Palin, as a private citizen, contacted John Glass who was then Wasilla Chief of Police, to give him his opinion that Michael Wooten was not a good candidate for a police officer position on the Wasilla police force.³⁵ A private citizen giving his opinion on a potential public employment matter is not, as a matter of law, a violation of the Ethics Act and should not be considered among listed events to support a claim of liability under the Act.

In December of 2007 as part of the process of debriefing security personnel about the potential security threat Todd Palin thought Trooper Wooten posed, the conversation between Todd Palin and the security detail expanded to concerns about Trooper Wooten generally and Todd Palin proceeded to discuss the past complaints detailed in Exhibit 1 attached. Mr. Palin expressed his view that AST had failed to take adequate action with respect to Trooper Wooten. Todd Palin was advised by AST security personnel that the proper person with whom to follow up with his concerns was the Commissioner of DPS. Todd Palin and the Governor

³⁴ As previously noted, the Branchflower Report aggregates a series of acts by Todd Palin and other officials and posits that the Governor should have stopped them. But as previously noted, the Branchflower investigation, after properly and appropriately enforcing its subpoenas to the Alaska Supreme Court, failed to enforce them. In this section, significant testimony from these witnesses sheds additional light on what transpired that was not considered previously.

³⁵ This is Event 4 of the Branchflower Report at 55.

also testified to having visited the DPS website where the Commissioner's office is named as the appropriate point of contact for such inquiries.

Todd Palin testified that he approached Commissioner Monegan about these matters as a result of the advice given to him by members of the AST security detail. Members of the security detail corroborate this. Todd Palin and Commissioner Monegan agree that they met on or about January 4, 2007 in the Governor's Office.³⁶ Mr. Palin brought with him a file that he had kept relating to the past complaints regarding Trooper Wooten, and both agree that Mr. Palin asked Commissioner Monegan to look into the matter to determine its status. Commissioner Monegan was unfamiliar with Trooper Wooten or his employment record at this time. Commissioner Monegan testified that among the materials brought to the meeting by Mr. Palin was a document with AST letterhead that he believes was some form of notification regarding the past complaints against Trooper Wooten that had been sent to the party who had complained to AST about Wooten. Our investigation has concluded that Mr. Monegan is mistaken. No such document was discovered in any of the AST files. Informal contact by Independent Counsel to DPS resulted in confirmation that often no such letter is ever sent to the complainant under these circumstances.³⁷

Upon looking into the matter, Commissioner Monegan learned that there had indeed been an Administrative Investigation (AI) which had reached its conclusion by settlement of a grievance in September of 2006. He learned that Trooper Wooten received a five day suspension. Commissioner Monegan instructed Major Leveque to conduct a page by page examination of the allegations contained in the papers presented by Mr. Palin to determine if all

³⁶ This is Event 5 in the Branchflower Report at 56-57.

³⁷ Mr. Palin produced the documents he stated were in the room with Commissioner Monegan. No document with AST letterhead or communication about the result of any personnel action involving Trooper Wooten was among them.

of the allegations had been previously addressed in the AI that culminated in Trooper Wooten's suspension, or if there were new matters being presented by Mr. Palin. Major Leveque reported back to Commissioner Monegan that all of the matters contained in the papers were part of the AI.

Commissioner Monegan and Todd Palin agree that Commissioner Monegan called Mr. Palin back within a few days to report that all of the matters that he had asserted had been dealt with and there was nothing further that could be done. Mr. Palin questioned Mr. Monegan as to why a criminal case could not be filed against Trooper Wooten regarding the shooting of a moose which was contained in his allegations. Commissioner Monegan responded that there was a statute of limitations defense to any such case, in view of its age, and that it would be problematic for the Palin family since there could be liability to members of the Palin family as well. Mr. Palin states that he was advised by the Commissioner he could discuss the matter with the State Ombudsman. Both agree that Mr. Palin was not pleased or satisfied with the response.

Mr. Palin was a private citizen, not subject to the Ethics Act, who was following up on the suggestion made by a member of AST itself to raise his concerns with Commissioner Monegan. Commissioner Monegan was correct to decline to share the specifics of the personnel action with Mr. Palin because of provisions of the Alaska Personnel Act. There is no violation of the Ethics Act that can be asserted on the basis of these contacts. Governor Palin, in any event, has testified under oath that she was unaware that Todd Palin made these early 2007 inquiries to Commissioner Monegan. Todd Palin confirmed that he did not discuss either the Monegan meeting or Commissioner Monegan's follow up call with the Governor at any time until the matter became the subject of scrutiny in 2008.

The Branchflower Report includes this contact as a basis for concluding, under AS 39.52.110(a), along with subsequent acts, that the Governor violated AS 39.52.110 (Scope of Code) because she did not step in at some point – it is not clear when - to stop the contacts being made to DPS. This contact does not belong among them for the following factual reasons:

1. Governor Palin and Mr. Todd Palin both testified under oath that the Governor did not know that this contact took place. The Governor states she was completely unaware of the contact and Mr. Palin testified he never told his wife about it. No evidence surfaced that contradicted these assertions.
2. The contact by Mr. Palin was entirely legal and was in fact invited by an AST officer in the first place.
3. Mr. Palin is a private citizen not within the jurisdiction of the Ethics Act.

Todd Palin continued to unapologetically complain to others that he was dissatisfied with AST's handling of the Wooten matter. He testified that he did not ever learn, from anyone, that any consequence of significance came of his complaints to AST prior to July 2008 when the existence of the five day suspension became public. He spoke frequently to several of his friends, now in state government, about his concerns. In the winter of 2007, he spoke to Chief of Staff Mike Tibbles. Mr. Tibbles contacted Commissioner Monegan to inquire about Trooper Wooten in February of 2007. When he did so, he did not know about Todd Palin's January meeting with Commissioner Monegan.³⁸

Commissioner Monegan and Mr. Tibbles agree on the basic facts surrounding this contact. Commissioner Monegan testified that he told Mr. Tibbles that the matter had been fully investigated and had resulted in disciplinary action. Commissioner Monegan went on to warn Mr. Tibbles that his inquiry would be discoverable in any civil action brought against the State,

³⁸ The contact between Tibbles and Monegan is listed as Event 9 in the Branchflower Report at 9.

and that it was his view that these inquiries could subject the State to civil liability and individual state officials to personal liability.

Mr. Tibbles agrees that this was Commissioner Monegan's view, but disagreed with an aspect of his analysis. Mr. Tibbles understood and agreed that the matter could not be reopened, but was unsatisfied with Commissioner Monegan's rebuff. Mr. Tibbles's perspective was that there still remained the issue of whether the matter was appropriately handled, even if it could not be undone. He remained concerned, however, as to whether Trooper Wooten would become a problem again and whether AST was providing appropriate supervision going forward. He regarded Commissioner Monegan's discussion about a civil lawsuit as non-responsive since he was not suggesting any action against Trooper Wooten, but was merely making inquiry.³⁹

Todd Palin had heard reports in Wasilla that Trooper Wooten was stating around town that he would never work for Governor Palin (with associated colorful language). He soon thereafter learned from family members and others that Trooper Wooten had hurt his back on the job, was on workers' compensation leave and therefore in fact was not working.⁴⁰ Subsequently, Mr. Palin heard reports that Trooper Wooten was seen in public acting inconsistently with his claim of being injured. Mr. Palin testified that he also saw Trooper Wooten acting in ways inconsistent with a severe back injury. In the same time frame, Mr. Palin, who often travelled on his snow machine far from civilization, saw Mr. Wooten, on several occasions on the Yenta River, near Skwenta.

³⁹ Mr. Tibbles had formerly worked at the DOA and was generally familiar with state hiring and firing matters. According to Mr. Tibbles, Commissioner Monegan was quite emphatic, even to the point of stating that Trooper Wooten could "own your house," referring to personal civil liability merely because Mr. Tibbles was speaking to the Commissioner about the matter. Mr. Tibbles, being aware that merely inquiring about the matter was not likely to pose such dire consequences, felt that Commissioner Monegan was being overly dramatic and protective.

⁴⁰ AST employees, unlike most other state employees, receive full pay benefits, not reduced workers' compensations benefits when they are out on workers' compensation leave.

Todd Palin decided, after several such sightings on the Yenta, to take a camera with him in case he spotted Trooper Wooten again. He did. After taking photographs of Trooper Wooten, Todd Palin decided to report the matter to the state government to determine if workers' compensation fraud was taking place. He reported the matter to Mr. Tibbles, Commissioner Monegan and was directed to Brad Thompson, Director of Risk Management in the DOA who has responsibility for such matters.⁴¹ Todd Palin was also close with Frank Bailey, the Governor's Director of Boards and Commissions, and frequently discussed Trooper Wooten with him.

Mr. Palin had several conversations with Mr. Thompson who followed up with DPS and sought an independent medical examination on the strength of the report by Mr. Palin. Mr. Bailey also made inquiries about the matter with Mr. Thompson. Mr. Thompson asserted under oath that at no time did he share the contents of Mr. Wooten's workers' compensation with Todd Palin or Frank Bailey. Mr. Thompson and Mr. Bailey report that Mr. Palin alleged that Trooper Wooten may have lied on his job application by failing to disclose a previous back injury.

Mr. Thompson's response to the foregoing was to seek and Independent Medical Evaluation of Trooper Wooten. Such an evaluation was obtained, and the State decided to controvert the workers' compensation claim on the basis of the medical examination. Numerous contacts took place as a consequence of the controversion in which Mr. Tibbles and other members of state government requested to know about the status of the matter. These inquiries did not include any from Governor Palin. As a result of the controversion, Trooper Wooten was

⁴¹ Mr. Palin's report of the snow machine incident is listed in the Branchflower Report at 59 as Event 10.

returned to light duty, his workers' compensation claim was settled with a final lump sum payment and Mr. Wooten returned to work.⁴²

Michael Tibbles, having learned about Trooper Wooten's workers' compensation issues, decided to speak to Dianne Kiesel, Director of Personnel, DOA. Ms. Kiesel had signed off on Trooper Wooten's suspension in September 2006, though she barely remembered it. Mr. Tibbles asked to view the personnel file for Trooper Wooten and Dianne Kiesel provided it. Mr. Tibbles, after reading the allegations and the findings in the grievance matter, disagreed with the result and made the decision to monitor the workers' compensation matter to insure that it was handled correctly. He from time to time asked for reports about the matter. Brad Thompson handled the matter personally. Dianne Kiesel also handled her department's role in the matter personally.⁴³

There were several discussions among DPS, Administration and the Governor's Office (Mr. Tibbles) regarding Trooper Wooten's return to work. Mr. Tibbles testified that he was concerned that Trooper Wooten was a problem employee and should be kept from significant interaction with the public. Inquiries with DPS were made as to what assignments could be made that would keep Trooper Wooten out of contact with the public, including desk jobs, transfers to remote locations, prisoner transport or other assignments. Kim Peterson, an assistant to Commissioner Monegan at DPS reported back on the limitations any attempt to force

⁴² In the course of the controversy, there was discussion as to whether the conduct constituted workers' compensation fraud or whether the conduct was a firing offense. Trooper Wooten supplied an after the fact statement from his chiropractor stating that he had previously released Trooper Wooten to take extended rides on snow machines but that he was not fit to sit for long periods. It is evident that the State officials were skeptical of this analysis, but there was no attempt to charge Trooper Wooten with workers' compensation fraud or to alter his employment situation with AST besides returning him to work for light duty.

⁴³ Brad Thompson was Director of Risk Management which handles controverted workers' compensation cases with the assistance of the Department of Law. Dianne Kiesel was then Director of Personnel. The Personnel Department often participates in assisting workers to return to work as their recovery permits.

such assignments because of the requirements of the PSEA contract and ultimately Trooper Wooten's return to work was handled and supervised by entirely by DPS.

Trooper Wooten's workers' compensation attorney has stated publicly that ultimately the workers' compensation case was handled appropriately and the same as any other.⁴⁴ This was also the conclusion of the Branchflower Report.⁴⁵ Independent Counsel has uncovered no evidence that Trooper Wooten's workers' compensation files were ever released in an unauthorized way.⁴⁶

Governor Palin states she was not informed of any of these contacts regarding the Wooten workers' compensation issues. Todd Palin agrees that he did not discuss these matters with his wife. Further, both state that at some time in the winter of 2007, Governor Palin communicated to Todd Palin that she was tired of talking about Trooper Wooten and didn't want Mr. Palin bring him up with her any more. Todd Palin agrees that the Governor told him this and he states that he complied and avoided bringing Trooper Wooten up with the Governor.

Michael Tibbles, Brad Thompson, Nicki Neal, Frank Bailey, Mike Nizich, Annette Kreitzer, Kevin Brooks and Dianne Kiesel all testified that they had no conversation about any of the foregoing with the Governor and she had no reason to know that any of the foregoing was happening.

Commissioner Monegan reports that he received a telephone call from Commissioner of Administration Annette Kreitzer in the summer of 2007 inquiring about

⁴⁴ Wesley Loy, *Wooten's Lawyer Saw No Intervention*, Anchorage Daily News, Sept. 25, 2008 at A3.

⁴⁵ Branchflower Report at 8.

⁴⁶ There are two such files. One maintained by Risk Management and another by the Workers' Compensation adjudicative branch in the Department of Administration. Neither file was improperly compromised. The PSEA attached to its complaint a document signing the adjudicative file out to Juneau from Anchorage by Mr. Michael Monagle, Program Coordinator, Division of Workers' Compensation. Mr. Monagle has stated, under oath, that contrary to being involved in an unauthorized transmission of the file, the file was moved at his direction after the allegations surrounding this case surfaced in July of 2008 and the file was placed in a secure location in his office for just the opposite reason – to secure the file.

Michael Wooten.⁴⁷ Commissioner Monegan states that, as he had with the Governor, Chief of Staff Tibbles, and later Attorney General Colberg, he cut off her inquiry after a single sentence and warned that there could be a lawsuit, the conversation was discoverable, "you don't want Trooper Wooten to own your house," that the matter was resolved and over with and the subject shouldn't be discussed.

Commissioner Kreitzer denies that this conversation took place. She states that she does not believe that is it a failure of recollection on her part and that she would have remembered the conversation had it occurred. She further states that she keeps meticulous notes of important contacts with others, particularly other commissioners, and that if a conversation of this nature had occurred, she would have noted it and maintained a record of the contact. She has no such record. No corroborative record of this call between Commissioner Monegan and Commissioner Kreitzer has been produced. Commissioner Monegan agrees that the nature of the inquiry Commissioner Kreitzer wished to take up with him is not known to him because he cut off her inquiry before the precise nature of it was expressed.

In September of 2007, as reported to Commissioner Monegan by Col Audie Holloway, Director of AST, Todd Palin called Mr. Holloway following a news event about settling a lawsuit involving a Trooper Spitzer. According to Holloway as reported by Monegan, Mr. Palin wanted to know what they were doing about the Spitzer settlement and why the State was keeping an employee that was costing the State money. Col. Holloway (according to Monegan) told Mr. Palin it was a personnel matter that was not his business. Col. Holloway was told (again according to Monegan) that Mr. Palin told Holloway that Spitzer was a friend of

⁴⁷ This contact is part of Event 10 in the Branchflower Report at 59-60 though it bears no relevance to the other matters listed there.

Trooper Wooten.⁴⁸ Mr. Palin states he was talking to Col. Holloway about the Spitzer news item as part of a larger conversation relating to retrieving the documents he had given Commissioner Monegan in January of 2007. Mr. Palin states the matter was a topic of conversation in Wasilla and the Palins were getting calls about the matter at his home and he told Mr. Holloway about the calls that were being received. Mr. Palin states Mr. Holloway stated it was a personnel matter that couldn't be discussed. Mr. Palin testified he said, "No problem, I understand."

This event does not belong in a list of events related to the Ethics Act. Mr. Palin was inquiring about a matter of public interest. He was a private citizen. The conversation had almost nothing to do with Trooper Wooten and no action was requested with respect to Trooper Wooten and no inquiry was made about him.

In the fall of 2007, Commissioner Monegan reports that he received a telephone call from Attorney General Talis Colberg about Trooper Wooten.⁴⁹ Commissioner Monegan responded that he cut Attorney General Colberg off at the outset of the conversation and stated his view about civil liability as described above. Commissioner Monegan testified that he asked Attorney General Colberg if his analysis of the legal situation was correct, and the Attorney General agreed that it was. Commissioner Monegan testified that he asked Mr. Colberg if he would talk to the "boss" and tell her that it was only going to "spill out" and that the more people that get involved in this the greater the chance that this will come out in the public. Commissioner Monegan testified that Mr. Colberg indicated he would "talk to them."

Attorney General Colberg confirms that a conversation occurred. He states he was making the inquiry following complaints and comments made to him by Todd Palin about Trooper Wooten. He states Mr. Palin had not asked for any specific action to be taken with

⁴⁸ This is Event 12 in the Branchflower Report at 61.

⁴⁹ This is Event 13 in the Branchflower Report at 61-62.

respect to Trooper Wooten. Mr. Palin asked Mr. Colberg if anything could be done about the Trooper. Mr. Colberg did not know about any of the previous contacts described above that had been made prior to the fall of 2007 to other officials. He also did not know anything about Trooper Wooten when he spoke to Commissioner Monegan. Mr. Colberg does not confirm that portion of the conversation wherein he is described as agreeing with Mr. Monegan's assessment of the potential for civil liability. Mr. Colberg communicated that he understood that the matter was over and done with and stated that he would pass that on to Mr. Palin. Mr. Colberg states he in fact did pass on the message to Mr. Palin. Neither Attorney General Colberg, Mr. Palin nor Commissioner Monegan ever discussed these contacts with Governor Palin.

In the fall and winter of 2007-2008 discussions were ongoing at DPS and DOA about Trooper Wooten's return to work. Several meetings and discussions took place involving officials at the Director, Deputy Commissioner and Commissioner level of DOA in consultation with officials at DPS and with Chief of Staff Tibbles of the Governor's Office. On November 19, 2007, Mr. Tibbles requested a status report on Trooper Wooten. The meeting was attended by Mr. Brooks, Mr. Thompson, Ms. Neal and Ms. Kiesel was present by telephone. There were conversations about the placement of Trooper Wooten upon his return to light duty. There is conflicting evidence about what was discussed. Notes of the meeting could support an inference that the placement discussions may have meandered into discussion supporting a motivation to constructively discharge Trooper Wooten by assigning him to duties that would cause him to resign. Sworn witness testimony from those attending the meeting is somewhat inconsistent with some entries on notes taken at the time. Taken together, however, it appears that the overall tenor of the meeting was concern on the part of Mr. Tibbles, and perhaps others, that the State

was better off, from a potential liability standpoint, if contact between Trooper Wooten and the public could be limited.

It is crystal clear that, after the meeting, and after consultation with DPS, there was no action taken with respect to Trooper Wooten's return to limited duty that was designed to cause Trooper Wooten to resign. DPS ultimately made the placement and duty assignments of Trooper Wooten without specific direction from either the Governor's office or DOA. All agree that the Governor was never informed of this meeting and was not involved in any aspect of Trooper Wooten's workers' compensation issues.

Todd Palin also reported to DPS, in the fall of 2007, as did Frank Bailey, that Trooper Wooten was about to take leave to go moose hunting which was regarded as inconsistent with his light duty status. The matter was looked into by DPS and determined not to be true. No action was taken. All witnesses involved agree that they did not tell the Governor about this event and she testified she did not know about it.

Also in the fall of 2007, Todd Palin reported to AST that Trooper Wooten was seen dropping off children at school at 8:01 a.m. in his patrol car during his active duty shift.⁵⁰ DPS looked into the matter and determined the action was authorized by his supervisor. The Governor did not know about these events. This event does not belong in a list of events involving the Ethics Act since this is a report by a private citizen.

On February 29, 2008, Frank Bailey made a phone call to Lt. Rodney Dial of AST at the Ketchikan Detachment that was recorded. The transcript of this recording is attached as Ex. 6.⁵¹ Mr. Bailey knew Lt. Dial when he was a Palin campaign volunteer and from when Lt. Dial served as legislative liaison for DPS. Neither Governor Palin nor Todd Palin knew Lt. Dial

⁵⁰ This is Event 11 of the Branchflower Report at 61. Commissioner Monegan alleged that he suspected, due to the way the event was communicated, that a private investigator was involved in this report. He is mistaken.

⁵¹ This is Event 14 of the Branchflower Report at 62.

well. Neither the Governor nor Todd Palin knew that Frank Bailey was going to make the call before it was made. Neither the Governor nor Todd Palin authorized Mr. Bailey to discuss the matter with Lt. Dial or speak on their behalf. Mr. Bailey testified that he was making the call to complain about the handling of Trooper Wooten, along with other matters, and wanted to express his view that Trooper Wooten should have been terminated. He confirms he did this entirely on his own and after looking at the transcript in retrospect admits that he appeared to be speaking on behalf of Todd Palin and the Governor, but was not. He did not know the call was recorded and did not tell either the Governor or Todd Palin that he made the call after it was completed.

In the call, Mr. Bailey described certain aspects of Mr. Wooten's personnel situation, and made the allegation that Trooper Wooten lied on his personnel application and that he may have been malingering with respect to his workers' compensation claim. Mr. Bailey testified under oath that the source of this information was Todd Palin. Mr. Palin confirms this. Mr. Thompson, who is mentioned on the tape, described his contact with Mr. Bailey as providing him with information as to how the process works to contravert a workers' compensation matter and states that he did not share the content of the workers' compensation file with Mr. Bailey at all. An examination of the Dial call transcript reveals that the statements that were made by Mr. Bailey could have come exclusively from his conversations with Todd Palin without ever reviewing the workers' compensation file.

Lt. Dial reported the call to AST Col. John Glass. Col. Glass reports that he contacted Frank Bailey and "lit in to him." He states he told Mr. Bailey his call was improper, the Wooten matter had been over for 2 ½ years and it was wrong for him to pursue the matter with Lt. Dial. Mr. Bailey denies this. He states instead that the conversations he had with Col.

Glass were cordial and were about his report of the use of a patrol car by Trooper Wooten to transport his children on multiple occasions.

Commissioner Monegan states that when he learned of the call he left a voicemail for Frank Bailey admonishing him in the same fashion as he had Mr. Tibbles, Commissioner Kreitzer and Attorney General Colberg.⁵² Commissioner Monegan states he received a message back from Mr. Bailey who said, "I read you loud and clear." Mr. Bailey denies this took place.

The placing of this phone call, had it knowingly been done on behalf of Governor Palin, could have been used as evidence of a violation of the Ethics Act pursuant to AS 39.52.190 which prohibits a public officer from knowingly assisting another public officer to violate the Act. But all agree that Governor Palin had no idea that Mr. Bailey was making this call. Mr. Bailey didn't specifically ask Lt. Dial to take action on Trooper Wooten, but the tenor of his conversation made quite clear that he held the personal opinion that he thought such action should be taken. He also made the suggestion that he was forwarding on to DPS the views of the Governor.

The issue, as to Frank Bailey is whether he was doing so to further some private, personal interest. A personal interest could be that Mr. Bailey was trying to curry favor with the Governor, or Todd Palin, in making this phone call. It may also be that Mr. Bailey was expressing his criticism of the DPS action, and inquiring into it, because he merely disagreed with it on the merits. If it is the former, AS 39.52.110(b)(2) teaches that this would be the kind of personal interest that is non-existent or speculative. See, *In re Investigation of Ethics Complaint Dated August 3, 2005*. If it is the latter, AS 39.52.110(b) states that the interest of Mr.

⁵² That is, he discussed the fact that the matter had been grieved and was closed and he discussed the potential for civil liability to the State.

Bailey is of a type that is possessed generally by the public.⁵³ Also, the Ethics Act is to be utilized with respect to actual improper interest in a matter and not merely the appearance of an impropriety. 9 AAC 52.010.

Shortly after this call, on March 6, 2008 Frank Bailey called Deputy Commissioner John Glass of DPS concerning to report that he was aware that Michael Wooten had been observed driving his patrol vehicle with one of his children in the vehicle. He also reported that Trooper Wooten was seen parked in a patrol vehicle outside the school, during his shift, for an extended period.⁵⁴ DPS looked into the matter and reported that while normally such use of a patrol vehicle was not authorized by AST, in this case there were exceptions to the general proscription against such use that applied. Mr. Bailey, in passing on a complaint that could have been facially valid to an agency authorized to deal with the complaint, is not a violation of the Ethics Act.

In the spring of 2008, John Glass reports that he raised the issue of Trooper Wooten with Todd Palin. He states he did so because he had heard that Mr. Palin had raised the issue of the snow machine incident.⁵⁵ Mr. Glass lectured Mr. Palin that he should leave the Wooten issue alone as it could be an embarrassment to the Governor. Mr. Palin held his ground as to his belief that Trooper Wooten should not be a trooper in response. Mr. Palin states that he doesn't believe he was the first to raise Wooten in this conversation. His response was to say, "Geez, ok."

This is an occasion when a state official brought up the matter to Mr. Palin and admonished him not to become involved in complaining about Trooper Wooten because he had

⁵³ There were others in state government, including at DPS and DOA who were involved in the grievance procedure itself, who did not concur with the action taken.

⁵⁴ This is Event 15 of the Branchflower Report at 63.

⁵⁵ Glass initiating the conversation with Todd Palin, and its contents, is listed as Event 16 in the Branchflower Report at 63-64.

previously been involved in the workers' compensation complaint which was itself not a violation of any law. There is no indication this conversation was shared with anyone else in state government. It is not a violation of the Ethics Act and does not belong on a list of events to support a duty by the Governor to take action.

Prior to Commissioner Monegan's dismissal from DPS on July 11, 2008, in the summer of 2008, there were two additional miscellaneous contacts involving Trooper Wooten. One related to avoiding assignment of Trooper Wooten to events where the Governor was expected to be, which was handled as a security matter.⁵⁶ A second incident involved the planned attendance by the Governor at an annual memorial event for AST. Commissioner Monegan provided the Governor's Office in Anchorage with a commemorative poster created for AST. Without realizing it, the poster he provided was a photo of Trooper Wooten. While members of the Governor's staff were quite perplexed and outraged by the incident, reports from those who saw the Governor's reaction when she was informed of it, were that she did not have a strong reaction and did not dwell on the incident.

C. Legal Analysis Pertaining to the Acts of Others and any Duty Governor Palin Had to Curtail Them.

Under either the legal construct described above which Independent Counsel believes is applicable, or that employed in the Branchflower Report, this evidence does not support a finding of probable cause against Governor Palin for "inaction" in failing to curtail the actions Todd Palin and these officials. The first and most obvious point is that no one, not even Commissioner Monegan, has asserted that any of these events were reported to the Governor or that she knew about any of them. The Branchflower Report assumes that they were. On this basis alone, there is a lack of probable cause.

⁵⁶ There were other matters relating to the Governor's security, some pertaining to the avoidance of contact with Trooper Wooten, which are not deemed particularly relevant here and which have not been chronicled.

Second, the contacts can be broken down into four categories. One is inquiry into the status of Trooper Wooten's employment by officials who were inquiring on Todd Palin's behalf. It is apparent that each time they did so, they were unaware that a similar inquiry had been made previously. Chief of Staff Tibbles was unaware of Todd Palin's earlier inquiry to Commissioner Monegan. Attorney General Colberg didn't know anything about the matter when he inquired of Commissioner Monegan. If Commissioner Kreitzer made any inquiry at all, we don't know its intent or purpose since Commissioner Monegan did not wish to hear her out, and Commissioner Kreitzer denies that she participated in any such conversation. As previously discussed, Todd Palin was making inquiries without holding public office and cannot, by definition, violate the Ethics Act. Inquiring into the status of an employment matter, without more, is not a violation of the Ethics Act.

The second category of contacts relate to complaint made against Trooper Wooten including the information provided in connection with Trooper Wooten's workers' compensation matter. There is nothing illegal about a private citizen bringing to the attention of the State evidence of suspected insurance fraud. Indeed, those that work in the area state that it happens all the time. Moreover, as a result of the information imparted, the State ordered an independent medical evaluation, which led to a controversion of the claim, which in turn led to Trooper Wooten being returned to work. The actions taken to supervise or monitor the process by Chief of Staff Tibbles and others, if a bit out of the ordinary, were within the authority of the officials participating. Mr. Tibbles explains the reason for his role was his concern that this involved a problem employee, who had not, in his view, had his previous matter handled properly and he didn't want this second issue improperly handled. Others in state government agreed. While there may have been some discussion, and it is not clear that there was, that may

have come close to an improper motivation regarding Trooper Wooten's return to duty, the conversation, if any, was brief and no improper action was taken. The Governor was not involved and did not know about any of these meetings and did not insert herself into the handling of the workers' compensation claim whatsoever.

The third category is the Frank Bailey call. Although it is a violation of the Ethics Act to assist another to engage in proscribed conduct under that Act, Mr. Bailey was not asked to so assist. He was acting with neither the authority nor the knowledge of either Todd Palin or the Governor. He was not acting within the course and scope of his authority as Director of Boards and Commissions and had not been given the authority to conduct this call. The call cannot be used to charge the Governor with a failure to act under AS 39.52.960(14). Neither was the call made to promote a material and non-speculative personal interest of Mr. Bailey.

The fourth category consists of miscellaneous events, often cited in the Branchflower Report that have nothing to do with violation of the Ethics Act.

None of these events, taken alone or in combination, provide evidence of probable cause for a violation of AS 39.52.120(b)(4). If the act of others did not constitute a violation of the Act, they also do not provide a foundation for concluding that the Governor violated the Ethics Act by failing to stop them.

3. The Dismissal of Commissioner Monegan.

Finally, having addressed the affirmative acts of Governor Palin that had anything to do with Trooper Wooten, and having addressed the acts of other officials and Mr. Palin, we turn to the dismissal of Commissioner Monegan. The starting point, of course, is the indisputable legal principle that commissioners serve at the pleasure of governors in our system, and governors are normally free to make changes to that office without explaining why. Alaska

Const. Art. III, Sec. 25. This is a particularly important concept, finding its source expressly within the constitution itself, since the manner in which governors carry out their elected mandate is through the appointments they make to their cabinet. The ability to appoint and change appointments, without scrutiny, except in the rarest of circumstances, is an important power the executive branch enjoys which cannot be abrogated or limited without doing violence to an express power afforded at the constitutional level.

Commissioner Monegan asserts that he believes he was terminated because he upheld his legal duty to insure that the rights of Trooper Wooten were not compromised. He appears in his papers before the Board and in his testimony to conclude this because he disagrees with the assessment of his performance, unrelated to the Wooten matter, that has been articulated by the Governor. Mr. Monegan appears to conclude that because his termination could not have been for the reasons stated, it must have been related to the position he took with respect to Trooper Wooten. It is not clear whether he believes that Trooper Wooten was the only reason he was terminated or whether he believes that his termination as Commissioner was improper if that were one the reasons. If it is the latter, there are not grounds for asserting a claim under the Ethics Act for terminating a commissioner. Otherwise, if the Governor has valid reasons for her actions and a claim under the Ethics Act can be made, the Governor would be unable to take the action the constitution clearly states she may take. Her actions under such circumstances should be sustained without bringing into play the Ethics Act. Otherwise, a Governor who had valid and invalid reasons for wanting to make a change would be bound to retain a commissioner. The Ethics Act was not intended to limit a Governors actions under such circumstances. Even if it did, the constitutional mandate would take precedence. Therefore, it is only if such a motivation were the sole reason for the action that the Act comes into play. Commissioner Monegan also

bases his contention on the claim that Governor Palin initially gave no reason for her action and then, he claims, gave several different responses for the basis for her actions.

The Governor has stated, under oath, that the Wooten matter played no role in her decision to terminate Mr. Monegan as Commissioner of DPS. Our investigation revealed that one of the important policy platforms expressed by the Governor from the outset was to reduce the size and cost of state government. To implement the goal of reducing the size of government and cutting spending, a process for arriving at a budget was implemented through the Office of Management and Budget (OMB). This was done very early in the process to provide a centralized clearing house for discussion, debate and proposals by and between the various state departments so that budgetary triage and prioritization could be assessed. In addition, departments were grouped, for these purposes, and assigned to a special assistant to the Governor who would coordinate between the department to which they were assigned and OMB. The Director of OMB was Karen Rehfeld. The Special Assistant assigned to DPS for these purposes was Randall Ruaro. Through communication between OMB, through cabinet meetings and a specific process managed by OMB, the Governor's budget was to be arrived at.

Governor Palin testified that she made the decision to dismiss Commissioner Monegan from DPS primarily for reasons related to the failure of Commissioner Monegan to cooperate with this process. In her sworn statement, she testified to the following:

- AST had appeared to be, from time to time, requesting increases to its budget while failing to make adequate progress on filling existing vacant positions. Governor Palin referred specifically to an idea she had, inspired by her visit to military serving in Iraq, to institute an aggressive recruitment program among military personnel about to leave military service. She did not feel that there was adequate follow up on the idea, which was presented to Commissioner Monegan.
- AST's ten year plan was drafted and presented to the Governor for signature outside of the OMB process described above and without consultation with OMB. The plan had significant budgetary impacts. OMB had complained about this.

- An initiative, begun by Commissioner Monegan for a vertical sexual assault prosecution plan for rural Alaska was championed by Commissioner Monegan with inadequate input and vetting by OMB and gubernatorial staff. Contacts were made and plans were written prematurely, in the Governor's view, to seek potential federal earmark legislation to help fund the project which was likely to be very expensive. The project would likely also have attendant state costs. The Governor testified that whatever the overall merits of such a proposal, there had been inadequate involvement by OMB and gubernatorial staff in the project before planning trips to promote the project to the Alaska delegation for federal funding.
- Commissioner Monegan had a tendency to take positions publically before checking out whether the position he was taking was consistent with her Administration's policy. An example given was Commissioner Monegan's public support for a matter that the Governor had already vetoed.
- The Governor had received reports that Commissioner Monegan had interfered with union negotiations or had at least been more of an advocate for the union's positions than for management's, in a fashion inconsistent with the direction of the Administration.⁵⁷
- The Director of OMB lacked confidence that Commissioner Monegan would support the positions of the Administration on budgetary matters before the legislature.
- There were issues regarding proper Trooper accountability, discipline and management that were illustrated by several high profile cases to which Commissioner Monegan had devoted insufficient attention and response.

As a result of our investigation, Independent Counsel had searches conducted of the State's e-mail database to determine if any of the concerns described by the Governor were discussed in writing, at the time, and before the controversies that led to the matters before the Board and the Legislature arose. Our search led to substantial corroboration that there were ongoing complaints by OMB, members of the Governor's Office and the Chief of Staff about these matters and others. Attached are a representative sample of 15 such e-mails out of many more that could be cited. Exhibits 7 - 22.

An initial concern, upon reading these e-mails, was that the communications are at the OMB and gubernatorial staff level, and the e-mails are not sent to the Governor directly. To examine whether this was an "after the fact" justification for the action taken with respect to Commissioner Monegan in July of 2008, Independent Counsel questioned witnesses about

⁵⁷ The PSEA has filed material questioning this conclusion. But the issue is not whether the Governor was correct, but whether she was truly receiving this input at the time, and whether she believed to be true. There is substantial evidence that reports of this nature were reaching the Governor. See e.g. Exhibit 15.

discussions with the Governor about these matters prior to the decision to dismiss Commissioner Monegan. There are three witnesses, who testified under oath, who corroborated much of the Governor's testimony.

Randall Ruaro testified to a lengthy meeting on May 6, 2008 of gubernatorial staff at which he participated. In this meeting, Mr. Ruaro addressed the status of each department to which he was assigned. When it came to DPS, Mr. Ruaro expressed substantial concern and frustration about the actions of Commissioner Monegan to the Governor. He testified that he discussed the fact that it took DPS substantially more time than other departments to obtain critical budget related information. He described frustration over the proposal for the rural vertical sexual assault prosecution plan which would add a number of additional and expensive positions. He told the Governor and those present that he felt the plan did not fit into the Governor's stated budget priorities and had virtually no chance of passing the legislature, given the positions that the Administration had taken with key legislators on related matters. Mr. Ruaro reported that this initiative was being pursued in the face of 40 existing vacancies at AST, and after these concerns had been communicated by OMB and by him, to DPS. Mr. Ruaro further informed the Governor and others present that he found Commissioner Monegan generally difficult to work with on budget matters.

Mr. Ruaro also recalled a discussion with Mr. Nizich, before July of 2008, in which Mr. Nizich reported that the Governor was considering terminating Mr. Monegan's as Commissioner of DPS and was seeking advice as to whether Mr. Monegan would be better suited to serve the Administration as Director of the Alcohol Beverage Control (ABC) Board. Mr. Ruaro responded that he thought it would be a very good fit, that Mr. Monegan would be

good at that job and that unlike at DPS, his involvement in budget issues would be minimal, he would be taking direction from a board and "he would not be involved in union issues."

Mr. Nizich testified that when he was Deputy Chief of Staff in the winter of 2008 he was party to several discussions with Chief of Staff Tibbles in which concerns were raised about Commissioner Monegan's going outside of the agreed upon budget process. In the course of those discussions, Mr. Nizich testified that there were two or three meetings that he attended previously when these issues arose concerning Commissioner Monegan came up, without reaching the point of discussing replacing Commissioner Monegan. Governor Palin then came to him in the May/June timeframe of 2008 and told him of her concerns with respect to Commissioner Monegan's inability to control his statements about budgetary matters and those of others within DPS. The Governor mentioned her frustration on the lack of availability of the State's King Air airplane for gubernatorial business. The Governor also mentioned her concerns about the vertical sexual assault unit that was being proposed, and her concern that more emphasis was not being placed on filling existing employment vacancies at DPS. She also mentioned the failure to follow up on her "Troop to Troopers" idea, an allusion to her trip to Iraq and her desire to recruit Troopers from the military which had not been followed up on.

In early July, the conversations between the Governor and Mr. Nizich became more definite, and Mr. Nizich began undergoing the process of replacing Commissioner Monegan. Kris Perry was a witness to this conversation. Though she was not directly involved in it, she was in the room when it took place. She did not remember or pay attention to all of the conversation, but did testify under oath to hearing portions of the conversation in which reassigning Commissioner Monegan to be Director of the ABC Board came up. Ms. Perry remembers that the discussion included the topic of Commissioner Monegan pushing back on the

budget, not providing adequate support for the Governor's budget efforts, and not being a team player. Ms. Perry specifically remembers that the Governor wanted to reassign Commissioner Monegan because she did want entirely sever him from service within her administration. Mr. Frank Bailey also corroborated the Governor's assertions with respect to her concern about the Commissioner's lack of progress on trooper recruitment as part of discussions regarding replacing Commissioner Monegan with Mr. Kopp in July of 2008.

Mr. Nizich handled the exit interview with Commissioner Monegan. The two men were alone. Mr. Nizich and Commissioner Monegan agree that Commissioner Monegan posed questions to Mr. Nizich as to the reasons for his termination and that Mr. Nizich did not answer them. According to Commissioner Monegan he asked if the action being taken related to: Wooten? The security detail? The plane? Inadequate face time with the Governor? Mr. Nizich testified Mr. Wooten's name did not come up during this dialogue.

Commissioner Monegan, in his papers filed before the Board, asserts that the Governor's stated reasons for his termination as Commissioner are undercut by the Governor's initial failure to provide a reason and subsequent explanations which he contends evolved over time and were inconsistent with one another. The evidence suggests that both Commissioner Monegan and Governor Palin gave statements that evolved over time. Independent Counsel concludes that these various statements are not proof to undercut the reasons stated by the Governor. The evidence of contemporaneous e-mails raising issues related to the budget as described by the Governor, plus the testimony of three corroborating witnesses testifying under oath to the fact that these issues were seriously discussed with the Governor at the time, more

than meet the burden, which is not a high one, given the Governor's express rights under the Alaska Constitution.⁵⁸

Instead, what appears to have happened is that initially the separation of Commissioner Monegan from state government was amicable. It is not uncommon for employers to refrain from providing extended public statements following a decision to terminate an employee from a position. It is evident that Governor Palin found Commissioner Monegan's expertise and contribution to state government valuable in many ways, as evidenced by her desire to retain him in an important position in state government. Mr. Nizich testified that there was a period of reflection and vacillation by the Governor in the weeks prior to her final decision. Commissioner Monegan, for his part, initially wrote a very conciliatory e-mail to his colleagues at the time of his departure. See Exhibit 22, attached.

Scrutiny surrounding Commissioner Monegan's termination as Commissioner became intense in July and August 2008. The statements and charges, back and forth, are not as credible as the evidence that existed prior to July 2008 and the sworn testimony of officials who were directly involved in the process prior to that time. Among the most telling of such testimony included in all of this is the testimony of Commissioner Monegan that at no time was he asked to fire Trooper Wooten or take any specific employment action.

4. Limitation on the Evidence Reviewed in Support of These Conclusions

A cautionary note must be made with respect to the investigation conducted. Efforts to locate and secure all relevant e-mails have been exceedingly difficult in this case. E-

⁵⁸ In the Governor's papers filed by her attorneys before the Board, Commissioner Monegan is described as being "insubordinate" in his actions to which Commissioner Monegan takes great exception. To the extent that the word "insubordination" is intended to convey a direct order from the Governor to Commissioner Monegan which was flouted or disobeyed, Independent Counsel found no evidence of such an event. Governor Palin clarified in her testimony, that the difficulties Commissioner Monegan had following directives were primarily between OMB and Commissioner Monegan, and that she regarded OMB to have supervisory authority over commissioners when it came to the budget process. See Exhibits 7-14, 16-21 attached.

mail communication has increasingly replaced the use of written correspondence or making documented phone calls. Search terms were selected to attempt to locate relevant evidence from huge amounts of data. This was done on our behalf by the Attorney General's Office which had frozen the electronic data of 22 relevant state officials when request by the Legislative Council's investigation. Efforts were made to use the most effective search terms to capture important communications while still making the amount of information to review manageable. But this is an imperfect process and there were times when we were in possession of pertinent communications from other sources that did not turn up in the searches because a search term was not used, or for some other reason. There were times when witnesses provided us with e-mails that were pertinent that the searches had not recovered.

Second, we are concerned about the use by the Governor and some of her staff of private e-mail accounts for government business. This is not illegal. But the practice, along with what we found to be bad advice that was apparently received within the Governor's Office, does not give us the assurance that we were able to locate all of the e-mails. In particular, the Governor and Frank Bailey conducted government business on private accounts. Todd Palin, of course, did not have a government e-mail account. Both Governor Palin and Frank Bailey testified that they had been told there was not a document retention policy that applied to e-mails in the Governor's Office. Our investigation revealed that if they received this advice, it was mistaken. We found document retention schedules for the Governor's Office and for the Director of Boards and Commissions that were specific and readily available at the Office of State Archives.

The Governor and Frank Bailey deleted e-mails without consulting this schedule (since they did not know of its existence). The Governor stated that she relied upon the state

computer system to catch and archive any e-mails that would be sent to a recipient with a state e-mail address. This would not capture any e-mails, however, sent between the Governor's private account and any other private account, including Frank Bailey's and Todd Palin's.

We were provided existing e-mails from the Governor's private Yahoo account as it existed at the time of its closing when the account was hacked by an intruder in September 2008. Nothing was in them that shed any light on this matter. Independent Counsel contacted the Legal Department for Yahoo and spoke with Emily Hancock who stated that e-mails on Yahoo accounts are currently beyond retrieval between 24 and 48 hours after deletion, making a subpoena to Yahoo for deleted e-mails fruitless.⁵⁹

We also investigated a private e-mail network that was opened by Frank Bailey for the intended use of Governor Palin, Todd Palin, Frank Bailey, Ivey Fry and Kris Perry. E-mail accounts were not specifically activated for the Governor on this account until late July of 2008. The accounts for Governor and Todd Palin were also shut down on September 17, 2008. Accounts for the others were shut down on October 15, 2008. According to the system administrator, who backed up all information that existed on the account as of September 17th, any e-mails deleted longer than 14 days prior to account closure would not have been backed up and could not be retrieved as part of the backup process.

Independent Counsel cannot say that any e-mails were destroyed that were pertinent to this inquiry. Neither can it be said that they were not.⁶⁰ There are separate judicial proceedings looking into the creation, maintenance and preservation of state records. We understand that a working group has been created to discuss the issue and recommend action. We recommend that the private use of e-mail accounts specifically created to be used to conduct

⁵⁹ Frank Bailey's private account was also at Yahoo.

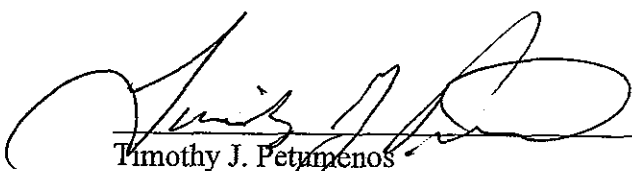
⁶⁰ Our investigation suggested that the archiving on the State computer system is only guaranteed for a period of six to seven months unless human intervention places e-mails into the archiving system to preserve public records.

state business be fully addressed. We also recommend that the document retention policies in the Governor's Office be reviewed and that there be additional communication as to what the current requirements are.

CONCLUSION

There is no probable cause to believe that the Governor, or any other state official, violated the Alaska Executive Ethics Act in connection with these matters.

Dated this 3rd day of November, 2008.



Timothy J. Petymenos
Independent Counsel to the Personnel Board

EXHIBITS TO REPORT OF INDEPENDENT COUNSEL

August 10, 2005 email from Sarah Palin to Julia Grimes	Exhibit 1
February 7, 2007 email from Sarah Palin to Walt Monegan	Exhibit 2
May 7, 2007 email from Gov. Palin to Walt Monegan	Exhibit 3
July 17, 2007 email from Kristina Perry to Gary Wheeler	Exhibit 4
September 27, 2007 email from Sarah Palin to Walt Monegan	Exhibit 5
February 29, 2008 transcript of conversation between Frank Bailey and Trooper Rodney Dial	Exhibit 6
June 27, 2007 email string from Christopher Clark to Karen Rehfeld	Exhibit 7
August 6, 2007 Memorandum from Karen Rehfeld	Exhibit 8
October 9, 2007 email string from Karen Rehfeld to Randall Ruaro	Exhibit 9
October 26, 2007 Memorandum from Karen Rehfeld	Exhibit 10
December 12, 2007 email from Randall Ruaro to Karen Rehfeld	Exhibit 11
December 12, 2007 email string from Randall Ruaro to Karen Rehfeld	Exhibit 12
December 2007 email from Randall Ruaro to Karen Rehfeld	Exhibit 13
March 3, 2008 email string from Randall Ruaro to Karen Rehfeld	Exhibit 14
March 10, 2008 email string from Annette Kreitzer to Walt Monegan	Exhibit 15
April 7, 2008 email from Randall Ruaro to Karen Rehfeld	Exhibit 16
May 7, 2008 email string from Karen Rehfeld to Randall Ruaro	Exhibit 17
June 18, 2008 email string from Lauren Rice to Audie Holloway	Exhibit 18
June 30, 2008 email from Randall Ruaro to Karen Rehfeld	Exhibit 19
July 7, 2008 email from John Katz to Randall Ruaro	Exhibit 20
July 7, 2008 email from Karen Rehfeld to John Katz	Exhibit 21
July 12, 2008 email string from Michael Nizich to Walt Monegan	Exhibit 22

Trooper Integrity, Character

Subject: Trooper Integrity, Character
From: Sarah Palin <spalin@mtaonline.net>
Date: Wed, 10 Aug 2005 15:50:45-0800
To: julia_grimes@dpa.state.ak.us

Dear Colonel Grimes,

It is my understanding that you are aware of problems within the Alaska State Trooper family that stem from one of your officers, Michael Wooten. My concern is that the public's faith in the Troopers will continue to diminish as more residents express concerns regarding the apparent lack of action towards a Trooper whom is described by many as being "a ticking timebomb", and a "loose cannon".

Mike Wooten has continued to boast about incidences regarding his unethical and illegal actions that reflect so poorly on the Troopers, and appears to relish in the fact that he can "do anything because I'm a Trooper", as he's proclaimed to people who question his actions.

Let me share again with you just a few of the many episodes in Wooten's recent past that have been discussed with Wooten's supervisors after the episodes were publicly discussed by Wooten with many in our community who are left scratching their heads regarding Wooten's poor reflection of the Trooper mission to prevent loss of life and property as a result of illegal or unsafe acts. (These are just a few, as I have received many calls and comments over the past four years about Wooten's questionable actions and his relationship with my family. Wooten is my brother-in-law, but this information is forwarded to you objectively, and I trust it is received and considered by you objectively.)

March 26, 2005 Officer Wooten was off-duty, drinking at the Mugshot Saloon in Wasilla when he pulled out his Trooper badge and demanded the bartender (Mr. Chris Brightbill) remove a patron whom Wooten disliked. The bartender knew Wooten was off-base with his demands and subsequently testified that Wooten was out of control, was abusing his position and authority and should not be in the position of a licensed Trooper, as he believes Wooten is a "loose cannon". (Private Investigator Leonard Hackett, interview and statement of Brightbill on 4/27/05.) Wooten eventually left the bar, was pulled over after a REDDI was called into Trooper dispatch after the caller observed Wooten driving drunk, and Wooten was pulled over. (Ironically, Wooten has been a member of your DUI Task Force and is featured in your television DUI Task Force PSAs.) The Trooper who pulled Wooten over is Officer Dave Hamel. He has served as a subordinate to Wooten. He did not cite Wooten for drunk driving, but merely gave Wooten a ride to a friend's house after responding to the REDDI. Wooten then called his wife (Molly McCann, 376-0302), explained that he was over the legal limit, and his wife picked him up at the friend's house and warned Wooten that his drinking and driving would "catch up with him" as he continued to disregard warnings about his drinking and driving practice in our small town. Wooten told others about this incident as a braggart way of reminding others that he is "untouchable" as a Trooper.

Around this time, Wooten rode with his girlfriend, Mrs. Angie Johnson, home from another local bar after another night of drinking. Mrs. Johnson was pulled over by a Trooper for suspected drunk driving. According to Wooten's account of the evening, he leaned over from the passenger window and demanded the responding Trooper to turn off his recorder and not cite Mrs. Johnson. She was not cited for DUI. Wooten subsequently bragged about this incidence to others, including Steven Menard (phone # 233-2120), again casting doubt in the public about the sincerity of the Trooper's mission.

Wooten drinks excessively and has showed extremely poor judgement and disregard for others' safety with his practice of drinking and driving, including on Jan. 19, 2005 drove home drunk; Jan. 23, 2005 drove home drunk after Super Bowl party in Anchorage; Feb. 6, 2005 in Anchorage leaving the Sullivan Arena's WWE Pro Wrestling event, drove very drunk as he drank Crown Royal straight from bottle, brought the Crown Royal into the Sullivan in PowerAde bottle and peined his stepson who was with Wooten in the vehicle; Feb. 12, 2005 in Wasilla; Feb. 13, 2005 drove drunk in Big Lake (leaving Call of the Wild Bar, next day so hungover he had to call in sick to Trooper Headquarters); March 13, 2005 drank at least three beers in car while driving family home from Glennallen snowmachine tip, driving over the speed limit and scaring his wife and kids who begged him to stop drinking on the drive home. Wooten's consumption of alcohol while driving with small children in his vehicle (as witnessed by his wife and stepson, Molly and Payton McCann, 376-0302) is deplorable. He's even left a friend's home in his Trooper car, waving with beer in hand, again drinking and driving in an arrogant public statement declaring he is above the law (as witnessed by Adrian and Marilyn Lane, 376-9060).

1 of 3

8/10/2005 4:22 PM

Exhibit 1
Page 1 of 3

CPVTT1280

Court documents regarding Wooten's past marriages and divorces, and according to Wooten's own admission, there's factual evidence that he is an abusive individual and has undergone mandatory alcohol abuse counseling and anger management counseling, but it's evident Wooten's drinking problem needs to be addressed more fully.

Wooten was recently transferred to Fish and Game as a Wildlife Investigator. He stated he would "do whatever needed to be done" to keep him from transferring to rural Alaska, as he unabashedly states his disrespect and dislike of Alaska Natives and did not want to serve Native communities. His transfer raised eyebrows amongst those who have discussed with Wooten his past illegal hunting acts, including killing a cow moose on the Kook River in the Fall of 2003. He shot the moose on a tag that was not his own, and bragged about this. He had no intention of processing the meat, so dropped the animal off at his father-in-law's house (Chuck Heath, 378-5790) and never returned to even pick up the meat after Mr. Heath processed it for him so it wouldn't go to waste. Mr. Heath delivered the meat to Wooten's house after Wooten showed no intention of retrieving the meat. This hunt was witnessed by Wooten's wife and Wasilla Police Officer Chris Watchus. Wooten continues to brag about the stryge he says he pulled to get this transfer, where he says he's bored, but "the free hunting trips and Cabela credit card make it worth it." He's recently stated he's determined to get on with the Anchorage Police Dept, due to his boredom at Fish and Game, though APD officers whom Wooten has shared this with have let others know that he wouldn't make a good APD officer.

Another example that Wooten likes to share with others regarding his unethical and illegal hunting techniques involves a wolf hunt where he illegally chased down the animal with his snowmachine to kill it unfairly. This was witnessed by Chuck Heath and his hunting partners.

Wooten's total disregard for the safety of others was blatantly apparent when he shot his 11-year-old stepson, Payton, with his Taser gun. My 14-year-old daughter, (Bristol Palin, 373-3113) was terrified as she witnessed this incidence, and pleaded with Wooten not to follow through on his intended action of "letting Payton feel what a Taser can do". Wooten "offered" to shoot Bristol with the Taser after Payton was knocked over by the shock and Bristol continued to protest Wooten's action, and he followed up by offering to spray them both with pepper spray so they could "feel that, too". Wooten's wife aggressively protested during the Taser gun incident, she cried, he caled her and Payton "pussy" for protesting.

Wooten's physical abuse of his wife is documented in their pending divorce case. He pushed her down on more than one occasion, including when she was holding their one-year-old son. Molly has been very reluctant to bring the physical abuse to light because Wooten's temper causes her to believe he'll be even more physically violent towards her, and others in her family whom he has threatened to "bring down", with the revelations. Wooten's gun, car and badge were evidently taken from him while a DVRO was in effect this spring, that turned into a No Contact rule between the parties and Wooten brazenly shows off his Trooper equipment now that he has it all back in his possession.

February 17, 2005 Wooten's marital infidelity surfaced publicly after his Trooper-sponsored trip to Idabo "for official business" on Jan. 28, 2005 included his married girlfriend's accompaniment. When confronted with this affair that others in the community were talking about, Wooten threatened to kill his wife's father, Chuck Heath, if Mr. Heath followed through with his offer to help Molly by getting an attorney to help her if they were to divorce. Wooten's words were, "I will kill him. He'll eat a lead bullet, I'll shoot him." If our father got the attorney to help Molly, I heard this death threat, my 16-year-old son heard it (Track Palin, 373-3113), Molly heard it, as did their small children. Wooten spoke this with his Trooper gun on his hip in an extremely intimidating fashion, leaving no doubt he is serious about taking someone's life who disagrees with him.

Other recent examples of Wooten's abuse of authority include Spring, 2005 Wooten refused to pay a fine at the Mat-Su Borough Landfill when told his uncovered load would cost him a \$5.00 fine. (Private investigator Leonard Hackett interview and statement 8/28/08.) Wooten introduced himself as a Trooper, was agitated and trying to be intimidating (indicated by Landfill Manager Mr. Greg Goodale, and Goodale's subordinate who had to deal with Wooten that day). Wooten eventually paid the small fine after trying to get out of it because of his Trooper status, and after the Landfill Manager had to be called in to settle the dispute caused by Wooten. This type of incident has resulted in citizens calling me, assuming there is something I can do about an abusive and intimidating Trooper who is giving the State of Alaska such a black eye.

Wooten has threatened to "bring down" anyone whom he dislikes, or anyone who would support his current wife (his third) during their divorce. When asked by Molly how he would accomplish this, Wooten states he can trump up charges against anyone and "I'll be believed by any attorney or judge in this state because I'm a Trooper." Specifically, on April 4, 2005 Wooten was counseled by my husband (Todd Palin 373-3113) to join Molly in acting

Trooper Agency, Laramie

divly and with maturity during their divorce - for the sake of the nine kids they and Wooten's girlfriend have between them all - and who are adversely affected by these circumstances. Wooten evidently took umbrage with the advice and that day told Molly she'd better "put a leash on your sister" or he'd "bring Sarah Palin down".

Wooten has threatened Molly that she'd better not talk about any of this, as he claims he has "bugged her phone" and, using his State investigation equipment, knows everything she's doing and saying. Molly is justifiably extremely intimidated and scared for her and her kids' safety.

April 11, 2008 Wooten did not show up for work, where he was to be served a DVRO. Sgt. Burke Waldron talked to Wooten's wife and encouraged her to get the DVRO, though Molly was scared to death that Wooten could, and would, destroy her if she did. Molly was told that Judicial Services would handle the DV "in order to keep things a little more confidential." Molly expressed concern that even those in Judicial Services may know Wooten (as Wooten continually reminded Molly that he had the court system and personnel on his side because he was a Trooper), and Molly was told that since they do know Wooten, Molly needed to "stay safe and be protected."

Julia, as fellow Alaskans, my family and I and concerned community members who have witnessed your employee's actions still want to have faith in the Alaska State Troopers. But with recent public disclosure of abuses in the Trooper organization, and our own knowledge of Wooten's blatant disregard for the laws he is hired to enforce, our faith is waning. I feel strongly that Wooten is a loose cannon. He's a ticking timebomb, as others describe him, and I am afraid his actions do not merely reflect poorly on the State, but his actions may cause someone terrible harm.

It is my understanding that months ago you were made aware of Wooten's problems. Wooten's supervisors, the Alaska Police Standards Council, and others in positions of authority are aware of these circumstances. So the question begs: is it acceptable for an Alaska State Trooper to use his badge and power in these aforementioned ways? Granted, Trooper Investigator Ron Wahl was sent to asked questions regarding some of these incidences, but his selective questioning and his personal responses to answers given (and his assurance that it's Wooten's Union that prohibits certain lines of questioning) makes one wonder about the seriousness taken here. Wooten does not tell the truth. He intimidates people and abuses his position. I don't know what more can be said, except that considering just a few examples from those I've shared with you (namely, the death threat against my father who is merely trying to help his daughter escape a horribly abusive relationship, the illegal hunting, and the drunk driving!) all would lead a rational person to believe there is a problem inside the organization.

Sincerely,

Sarah Palin
1140 W Parks Hwy
Wasilla, AK 99654
373-3113 or 715-8917

ps. Again, Wooten happens to be my brother-in-law, and after his infidelity and physical abuse of his wife (my sister) surfaced, Mike chose to leave his family and has continued to threaten to "bring down" anyone who supports her. I would ask that you objectively consider this information, disregarding my sister's pending divorce from Wooten, as I have objectively separated the divorce and Wooten's threats against me and my family with the fact that the Troopers have a loose cannon on their hands.

270
3/10/2005 4:22 PM

COPY

From: Sarah Palin [mailto:gov.sarah@yahoo.com]
Sent: Wednesday, February 07, 2007 8:04 AM
To: walt_monegan; mike_fibbles
Subject: CONFIDENTIAL cop bill

Walt - you mentioned wanting to testify on a bill re: police officers killing someone, then facing 99 yrs.

You are absolutely free to speak your mind on this.

When asked about it, just to let you know, I'm also going to speak my mind on it. For police officers to violate the public trust is a grave, grave violation - in my opinion. We have too many examples lately of cops and troopers who violate the public trust and DPS has come across as merely turning a blind eye or protecting that officer, seemingly "for the good of the brotherhood". The murder and rapes in rural AK by officers are still fresh in Alaska's mind.

In sharing a few personal examples with you (including the trooper who used to be related to me - the one who illegally killed the cow moose out of season, without a tag - he's still bragging about it in my hometown and after another cop confessed to witnessing the kill, this trooper was "investigated" for over a year and merely given a slap on the wrist... though he's out there arresting people today for the same crime! This is the same trooper who shot his 11-yr-old stepson with a taser gun, was seen drinking in his patrol car, was pulled over for drunk driving but let off by a co-worker & brags about this incident to this day... he threatened to kill his estranged wife's parent, refused to be transferred to rural Alaska and continued to disparage Natives in words and tone, he continues to harass and intimidate his ex. - even after being slapped with a restraining order that was lifted when his supervisors intervened... he threatens to always be able to come out on top because he's "got the badge", etc. etc. etc.) This trooper is still out on the street, in fact he's been promoted. It was a joke, the whole year long "investigation" of him - in fact those who passed along the serious information about him to Julia Grimes and Tandeske were threatened with legal action from the trooper's union for speaking about it. (This is the same trooper who's out there today telling people the new administration is going to destroy the trooper organization, and that he'd "never work for that b****", Palin.)

Anyway - just a personal example of what I've personally seen out there and had to live with for two years - and this is what people in the Valley are putting up with (those many residents who know of this trooper time-bomb who's supposed to be "protecting" them). I've heard too many stories from others across this state who believe DPS has been overly protective of their own, to the detriment of DPS, to the chargin of the public, and it all leads to the erosion of faith Alaskans should have in their law enforcement officials.

Just my opinion - I know you know I've experienced a lot of frustration with this issue. I know Todd's even expressed to you a lot of concern about our family's safety after this trooper threatened to kill a family member - so you need to know that if I am a supporter of whatever we can do to build trust back into DPS, then there are many other Alaskans in the same boat we are and may look on this new cop bill as a good thing.

Thanks for letting me share my concerns with you,
Sarah

Expecting? Get great news right away with [email Auto-Check](#).
Try the [Yahoo! Mail Beta](#).

From: gov.sarah [mailto:gov.sarah@yahoo.com]
Sent: Monday, May 07, 2007 1:09 AM
To: Walt C Monegan; Michael A Tibbles
Subject: Re: FW: Commissioner Notification

You're right Walt - the majority are good folks. I just get so heartbroken for Alaskans when the trust they deserve to have in their officials gets chipped away. Our residents will be disappointed in this officer - but you're right that AST took it seriously and dealt with this specific problem. It comes on the heels of the Ivanoff Act, so may be raw to some folks and there is a heightened sensitivity to the wrongdoings of peace officers right now, I believe. Add to that the recent arrests in Juneau.

I am so thankful this was acted upon quickly

Thank you.

-----Original Message-----

From: Walt C Monegan III <walt_monegan@dps.state.ak.us>
Date: Sun, 06 May 2007 16:55:09
To: Sarah Palin <gov.sarah@yahoo.com>
Cc: Mike Tibbles <mike_tibbles@gov.state.ak.us>
Subject: Re: FW: Commissioner Notification

The positive on this is that AST acted on a complaint, investigated it, and arrested the suspect Trooper without fan fare or hesitation. Please remember that the vast majority of these men and women strive everyday and every call to live to ours and everyone's expectations.

-Walt

----- Original Message -----

From: Sarah Palin <gov.sarah@yahoo.com>
Date: Sunday, May 6, 2007 3:33 pm
Subject: Re: FW: Commissioner Notification
To: Mike Tibbles <mike_tibbles@gov.state.ak.us>
Cc: Walt C Monegan <walt_monegan@dps.state.ak.us>

> well Mike - between this and the message I received the other
> night where an Ak State Trooper recently told a friend of family
> that he could further "mess with the governor's sister" by
> claiming falsehoods about us - well - some of our "finest" in
> uniform continue to disappoint.

>

> I am co-ing Walt on this.

>

> Mike Tibbles <mike_tibbles@gov.state.ak.us> wrote:

> FYI

>

> NOT FOR PUBLIC RELEASE

>

> Date: May 5, 2007

> Time: 1955 hours

> Case Number: 07-34187

- > Subject: AST Member arrested / SA2
- > Post: FAIB
- >
- > Synopsis: On the evening of Thursday, May 3, 2007 Alaska State Troopers in Fairbanks received information alleging that an off duty Alaska State Trooper had sexually assaulted a 15 year old juvenile. A criminal investigation was initiated by members of the Alaska Bureau of Investigation.
- >
- > Following an investigation, Junior Anthony, age 34 of Fairbanks, was arrested at his residence on Saturday, May 5 at approximately 1925 hours. Mr. Anthony was transported to the Fairbanks Correctional Center where he was booked on one count of Sexual Assault in the 2nd Degree.
- >
- > Junior Anthony is an Alaska State Trooper assigned to uniformed patrol in Fairbanks.
- >
- >
- >
- >
- > _____
- > Ahhh...imagining that irresistible "new car" smell?
- > Check out new cars at Yahoo! Autos.

FW: Gara's gun issue

Page 1 of 1

From: Perry, Kristina Y (GOV)
Sent: Tuesday, July 17, 2007 12:43 PM
To: Wheeler, Gary R (GOV); Cockrell, Robert A (GOV)
Subject: FW: Gara's gun issue

FYI

-----Original Message-----

From: Palin, Sarah (GOV sponsored)
Sent: Tuesday, July 17, 2007 6:16 AM
To: Monegan, Walt C (DPS)
Cc: Colberg, Talis J (LAW); 'fek@wnr@yahoo.com'
Subject: Gara's gun issue

Walt- we'll ask you to chime in on Gara's proposal re: the gun issue in today's ADN when we all can sit down to discuss the issue.

The first thought that hit me when reading Gara's quote about people not being able to buy guns when they're threatening to kill someone went to my ex brother-in-law, the trooper, who threatened to kill my dad yet was not even reprimanded by his bosses and still to this day carries a gun, of course. We can't have double standards. Remember when that death threat was reported, and follow-on threats from Mike that he was going to "bring Sarah and her family down" - instead of any reprimand WE were told by trooper union personnel that we'd be sued if we talked about those threats. Amazing. And he's still a trooper, and he still carries a gun, and he still tells anyone who will listen that he will "never work for that b*tch" (me) because he has such anger and disdain towards my family.

So consistency is needed here. No one's above the law. If the law needs to be changed to not allow access to guns for people threatening to kill someone, it must apply to everyone.

Hopcfully we'll all meet on this soon, as Gara will be expecting a response soon.

5959 301

From: Palin, Sarah (GOV sponsored)
Sent: Thursday, September 27, 2007 6:28 PM
To: ExternalEmailgsp
Subject: Fw: Confidential - Spitzer

----- Original Message -----

From: Palin, Sarah (GOV sponsored)
To: 'ftb907@yahoo.com' <ftb907@yahoo.com>
Sent: Thu Sep 27 17:19:06 2007
Subject: Fw: Confidential - Spitzer

These didn't reach audie and john. Pls send

----- Original Message -----

From: Palin, Sarah (GOV sponsored)
To: Glass, John D (DPS); Holloway, Audie E (DPS)
Sent: Thu Sep 27 17:16:47 2007
Subject: Fw: Confidential - Spitzer

-----Original Message-----

To: Walt Monegan
Sent: Sep 27, 2007 8:49 AM
Subject: Confidential - Spitzer

Walt- could you provide me any documentation regarding the state's settlement of Trooper Spitzer's case (I saw it on the news last night - I hadn't even known that this trooper was in trouble again. He's the same one who was stationed in the valley and had a bad reputation along with his fellow trooper whom we've talked about before, and this is at least the second public case involving Spitzer and allegations of his abuse of power).

What I need is just the factual info that proves this was a DPS issue and I was not a part of any settlement. I was not advised, nor requested to participate in this... as is the appropriate way of handling such a case. I ask because I've already heard the accusation that "I" settled with a bad cop.

I'd like to explain factually what an elected official's role is in cases like this (that being, I had no role in this).
Thank you.

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10 TRANSCRIPT OF CONVERSATION

11 BETWEEN

12 FRANK BAILEY AND TROOPER RODNEY DIAL

13 FEBRUARY 29, 2008

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BAILEY DAIL PHONE CALL FEB 29 2008

Page 1

Exhibit 6
Page 1 of 22

00002

1 UNIDENTIFIED SPEAKER: Good morning. State
2 Trooper's office. May we help you?
3 MR. BAILEY: Hey, good morning. I'm looking for
4 Lieutenant Dial.
5 UNIDENTIFIED SPEAKER: Yes, sir. Who may I
6 say is calling?
7 MR. BAILEY: This is Frank Bailey.
8 UNIDENTIFIED SPEAKER: Hold on just a moment,
9 Mr. Bailey, I will transfer your call. You have a good day, sir.
10 MR. BAILEY: Great. Thank you.
11 LIEUTENANT DIAL: Good morning, Frank. How
12 are you doing?
13 MR. BAILEY: I'm doing good, Rodney. How are you
14 doing?
15 LIEUTENANT DIAL: Good.
16 MR. BAILEY: Good. Good. Hey, I've got a question
17 that's a little bit awkward to ask, and so I want to be real respectful.
18 I mean, if this is something you don't feel comfortable with, that --
19 just tell me straight up, and I respect that fully.
20 But as you know, I mean, things are really ramping up
21 with the contract negotiations right now.
22 LIEUTENANT DIAL: Uh-huh.
23 MR. BAILEY: And we hear that there's going to be
24 quite a bit of communication going around on the PSEA side,
25 coming from say John Cyr and things like that.

BAILEY DAIL PHONE CALL FEB 29 2008

Page 2

00003

1 Is there -- do you feel comfortable keeping us in the

2 loop on that, if any of that does come through in writing?

3 LIEUTENANT DIAL: You mean if -- if I learn what

4 they're asking for, or what?

5 MR. BAILEY: Yeah, yeah. I mean, with -- what

6 typically has happened in the past is we'll get, you know, some -- I

7 mean, we saw this happen on the ASEA and the SU side, where,

8 you know, Jim Duncan or one of these folks will send out an e-mail

9 that really doesn't have all the facts quite right, but it'll get, you

10 know, just forwarded to God and everybody.

11 And it's -- it's things like that that we really -- we'd like

12 to know if something comes out like that, if possible.

13 LIEUTENANT DIAL: Oh, you mean anything that

14 would be forwarded to legislators or something like that?

15 MR. BAILEY: Yeah. Well, even to members, you

16 know. Yeah, I mean, I can -- to legislators, we'll typically see it.

17 But I mean, you know, something that -- that -- what typically is to

18 mean as, you know, kind of an effort to get members, you know,

19 rising up to talk to legislators.

20 And that's fine. That's good. We just want to have an

21 idea if the information that's being said is accurate or not.

22 LIEUTENANT DIAL: Oh, sure. I mean, normally I'm

23 not much in the loop on that. I'm not in PSEA. You know that,

24 right?

25 MR. BAILEY: No, I didn't know that --

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1 LIEUTENANT DIAL: Yeah.

2 MR. BAILEY: -- actually. I thought -- I thought
3 maybe -- I mean, I know you're -- you've been working on the
4 Legislative side, you know, here with Walt. But yeah, I thought
5 maybe you might still be -- still be a member in that.

6 LIEUTENANT DIAL: Yeah. The captain and I are in
7 SU. We're both exempt employees.

8 MR. BAILEY: Got you. Okay.

9 LIEUTENANT DIAL: So they -- they really don't
10 invite us to the party, if you -- we're all cordial and stuff, but I --
11 you know, I -- usually the first I'll hear of whatever it is they're
12 asking for or whatever they want is when it's pretty much public
13 knowledge or posted on their Web site.

14 MR. BAILEY: Right, right. Okay.

15 LIEUTENANT DIAL: But I mean, if I -- if I do come
16 across that, I -- I doubt that they would have any concerns with me
17 sending it, and I'd certainly forward it to you.

18 MR. BAILEY: That would be great. That would be
19 great.

20 And you know, I -- I can certainly keep -- keep names
21 out. You know, that's no problem. I don't want any -- you know, in
22 any way get -- you know, get some onus or focus on you at all
23 there.

24 LIEUTENANT DIAL: Oh, I'm not worried about it.
25 Because like I said, if -- if I get ahold of it, it's -- it's generally

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1 public knowledge anyway.

2 MR. BAILEY: At that point?

3 LIEUTENANT DIAL: Yeah. I don't attend any of
4 their meetings. And I'm not, you know, entitled to get any of their
5 e-mail. So I really don't know what they're doing.

6 I know that they're, you know, doing the same general
7 contract negotiations as they've done here several years ago.

8 MR. BAILEY: Sure.

9 LIEUTENANT DIAL: And you know, sometimes
10 they'll -- they'll just kind of keep me in the loop.

11 And some of that is because I'm the legislative liaison
12 and, you know, we're -- for the most part, we're all on the same side
13 when it goes -- when we go down to Juneau. You know, we're
14 asking for, you know, more funding and that certain bills be passed
15 and things like that.

16 MR. BAILEY: Right, right. Yeah.

17 LIEUTENANT DIAL: And if I do come across
18 something like that, sure, I'll send it over your way.

19 MR. BAILEY: That would be great, man. That would
20 be fantastic.

21 LIEUTENANT DIAL: Are you kind of expecting to
22 get back to order or something on the negotiation?

23 MR. BAILEY: Not -- you know, I don't know. I'm
24 sort of more over on the governor's office side, you know, so I don't
25 really see a whole lot of that. But we do hear of ads that are

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1 coming out from PSEA. And there has been some
2 misrepresentation.

3 I think John Cyr, in some recent contract negotiations,
4 talked about some promises that the governor had made during the
5 campaign which were -- which were completely false. And that
6 was -- you know, that was sent to me and Chuck.

7 And you know, fear was -- was horrible during the
8 campaign to the governor, you know. I know we're not supposed to
9 hold grudges, and I don't think the governor does. But those of us
10 around her certainly remember that, you know.

11 And it's -- you know, we all want the same thing. We
12 want good, healthy recruiting. We want good, solid discipline for
13 the, you know, officers that, you know, use excessive force and go
14 out of the -- out of the boundaries, so that we, you know, keep a
15 good name for the department and things like that, you know, and
16 good -- you know, good healthy pay for the officers, for sure.
17 But --

18 LIEUTENANT DIAL: Yeah. I would hope that
19 PSEA wouldn't, you know, do things like that. I certainly don't see
20 it as benefiting them. I think that would be a big tactical mistake to
21 try to -- you know, to stop the governor.

22 MR. BAILEY: Yeah.

23 LIEUTENANT DIAL: I just don't agree with that kind
24 of, you know, tactics. And hopefully they're not going to go that
25 way.

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1 MR. BAILEY: Yeah. Well, Rodney, just so you
2 know, they -- they're -- just -- I'm going to give you some insight
3 that you -- you will see here. And you're going to -- you know, this
4 is going to probably -- unfortunately it's going to come up again
5 and again.

6 But there's been some issues around the state, like the
7 Spitzer situation out west, where he, you know, had all the
8 settlements. And you know, we understand there's some mitigating
9 circumstances, but you know, that -- that really put salt in the
10 wound in rural Alaska with a situation like that.

11 There's a situation in Kenai.

12 And there's a gentleman by the name of Mike Wooten,
13 who is a trooper in the -- in the Valley.

14 LIEUTENANT DIAL: Uh-huh.

15 MR. BAILEY: And there is -- there's a family tie with
16 the governor there. And so I think because of that, my
17 understanding is, you know, Walt has been very reluctant to take
18 any action.

19 But there are some very clear facts out there that -- and
20 this is -- these things actually happened -- that he tasered his
21 11-year-old kid. He drove drunk in a patrol car. He shot a cow
22 moose out of season.

23 LIEUTENANT DIAL: Wooten did?

24 MR. BAILEY: Yes.

25 LIEUTENANT DIAL: Uh-huh.

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1 MR. BAILEY: And yet he is -- you know, and then
2 there was some really funny business about a worker's comp claim
3 I think that came up.

4 And you know, I was talking to Brad Thompson a little
5 bit about that. And his whole goal was to just get Wooten back
6 working.

7 But you know, he lied on his application when he
8 applied. He -- he said that he didn't have any physical impairments.
9 And come to find out, he was rated in the military, and that was
10 discovered after he retired.

11 But the Palins can't figure out why nothing's going on.

12 And here's the problem that's going to happen, is that
13 there is a possibility, because Wooten is, you know, an ex-husband
14 of the governor's sister --

15 LIEUTENANT DIAL: Uh-huh.

16 MR. BAILEY: -- and there's, you know, a custody
17 situation. There is a strong possibility that the governor herself
18 may get subpoenaed to talk about all this stuff on the stand --

19 LIEUTENANT DIAL: Right.

20 MR. BAILEY: -- over the next coming months, which
21 would be --

22 LIEUTENANT DIAL: That's not good.

23 MR. BAILEY: It would be ugly.

24 LIEUTENANT DIAL: Right.

25 MR. BAILEY: I mean, you know, and I don't think

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1 anybody wants that. But you know, Todd and Sarah are scratching
2 their heads. You know, why on Earth hasn't -- why is this guy still
3 representing the department? He's a horrible recruiting tool, you
4 know.

5 LIEUTENANT DIAL: Uh-huh.

6 MR. BAILEY: So just -- I mean, from their
7 perspective, everybody's protecting him.

8 And you know, I'm just -- I'm just kind of giving you
9 the candid thumbnail. Mike Tibbles disagrees with me, you know,
10 Andie probably disagrees with me, Walt does, and everything. And
11 I understand it's really touchy.

12 But I just want you to understand. I mean, cops who
13 use excessive force or go out of the lines, they just have no
14 tolerance, because they've seen the effects personally.

15 And he's -- I mean, he's declared bankruptcy and, you
16 know, and his finances are in complete ugly -- you know, declared
17 bankruptcy and then bought a new truck, and all kinds of crazy
18 stuff, you know, that just doesn't represent the department well.
19 And the community knows it, but --

20 LIEUTENANT DIAL: Right.

21 MR. BAILEY: -- no action has really been taken.

22 LIEUTENANT DIAL: Yeah. You know, Frank, I met
23 the governor years ago when she was mayor in Wasilla. And I
24 remember she came to Police Memorial Day one time.

25 And it wasn't too long after that I became aware there

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1 was an issue there with Wooten, and just that they were related at
2 one point. And I guess, you know, that marriage went bad at one
3 point.

4 MR. BAILEY: Right.

5 LIEUTENANT DIAL: And yeah. I -- I don't -- you
6 know, I believe he's in -- isn't he in the Palmer area or Anchorage
7 area now?

8 MR. BAILEY: He's in -- he's in, yeah, Palmer/Wasilla
9 now.

10 LIEUTENANT DIAL: Yeah. Other than that, I don't
11 know a lot of, you know, what's going on with that. I'm sure the
12 commissioner and colonel would be much, much more up on that.
13 I -- I'm sure everybody would hate to see the governor brought into
14 that.

15 MR. BAILEY: Right, right.

16 LIEUTENANT DIAL: You know, I will -- you know,
17 I'll certainly -- if there's anything I can do for you guys, please let
18 me know. Certainly I can do that.

19 MR. BAILEY: Yeah.

20 LIEUTENANT DIAL: And anything I learn about
21 PSEA --

22 MR. BAILEY: Yeah.

23 LIEUTENANT DIAL: -- I'll let you know, too.

24 You know, when I do see those guys that are
25 campaigning for PSEA, I mean, if I had my two cents' worth, and if

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1 they're willing to accept it, I would say, you know, you'd be
2 complete fools to try to, you know, take on the governor. I mean,
3 let's have a spirit of cooperation with this whole thing and see what
4 we can do --

5 MR. BAILEY: Sure. Absolutely.

6 LIEUTENANT DIAL: -- and not spread a bunch of --
7 you know, because as I recall, Mr. Cyr had some issues with the
8 prior administration as well, where he was sending out some crazy
9 letters to the editor and those types of things, so --

10 MR. BAILEY: Yeah. I think it's -- what we hear is
11 that more of that's coming up, and that there's actually ads coming
12 out soon. So I don't -- you know, I don't know what the content of
13 that is, but yeah, sounds like that's about to happen again.

14 LIEUTENANT DIAL: Yeah. You know, anything of
15 that nature, I would suspect real highly that they would keep far
16 away from me.

17 MR. BAILEY: Yeah.

18 LIEUTENANT DIAL: I mean, they know what I do.
19 They know what I do. And you know, if I learned of something
20 that was going to make the department look bad or the governor
21 look bad, I mean, I'd pick up the phone immediately and call the
22 colonel and the commissioner.

23 MR. BAILEY: Right.

24 LIEUTENANT DIAL: You know, there will not be
25 any protecting, certainly on my part, of anything that would cause

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1 any embarrassment to the administration in any way.

2 MR. BAILEY: Uh-huh.

3 LIEUTENANT DIAL: So you know --

4 MR. BAILEY: Yeah. That's awesome.

5 - LIEUTENANT DIAL: -- so I got your guys' back on
6 that. So you don't have to worry about that.

7 MR. BAILEY: Cool.

8 LIEUTENANT DIAL: But yeah.

9 MR. BAILEY: Well, just so you got some insight on
10 the other stuff, too, you know. It's -- it's going to be interesting.

11 But the general -- the general feeling is, you know,
12 they just can't figure out why this guy is still working for --
13 especially -- you know, I know it's difficult in a union environment.
14 You know, you've got to work within those lines.

15 But especially the fact about him lying on his
16 application. You know, I hired -- I hired hundreds of people in
17 the -- in the airline world. And if we found out later that they had
18 lied on their application, we -- we terminated them. You know, it
19 was very simple.

20 And they were -- they had a very strong union, and it
21 was just one of those --

22 LIEUTENANT DIAL: And -- and where did -- and,
23 Frank, where did you get that information from? I used to be a
24 recruiter, so I'm just -- and I know how that --

25 MR. BAILEY: Yeah.

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1 LIEUTENANT DIAL: -- that information a lot of
2 times is extremely confidential. So I'm just -- I'm trying to find out
3 how it was determined by anybody that -- that he had indicated
4 something on his application that look -- later found was not to be
5 true.

6 MR. BAILEY: Well, I'm a little bit reluctant to say.
7 But in -- over in admin is where, you know, we've -- we hold
8 workers' comp right in there.

9 And the situation where he declared workers' comp,
10 but then was caught on an eight-mile snowmachining trip days --
11 days after, you know, that -- that started coming up there. So we
12 collected statements that we forwarded on to workers' comp there.
13 And so we started seeing the --

14 LIEUTENANT DIAL: Oh, okay. I got it.

15 MR. BAILEY: -- the application from that point.

16 LIEUTENANT DIAL: And that's while -- while he
17 was a trooper?

18 MR. BAILEY: Correct.

19 LIEUTENANT DIAL: Really? Okay.

20 MR. BAILEY: Yeah.

21 LIEUTENANT DIAL: And --

22 MR. BAILEY: And I think he went to a desk job.
23 You know, I think that that situation has pretty much, you know,
24 leveled itself out. They put him at the desk for a while on some
25 light duty, et cetera, et cetera, so --

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1 LIEUTENANT DIAL: And, Frank, has the
2 administration expressed these concerns to the commissioner and
3 the colonel?

4 MR. BAILEY: Yeah.

5 LIEUTENANT DIAL: Okay.

6 MR. BAILEY: Yeah.

7 LIEUTENANT DIAL: You know, and I don't know
8 anything about it.

9 MR. BAILEY: Yeah.

10 LIEUTENANT DIAL: But just so you know, they --
11 maybe there is an administrative investigation going on. I mean,
12 did they indicate that to you at all?

13 MR. BAILEY: Everything that has come back to -- to
14 Todd and the governor is basically stay -- stay away, there's nothing
15 we can do.

16 And that's very frustrating. Because you know, it
17 just -- but you know, this guy is the ultimate poor recruiting model,
18 you know, for -- you know, it's people like that that make it really
19 hard to get good folks, I think, you know, because people see that
20 and think, man, he's heavy handed. I don't want to be part of that.
21 And so --

22 LIEUTENANT DIAL: Well, is there -- is there
23 something I can do for you or for the governor in that regards? I
24 mean, I could -- I would certainly like to call and just, you know,
25 run this by the commissioner, you know, our conversation, to see if

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1 there's something I don't know about it that maybe we can, you
2 know, provide to you additional information or something of that
3 nature. I mean --

4 MR. BAILEY: You know, I don't think there's
5 anything wrong in bringing it up to the commissioner. I've already
6 brought it up with -- is it Megan?

7 LIEUTENANT DIAL: Megan Peters?

8 MR. BAILEY: Yeah. Is she special assistant?

9 LIEUTENANT DIAL: Megan Peters is our public
10 information officer for the department.

11 MR. BAILEY: Yeah. I think it was Megan that I
12 spoke to, if I remember correctly. I talked to her last year.

13 Because while he was on light duty, he requested -- we
14 were given information that he applied for and got a moose --
15 moose ticket to go hunt a moose.

16 And she was very tight lipped with me. She would not
17 give me -- I mean, as soon as I mentioned the name Wooten, I told
18 her that, you know, I don't expect you to share anything with me,
19 but there's a sense that nothing's happening with this situation. And
20 I want you to have this new information that we just received. So --
21 but of course I would never hear anything back from that.

22 But you know, to answer your question, I don't know
23 that there is. I would hope that there is something going on there.
24 But if there is, the governor certainly is unaware of it, Todd is
25 unaware of it. You know, her sister is continuing to go through

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1 difficult -- difficulties there.

2 You know -- I mean, one thing that has been verified
3 from the school is that -- and I don't know if this is illegal or wrong.
4 But he's using his patrol car to bring his kids to school and pick
5 them up from their visits, because they've got a joint custody
6 situation.

7 LIEUTENANT DIAL: Okay.

8 MR. BAILEY: So maybe that's okay. But you know,
9 for us, again, back in the airline world, we would call that timecard
10 fraud and stealing -- stealing pay.

11 LIEUTENANT DIAL: Okay. And just so you know,
12 too, officers are not allowed to use their cars off duty without
13 permission from a supervisor.

14 So -- however, there are some exceptions. I mean, if
15 somebody belongs to, you know, like a CERT team or something
16 that they have to be available for to immediately respond, there are
17 some exemptions. But I can -- I can certainly relay those concerns.

18 MR. BAILEY: Yeah. That would be very interesting.
19 And if there's anything that you need in terms of, you know,
20 statements from the school or from anything like that, you know,
21 just tell us what -- tell me what you need and we'll -- we'll get it for
22 you.

23 Now, if he's on duty, is he allowed to, you know, drive
24 his kids around in -- in the car?

25 LIEUTENANT DIAL: Well, you know, the best way I

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1 can answer that would be it depends. It depends on what he is
2 assigned to, if he is on standby, if he has the permission of his
3 supervisor, a whole bunch of different things. So I can't just say
4 one way or another on that.

5 MR. BAILEY: Right, right.

6 LIEUTENANT DIAL: Generally the officer in the
7 field that is not assigned some special duty that requires that he be
8 available immediately off duty, generally for those officers, they
9 are not allowed to use their vehicles off duty.

10 MR. BAILEY: Yeah.

11 LIEUTENANT DIAL: So -- but you know, I couldn't
12 make a blanket statement --

13 MR. BAILEY: Sure.

14 LIEUTENANT DIAL: -- because I don't really know a
15 lot about Trooper Wooten and what he's doing.

16 MR. BAILEY: Right, right. Okay. Well, it sounds to
17 me, though, from talking here, Rodney, that it might be helpful to
18 just get a statement of what is seen and what is actually happening.

19 LIEUTENANT DIAL: Well, I -- absolutely, Frank. I
20 mean, if -- if the -- you know, and I'm going to -- I'm going to call
21 the commissioner and just make sure that, you know, they are
22 aware of these concerns. Because if there is some wrongdoing that
23 is going on or alleged to be going on that the department is not
24 aware of, I'm sure that they'll want to be aware of it.

25 MR. BAILEY: Yeah.

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1 LIEUTENANT DIAL: You know, it's very important
2 for us that the governor have a -- you know, a good opinion and
3 impression of the department. I mean, we care very deeply about
4 what she thinks about the department. And you know, I --

5 MR. BAILEY: Yeah.

6 LIEUTENANT DIAL: -- I don't want it to appear that
7 we don't, so --

8 MR. BAILEY: You know -- you know, I -- I
9 appreciate that so much. And I'm telling you honestly, I mean,
10 she -- you know, she really likes Walt a lot.

11 But on this issue, she feels like it's -- she doesn't know
12 why there is absolutely no action for -- for a year on this issue. It's
13 very, very troubling to her and the family, you know. I can -- I can
14 definitely relay that.

15 LIEUTENANT DIAL: Well, please tell her that, you
16 know, I certainly am concerned. And I will immediately get on the
17 phone after we're done and see if there's something that the
18 department does not know about this, something more that could be
19 done, maybe some additional information that you don't have that I
20 can pass on.

21 And you know, just -- just so that I've got it straight,
22 let's see here, I've got some of the following concerns that you have
23 expressed. One that -- that he lied on his initial application.

24 MR. BAILEY: Correct.

25 LIEUTENANT DIAL: And that was mainly regarding

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1 a pre-existing injury?

2 MR. BAILEY: Correct.

3 LIEUTENANT DIAL: Okay. And then issues

4 concerning may have illegally shot a moose?

5 MR. BAILEY: Right.

6 LIEUTENANT DIAL: Okay. And workers' --

7 workers' comp issue?

8 MR. BAILEY: Uh-huh. The workers' comp issue is

9 pretty much -- I believe he's back on full duty now.

10 LIEUTENANT DIAL: Okay.

11 MR. BAILEY: That was pretty much dealt with.

12 And then the tasing of his kid, I don't know if that

13 was ever verified or what. I think there was some kind of

14 investigation on that at one point, but it's just horrible. We can't --

15 you know, can't understand why he would do that.

16 LIEUTENANT DIAL: And then we've got use of

17 patrol car off duty, and then a concern that the governor could be

18 subpoenaed in for, what, a child custody case, is that what it would

19 be?

20 MR. BAILEY: Correct.

21 LIEUTENANT DIAL: Okay.

22 MR. BAILEY: Yeah.

23 LIEUTENANT DIAL: All right. Okay. And then

24 also, you know, anything regarding PSEA that I come across.

25 MR. BAILEY: Yeah. That -- that would be fantastic,

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1 Rodney.

2 And this number -- I don't know if this came up on
3 caller ID, but that's my cell phone. And you can catch me any time
4 on that, though.

5 LIEUTENANT DIAL: The 748-5816?

6 MR. BAILEY: 5816.

7 LIEUTENANT DIAL: Okay. And are you normally
8 at the Anchorage office?

9 MR. BAILEY: You know, for the session, I've been in
10 Juneau quite a bit. So I'm -- I'm here about four days a week. I fly
11 back here in a couple of hours.

12 LIEUTENANT DIAL: In Anchorage, is your number
13 269-7450?

14 MR. BAILEY: 7459.

15 LIEUTENANT DIAL: 7459. And what's a good --
16 what's a good Juneau number to get you?

17 MR. BAILEY: It's 465-39 --

18 LIEUTENANT DIAL: I'm just writing all this down
19 here real quick.

20 MR. BAILEY: Yeah.

21 LIEUTENANT DIAL: Okay. You got it. Anything I
22 can do to help you, you can count on it. And let me make some
23 phone calls and I'll see what I can find out.

24 MR. BAILEY: Rodney, thank you for listening there.
25 And I really appreciate it, guy.

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1 LIEUTENANT DIAL: Yeah. No problém. Any time.

2 MR. BAILEY: All right. Take care.

3 LIEUTENANT DIAL: Bye.

4 MR. BAILEY: Bye bye.

5 (Off record)

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3 CERTIFICATE

4 UNITED STATES OF AMERICA)

5)ss.

6 STATE OF ALASKA)

7 I, Sunshine V. Morrison, Notary Public and Certified Reporter and

8 Transcriber with Accu-Type Depositions, do hereby certify:

9 That the foregoing pages numbered 2 through 21 contain a true,

10 accurate and complete transcript of the telephone Conversation between

11 Frank Bailey and Trooper Rodney Dial on February 29, 2008, as transcribed

12 by Jeanette Blalock, Notary Public and Certified Court Reporter and

13 Transcriber with Accu-Type Depositions, and as proofread and listened to by

14 Sunshine Morrison, to the best of our knowledge and abilities from a link of

15 the Anchorage Daily News audio file supplied to me via internet by Mr.

16 Stephen Branchflower.

17 DATED this 14th day of August, 2008.

18

19

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Sunshine V. Morrison, CR 7575

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Rahfeld, Karen J (GOV)

From: Clark, Christopher G (GOV)
Sent: Wednesday, June 27, 2007 7:58 PM
To: Rahfeld, Karen J (GOV)
Subject: Wait and Audie's plan to fix the Alaska criminal justice system
Importance: High
Attachments: For Wait - Audie's projects.doc

After you've recovered from budget vevoes, you may want to take a peek at the attached document: a draft, \$8.9 million, two-year plan backed by Wait Monegan and Col. Audie Holloway to fix Alaska's criminal justice system.

Also check out the message below.

From: Monegan, Wait C (DPS)
Sent: Wednesday, June 27, 2007 8:48 AM
To: Palin, Sarah H (GOV)
Cc: Kelly, Russell T (GOV); Glass, John D (DPS); Holloway, Audie E (DPS)
Subject:
Importance: High

Governor - AST Major Gilck and I are down here in your DC Office preparing to meet with Senators Stevens and Murkowski about the Village Public Safety Officers Program and the currently suspended IHS funds that I mentioned at our last Cabinet meeting. On this topic, coupled with the recent Amnesty International Report regarding sexual assaults in Rural Alaska, I intend to share what we are going to propose to you, and that is a plan conceived by Col. Holloway regarding addressing three large issues.

I have attached Audie's plan for your viewing, but in truth I had been waiting for our next one-on-one meeting to go over it in detail. This IHS/VPSO issue arose and in discussing this with John Katz (an amazing man) he suggested I share Audie's plan with the Senators; perhaps to even seek some Federal funding in its support.

I apologize for not sharing this with you prior, but I feel you will conceptually agree with this plan; though here today, I am only going to focus on "Project #1" which is the Sexual Assault and Sexual Abuse of Minors in Western Alaska.

Synopsis - Hire long term temporary law enforcement investigators with support staff, a prosecutor and a defense attorney with support staff, a specially appointed court judge with support staff, and a DNA specialist and evidence technician. I would want to add funds to contract a victim advocate/support to this as well. All for a two year period, with one renewable two year period if necessary; making this at maximum, a 4 year project. This crew would be dedicated to only address the cases of sexual assault and child sexual abuse in Western Alaska. This is attractive two fold: a long overdue concentrated response to a historic and infamous problem; and also, by taking these cases off the plate, this allows AST and the courts to address and hopefully get a handle on the remaining issues facing Rural areas. Price tag - about \$3M. for two years.

Concerns, comments, or condemnations, I am on cell at 351-0211. Our meeting is set at 2:00 PM (EST) and Allison will accompany us.
-Wait

6/27/2007

Exhibit 7
Page 1 of 1

CPVT559

MEMORANDUM

STATE OF ALASKA
Office of the Governor
Office of Management and Budget

To: Commissioners
Administrative Services Directors

Date: August 6, 2007

From: Karen J. Rehfeld *KJR*
Director

Subject: "Heads Up" Meetings on
FY 09 Budget

You and your staff are to be congratulated for the great work in developing and implementing Governor Palin's budget goals in the FY2008 operating and capital budgets. Controlling spending, living within our means, and saving for the future continue to be the focus for this administration. These goals will guide us in developing the FY2009 budget.

I would like to schedule the first round of agency meetings to discuss your preliminary FY2009 budget recommendations in early September. These "Heads Up" discussions will take place in the Governor's Conference Room and will include the Chief of Staff as his schedule allows, special assistants, OMB analysts and anyone you chose to bring from your agency. I have attached a tentative department meeting schedule. I understand that changes may be necessary. Please contact Kari Spencer at 465-4660 if you need to change meeting dates or times. Also, if there are other entities that should be scheduled for separate discussions, please let Kari know.

With the first 90-day session upon us, the Governor would like to accelerate our process in order to be fully prepared to work on the budget when the legislature convenes on January 15, 2008. She is committed to maintaining budget discipline and holding the line on new positions and programs, and limiting the amount of supplemental requests and budget amendments. The Governor is also committed to a more open process and better communication with the legislature. Your suggestions for how best to accomplish this task are appreciated.

Additional meetings will be scheduled in October to help finalize FY2009 budget recommendations for the Governor. I appreciate the time it takes to prepare for these meetings. It would be helpful to have the discussion on various budget items and issues to be as fully developed as possible. It is not necessary to bring written documents to this preliminary meeting.

Attached is information from the FY2009 budget instructions to help frame the discussion for these meetings. If you have any questions, please call me or your OMB Analyst. Thanks!

Attachments

1. Excerpt from FY2009 Budget Instructions
2. Preliminary schedule for department meetings

Office of Management & Budget FY2009 Budget Instructions
Preliminary Budget "Heads Up" Meetings

You do not need to discuss statewide personal services cost increases such as wages, health insurance, and retirement.

Topics to be covered at the September "Heads Up" meetings include:

1. Proposed changes in the department's operating funding levels by fund source compared to the FY 08 level. In explaining the impact of your proposals, please use the performance management framework your department has developed to describe the anticipated change as a result of the proposed funding change. Link your funding needs to results by showing how results will be different from the status quo.

Your budget information should be as specific as possible so please be prepared to answer to the following questions:

- a. How will proposed funding changes impact the achievement of your desired end results?
- b. What are the anticipated changes in outcomes with the proposed changes in funding? If there are no changes in outcomes, why are you requesting funding?
- c. Will progress be improved or hindered - by how much?
- d. If you received funding for FY 07 or FY 08, then "What did we "get" for our investment? Are we closer to the end result - if not, why not?

Also be prepared to discuss:

- e. Formula-driven increases and options that could mitigate that growth (i.e., statute/other program changes);
- f. The effect of any proposed savings or requested funding increase on your department's performance targets and end results - again, how they'll be different from the status quo; and
- g. FFY 09 federal funding requests.

**Office of Management & Budget FY2009 Budget Instructions
Preliminary Budget "Heads Up" Meetings**

2. Reorganization proposals:

- a. To realign programs with another department; and/or
- b. Program/other organizational consolidations in your department;

Please explain your recommendation in terms of how that new alignment will improve the results to be delivered.

3. New revenue/financing ideas

Your proposal must include revenue estimates that are as firm as possible, your methodology for arriving at those revenue estimates (i.e., no back of the envelope calculations), and any obstacles or conditions that must be overcome in order for your proposal to be successful.

4. FY 09 capital budget requests with fund sources (describe your department's requests, including IT projects). IT projects will go through their separate review process, but we need to have a sense of the capital budget "universe." Please provide a status on the currently authorized IT projects.

5. Fund balances for dedicated/designated fund sources and any proposal to use those balances in FY 09;

6. Legislation needed to implement budget-related proposals; and

7. Current year issues:

- a. Potential FY 08 supplemental requests (discuss steps the department is taking to mitigate the need for a supplemental);
- b. Current and potential liabilities, which may include potential lawsuits, update of current litigation and budget impact.

8. Budget Reductions/Savings

Several departments proposed cost-savings ideas during the development of the FY 08 budget, but needed more time to plan for implementation. Each department should be aggressively reviewing its operations to find areas in the budget that can be reduced.

Office of Management & Budget FY2009 Budget Instructions
Preliminary Budget "Heads Up" Meetings

Suggestions to Assist in Identification of Savings

Some of these suggestions may still be applicable to your programs, so please review and make any recommendations you would like to propose:

1. Some departments have individual divisions that have their own administrative support functions. Consolidate this support within the department's administrative services division and eliminate duplicative positions.
2. Charge external grants the maximum amount allowable for indirect costs and use this funding to offset state support of administrative costs.
3. Do some of your department programs serve the same clients as another department? If so, these are potential candidates for consolidation.
4. Are there state-owned assets managed by your department that could be sold?

Rehfeld, Karen J (GOV)

From: Rehfeld, Karen J (GOV)
Sent: Tuesday, October 09, 2007 3:56 PM
To: Ruaro, Randall P (GOV); Tibbles, Michael A (GOV)
Subject: RE: DPS Plan and Request for Governor's Signature

I am stunned that they would ask the governor to "sign" anything! I really want to see what they have broken out in terms of "must haves" in FY2009 and what the out years look like - I also do not know where/how the governor feels about the VPSO's becoming state employees or the legislation to create the tiered police officer - this is all part of the budget process SO, I guess it is good they are putting these options out there, but NO, I would not recommend the governor commit to anything - KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Tuesday, October 09, 2007 3:23 PM
To: Rehfeld, Karen J (GOV); Tibbles, Michael A (GOV)
Subject: DPS Plan and Request for Governor's Signature

Karen / Mike:

DPS has asked the Governor to review and sign their "10 year plan". I am reading it now. I am a bit concerned about DPS pushing the Governor to quickly accept and approve of plans, ideas, budget proposals, etc. Commissioner Monegan may be planning on discussing ideas such as a new tiered police system and state employee status for VPSO's at APN, before the Governor has fully reviewed and approved them.

Any thoughts?

Randy

10/9/2007

CPVT1502

MEMORANDUM

STATE OF ALASKA

Office of the Governor
Office of Management and Budget
PO Box 110020
Juneau AK 99811-0020
(907) 465-4560, fax 465-3008

To: Commissioners
Deputy Commissioners
Administrative Directors

Date: October 26, 2007

From:  Karen J. Rehfeld
Director

Subject: FFY2009 Federal
Appropriation Requests

The State of Alaska has taken steps to reduce the number of earmark requests forwarded to the Congressional Delegation for consideration over the past several years. It will soon be time to begin developing the state's FFY2009 federal appropriation requests for submission to the delegation. With the increased attention related to earmarks, we will significantly reduce the number of earmark requests for FFY2009.

To enhance the state's credibility, requests should be made only for the most compelling policy and programmatic interests at the state and national level. Requests need to have a strong federal purpose or nexus, and should not be proposed primarily to fill gaps in the state budget. Access to state matching funds and other funding partners will also be important elements of the requests. There will be a very high bar to overcome in proposing earmarks and it is our goal to transmit no more than 10-12 requests beyond those appropriations for the Alaska National Guard and for specific on-going research and other activities.

This change will require agencies to reexamine the way business is done and to vigorously investigate funding opportunities not directly tied to the congressional appropriations process. Agencies may need to rely solely on programmatic and formula funds, or compete for new federal grants and contracts.

We will be working closely with the Governor's Washington D.C. office in developing the FFY2009 request. Please use the attached form to submit your requests. When filling out the forms please use whole dollars, not budget dollars. OMB requests that you submit your requests by January 7, 2008.

JoEllen Hanrahan will be coordinating the federal requests this year. Please submit your requests via email both to JoEllen (jo.ellen.hanrahan@alaska.gov) at OMB, and to Paula Spreter (pspreter@alaskadc.org) in the Governor's Washington D.C. office. If you have any questions, please contact JoEllen at 465-3559 or Paula at 202-624-5989.

Attachment

cc: John W. Katz

Rehfeld, Karen J (GOV)

From: Ruaro, Randall P (GOV)
Sent: Wednesday, December 12, 2007 11:51 AM
To: Rehfeld, Karen J (GOV); Tibbles, Michael A (GOV); Nizich, Michael A (GOV)
Subject: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Karen / Mike:

I continue to be concerned about the ability of DPS to support the Governor and her budget. I have a meeting scheduled for Dec. 18, at 11:00 am, with Commissioner Monegan, Deputy Commissioner Glass, and Colonel Holloway to ask some very direct questions on the subject.

Also, I was advised by Lauren Rice last week that DPS is working on a statewide initiative on domestic violence and sexual assault that could cost tens of millions of dollars a year. I think once they have their plan in place, they will ask for a direct meeting with the Governor to try and sell the plan.

I am open to suggestions to how we reconcile the apparent vision of DPS regarding public safety and the reality of the Governor's budget and desire to hold down spending.

Thanks,

Randy

From: Ruaro, Randall P (GOV) </O=SOA/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RPRUARO>
To: <Rehfeld>; GOV <Karen J>
Sent:
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Right. I am just trying to picture the player telling Coach Knight he won't set the pick because he does not feel it is the appropriate choice for the play.

Randy

From: Rehfeld, Karen J (GOV)
Sent: Wednesday, December 12, 2007 1:27 PM
To: Ruaro, Randall P (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Throw a chair or two??? Maybe that would be effective? KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, December 12, 2007 1:26 PM
To: Rehfeld, Karen J (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

What would Bobby Knight do?

From: Rehfeld, Karen J (GOV)

Sent: Wednesday, December 12, 2007 1:25 PM
To: Ruaro, Randall P (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

We may need to get Wait's help – certainly he can appreciate the position he puts the governor in – if Audie can't articulate the company line, he shouldn't be testifying – I think he has plenty of room to talk about the governor's priority and this budget is a good first step, etc... BUT, if he is "uncoachable" to use a basketball term, he gets benched! KJR

Karen J. Rehfeld, Director

Office of Management & Budget

465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, December 12, 2007 1:21 PM
To: Rehfeld, Karen J (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Karen:

Right now, I believe that if Senator French asked Audie whether the Governor's budget provides him with enough troopers to do an adequate job of protecting Alaskans he would say not hesitate to say "absolutely not". I am not sure that any amount of coaching or suggesting will be able to change his response, although I have on several occasions in the past and will continue to try again at the December 18th meeting.

I am also concerned that he has already had conversations with Senator French to this effect, which would explain why Senator French was the only legislator interviewed on the subject of the DPS plan for more troopers in the future in the Channel 2 story, and may explain why Hollis is going to call for legislative hearings on the subject of criminal justice the first 2 days of session. I intend to ask him this question as well on the 18th.

Randy

From: Rehfeld, Karen J (GOV)
Sent: Wednesday, December 12, 2007 1:00 PM
To: Ruaro, Randall P (GOV)

Exhibit 12
Page 2 of 4

AGO011221

Cc: Kelly, Russell T (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Well, I don't know what experience Audi has testifying before legislative committees— When you have the meeting with involved parties, it will be critical to stress that Depts must support the governor's budget – it is fair to say there is more to do and we will be taking reasonable, responsible steps to get there, etc..... BUT, he may need some coaching on how to answer a question and not ramble on and on – they will trip him up in a hurry if he starts delivering the passionate speech - KJR

Karen J. Rehfeld, Director

Office of Management & Budget

465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, December 12, 2007 12:56 PM
To: Rehfeld, Karen J (GOV)
Cc: Kelly, Russell T (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Thanks Karen. I agree and will pass that message on. At some point, does there need to be a meeting where DPS and 3rd floor folks don't leave until both sides agree on what the budget plan is for the future? Or is it just impossible to reconcile the two positions?

My worry is that without any reconciliation, you will have Audie testifying in about 4 weeks before Senator Hollis French in Senate Judiciary that the Governor's budget is not sufficient for either troopers or VPSO's.

Randy

From: Rehfeld, Karen J (GOV)
Sent: Wednesday, December 12, 2007 12:44 PM
To: Ruaro, Randall P (GOV); Tibbles, Michael A (GOV); Nizich, Michael A (GOV)
Subject: RE: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Sounds like this is in addition to the Trooper plan – will need to have a better idea of what this all looks like AND, how they propose to phase in these various plans – hopefully we don't have to weed through another \$120million request next year –

My suggestion is that they present their plan to you, maybe me, and NOT go see the governor directly! Good luck! KJR

Karen J. Rehfeld, Director

Office of Management & Budget

465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, December 12, 2007 11:51 AM
To: Rehfeld, Karen J (GOV); Tibbles, Michael A (GOV); Nizich, Michael A (GOV)
Subject: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Karen / Mike:

I continue to be concerned about the ability of DPS to support the Governor and her budget. I have a meeting scheduled for Dec. 18, at 11:00 am, with Commissioner Monegan, Deputy Commissioner Glass, and Colonel Holloway to ask some very direct questions on the subject.

Also, I was advised by Lauren Rice last week that DPS is working on a statewide initiative on domestic violence and sexual assault that could cost tens of millions of dollars a year. I think once they have their plan in place, they will ask for a direct meeting with the Governor to try and sell the plan.

I am open to suggestions to how we reconcile the apparent vision of DPS regarding public safety and the reality of the Governor's budget and desire to hold down spending.

Thanks,

Randy

From: Ruaro, Randall P (GOV) </O=SOA/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RPRUARO>
To: <Rehfeld>; GOV <Karen J>; <Tibbles>; GOV <Michael A>; <Nizich>; GOV <Michael A>
Sent:
Subject: DPS - Operating budget / DPS Initiative on domestic violence and sexual assault

Karen / Mike:

I continue to be concerned about the ability of DPS to support the Governor and her budget. I have a meeting scheduled for Dec. 18, at 11:00 am, with Commissioner Monegan, Deputy Commissioner Glass, and Colonel Holloway to ask some very direct questions on the subject.

Also, I was advised by Lauren Rice last week that DPS is working on a statewide initiative on domestic violence and sexual assault that could cost tens of millions of dollars a year. I think once they have their plan in place, they will ask for a direct meeting with the Governor to try and sell the plan.

I am open to suggestions to how we reconcile the apparent vision of DPS regarding public safety and the reality of the Governor's budget and desire to hold down spending.

Thanks,

Randy

From: Rehfeld, Karen J (GOV) </O=SOA/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KJREHFELD>
To: <Ruaro>; GOV <Randall P>
Sent:
Subject: RE: Feb. 15 letter

Sight KJR

Karen J. Rehfeld, Director

Office of Management & Budget

465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Monday, March 03, 2008 12:12 PM
To: Rehfeld, Karen J (GOV)
Subject: RE: Feb. 15 letter

Karen:

I have spoken to Walt, John Glass, and Audie about working through issues internally first several times. Mike Nizich has spoken with them, and COS has spoken directly with the Commissioner. They seem to just not want to accept that concept. Sorry this happened.

Randy

From: Rehfeld, Karen J (GOV)
Sent: Sunday, March 02, 2008 2:32 PM
To: Ruaro, Randall P (GOV)
Subject: FW: Feb. 15 letter

FYI – I never got a chance to call Walt – wanted to get something off to him before he writes any more letters! KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

From: Rehfeld, Karen J (GOV)
Sent: Sunday, March 02, 2008 2:31 PM
To: Monegan, Walt C (DPS)
Subject: Feb. 15 letter

Hi Walt – I was assigned to respond to your Feb. 15 letter to Governor Palin in support of the \$1.8 million for the Anchorage Community Land Trust project. As you know, we vetoed funding for this project in FY2008 and we do not have it in the governor's FY09 budget. I understand that this project has considerable support locally, which is very good. At this time, we would prefer to put state funds toward some of our higher priority projects, like the DPS Hanger, the Crime Lab, etc...

With significant pressure to increase the budget, particularly in the area of public safety, for VPSO, sexual offenses, child pornography, the \$1.5 million for the Bethel sleep off center, etc... I just don't see how we can support the \$1.8 million at this time. I will not be drafting a letter for the governor's signature in response to your letter. I expect we will see your letter appear as justification for funding to be included in the capital budget as the legislature makes changes to our budget, which is a bit awkward.

Bottom line is, let's talk about this rather than writing letters to the governor. Thanks! KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

5959 301

From: Kreitzer, Annette E (DOA)
Sent: Monday, March 10, 2008 3:06 PM
To: Monegan, Walt C (DPS)
Cc: Tibbles, Michael A (GOV)
Subject: RE: PSEA mediation

It's not just the half percent, it's the entire cost of the contract. Each piece (steps, education recognition, etc.) raises the amount of compensation the State must be prepared to commit to for the next three years, whether the money is there or not. I don't see you as being argumentative.

ak

From: Monegan, Walt C (DPS)
Sent: Monday, March 10, 2008 3:00 PM
To: Kreitzer, Annette E (DOA)
Cc: Tibbles, Michael A (GOV)
Subject: RE: PSEA mediation

I am not trying to be argumentative nor be disparaging about the 'other-than-salary' offers, I had mentioned earlier that I thought them to be generous.

But SBS is a not an issue, as PSEA already gets that, as does SU, as does the unrepresented, as does... The view here is one of fairness; 5 1/2%, 3%, 3% were offered to SU, and the unrepresented, [leave VPSOs out of this]; so to the road troopers, who feel they put so much more on the line and risk (literally) everything, are left to ask "Why are we singled out for not getting a 1/2%?"

Of all the issues DPS faces in being: understaffed; stretched to the limit in public expectations; being behind in technology; working paperwork a day off a week to be only "behind" in report submissions instead of being "way behind." Add to this that the uniformed trooper is a very visible symbol of the SOA and faces the growing frustration from citizens feeling we [the State] are not interested in them. Plus working with a legislature that seems not intent on providing aid or support; and the overall perspective of the rank and file is desperate.

Then there are management tools that we are trying to include in this contract that are in hang fire such as: compressed workweeks, and tightened up disciplinary language; either of which could reduce costs and enhance our ability to recruit and retain.

What I am asking you is to work with me in providing a ray of hope, a 1/2% sign of encouragement, to a collection of dedicated men and women who by our standards are very hard to come by. This is our Administration's opportunity to extend to a tired and frustrated group of troopers, a small symbol of appreciation. I have been told that there are 20-30 troopers who 'have their bags packed and ready to go' but are waiting to see the outcome of these negotiations to decide.

Annette, I am asking you to help me to put this contract behind us. There is so much we have to do in this state, but we must clear this contractual hurdle first before we can continue. We are so close; can we not add that 1/2%?
-Walt

From: Kreitzer, Annette E (DOA)
Sent: Monday, March 10, 2008 11:05 AM
To: Monegan, Walt C (DPS)
Cc: Tibbles, Michael A (GOV)
Subject: RE: PSEA mediation

10/6/2008

Exhibit 15
Page 1 of 3

CPVTT - 2466

We are meeting with the federal mediator in ANC today and tomorrow. Commissioner, two things I didn't see mentioned in the MOA/SOA comparison:
SOA & employee contribution for SBS of 12.26% of State payroll;
Value of the Service Steps –we computed the cost to the State for APEA-SU at around \$1.9 million a year.

PSEA is only looking at salary and not at what else is in the offer. We have been talking a whole package to address issues of recruitment, rewarding those who "step up" (like FTOs); and retention (service steps). Only focusing on the arbitrator's award for APEA-SU will not help the case. APEA-SU does not have the premium pay and other pay opportunities that PSEA has.

ak

From: Monegan, Walt C (DPS)
Sent: Monday, March 10, 2008 10:30 AM
To: Kreitzer, Annette E (DOA)
Cc: Tibbles, Michael A (GOV)
Subject: RE: PSEA mediation
Importance: High

Any news? Have we gone to Mediation or are we meeting at the negotiations table?
-Walt

From: Monegan, Walt C (DPS)
Sent: Friday, March 07, 2008 2:40 PM
To: Kreitzer, Annette E (DOA)
Cc: Tibbles, Michael A (GOV)
Subject: RE: PSEA mediation

FYI – I had a meeting this AM with John Cyr and PSEA President Rob Cox to discuss personnel cases, then they expressed that they and we are so close to resolving this contract.

Bottom line – They think that 5 ½%, 3% (or a capped CPI), and 3% (or a capped CPI), along with an educational incentive that adds a percentage to the base pay could be sold to the union membership and forgo the mediation/arbitration. They also said they offered to switch the DPS paid for bi-annual medical exams [approx. \$1K or so for each exam] to apply that toward the health insurance premium and let the health trust pay for the exams.

Are we so far apart that this would not work?
-Walt

From: Monegan, Walt C (DPS)
Sent: Thursday, March 06, 2008 5:29 PM
To: Kreitzer, Annette E (DOA)
Cc: Tibbles, Michael A (GOV)
Subject: PSEA mediation
Importance: High

Annette –

10/6/2008

Exhibit 15
Page 2 of 3

CPVTT - 2467

I understand we are to begin mediation with PSEA next week, primarily because of salary issues. The terms I was told that we offered were 5%, 3%, and 3%. I was also told there were other financial package offerings such as \$3-\$5K @ year for every year after a three year service obligation was met; a flat premium for the rating and not the actual time worked for CIRT and pilots; a step increase for a BA Degree; and, the uncapped continual step increases after "F" step every two years. On these other offerings, I commend you, they are generous.

I won't mentioned the % 5 1/2, 3%, 3%, just offered in HB417, or the proposed 26% increase for VPSOs [not your offering, I know], but I am pretty sure PSEA and SU will.

My concern is that our timing on these contracts is unfortunate; we (the State) offer these otherwise very reasonable terms while standing in front of a billion dollar surplus. Our workers are looking behind us and want to know why we are being so frugal, especially when we look so rich. And it isn't only contract negotiators that are extending both their hands out wanting some of that billion dollars; look at the communities, non-profits, and legislators. Perhaps it is time to explain to the world what that bankroll is intended for. I have been telling my staff that it is not so different that a farmer cashing in a crop or fishermen selling their catch; for the moment, they too are loaded with cash, but they understand that the money must be stretched out until the end of next season. Alaska has a commodity based tax system, and nothing else; no income or sales tax. As population, inflation, and cost of living all grow, but the "tax base" does not, we are forced into stretching our relatively stagnant dollars trying to feed a vibrant and growing society. The Governor is striving to expand our tax base with another marketable commodity, yet the realistic date when that commodity can be brought to market is 10 years away. Given that, our best (and appropriately conservative) projection on our needs vs. our ability to pay for them forces us to adopt a 4% @ year growth cap to bridge to our market date.

This we understand, but seemingly no one else does or cares. Blame Dr. Spock and his indulgent behavior advice, but in this era of instant gratification, our workers, our citizens, and even some our leaders, want it now.

Aside from this rant of fiscal philosophy, and the suggestion we need to be a little more transparent to everyone on the "why," I ask that you consider this with the PSEA:

- Cap the continual 'after F step' increases to say 12 years. This still expands the increases for five more years over present practice, but will keep an incentive for workers to seek promotion and a new set of step increases that otherwise may not be such an incentive as long as the pay increases keep coming in...
- Shift that anticipated and capped step expense/savings to the front end of the salary offer, at least to match the 5 1/2 % that HB417 offers.

This, the aforementioned other financial package offers, and the global explanation about why we need to save, may either convince the PSEA or the arbitrator.

Consider this, because I believe we can be both conservative and compassionate...

-Walt

CPVTT - 2468

10/6/2008

Exhibit 15
Page 3 of 3

From: 'Ruaro, Randall P (GOV)' <randall.ruaro@alaska.gov>
To: <JSJ Test2>; <Rehfeld>; GOV <Karen J>
CC: <Nizich>; GOV <Michael A>
Sent: 4/7/2008 7:59:46 AM
Subject: Crime Lab Funding

Mike:

I believe Commissioner Monegan will be here all next week to lobby legislators to put as much gf as possible into the capital budget for the crime lab. I have heard he will be asking legislators for \$50-70 million state gf.

If our position is that we do not want the crime lab funded beyond \$10 million state gf this year or only as part of a statewide bond package, we should probably communicate that position to him. I believe he also plans on rallying police departments, etc., in support of his gf request.

Randy

From: Rehfeld, Karen J (GOV)
Sent: Wednesday, May 07, 2008 9:09 PM
To: Ruaro, Randall P (GOV)
Subject: RE: This morning's meeting

Some amount of the \$12 million is for site prep -- I am sure we have that in the backup somewhere -- I am thinking \$6 million? KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, May 07, 2008 3:27 PM
To: Rehfeld, Karen J (GOV)
Subject: RE: This morning's meeting

Karen:

I FEEL YOUR PAIN! DPS is constantly going off the reservation.

They also did not do a good job selling the crime lab. No pictures of drawings of what would actually be in the crime lab, just assertions that they needed everything and it would cost \$100 million. Now that they have some design money, perhaps they can get a concept on paper, and explain to legislators what everything is that needs to go into the crime lab, show them how it fits in the design of the building, etc.

A good question might be how much of the \$12 million appropriation for the crime lab design is actually needed to produce a design? If it is \$2-3 million, do we reduce the appropriation?

Randy

From: Rehfeld, Karen J (GOV)
Sent: Wednesday, May 07, 2008 2:10 PM
To: Ruaro, Randall P (GOV)
Cc: Nizich, Michael A (GOV)
Subject: RE: This morning's meeting

We need a cabinet level budget discussion/retreat thing AFTER we get through special session -- Wait told me he has already talked to Dan Fauske about AHFC financing and constructing the crime lab -- says it will be cheaper than going through DOTPF! He also said he needed to talk with Galvin about financing options. In any case, I don't mind these guys talking with other commissioners, but the bottom line is that we need a much better defined project and cost estimates and a coordinated approach to the financing and how that fits into our long-range budget plan, etc..... geez! KJR

Karen J. Rehfeld, Director
Office of Management & Budget

9/12/2008

Exhibit 17
Page 1 of 3

PB0017

465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, May 07, 2008 11:44 AM
To: Rehfeld, Karen J (GOV)
Cc: Nizich, Michael A (GOV)
Subject: RE: This morning's meeting

Karen:

I agree. I think for now, Audie is content to work through the retention and recruitment group that Commissioner Kreitzer is heading up. It is hard to say though, he goes public with things now and then and never tells anyone. I do not believe the Criminal Justice Working Group is taking up this issue but it would not surprise me if Walt raised this issue with them or anyone else at anytime, anywhere.

I think at various times, both Mike Nizich and Mike Tibbles and I have told Walt, Audie, and John Glass not to work this way. It doesn't seem to sink in very well. Is working through the recruitment and retention group, then OMB and getting Governor approval on budget issues BEFORE going public a topic that could be mentioned at the next cabinet meeting without directing it only at DPS?

Randy

From: Rehfeld, Karen J (GOV)
Sent: Wednesday, May 07, 2008 10:56 AM
To: Ruaro, Randall P (GOV); Sutton, Mary C (GOV)
Cc: Nizich, Michael A (GOV)
Subject: RE: This morning's meeting

Will need to keep Dan Spencer in the loop also - the whole discussion about vacant positions, and the funding needed based on successful trooper academies could be interpreted as conflicting with this discussion. 125 troopers X \$\$\$\$\$ per trooper is a lot of money. And, I don't know where this fits with the work of the Criminal Justice Planning Group and the broader budget implications across various departments. So, bottom line for me is that this cannot be done in isolation and a press release should not be issued regarding the need for 25 troopers a year for 5 years in order to "do their job". Thanks! KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

From: Ruaro, Randall P (GOV)
Sent: Wednesday, May 07, 2008 7:53 AM
To: Sutton, Mary C (GOV)
Cc: Rehfeld, Karen J (GOV); Nizich, Michael A (GOV)
Subject: RE: This morning's meeting

Mary:

The ultimate outcome was that Colonel Audie Holloway from DPS confirmed he is working on a staffing study. The study is being created internally by DPS employees and Colonel Holloway. He said that the study will

9/12/2008

Exhibit 17
Page 2 of 3

PB0018

probably say the troopers cannot do their jobs right now (A conclusion that is highly subjective and depends who you are asking and how they define "doing their job") and that DPS needs a net of 25 new troopers a year for 5 years to get to a point where they can "do their job".

I am not sure how Audie's staffing study is going to take into consideration the roughly 40 vacant authorized trooper positions in DPS right now that they are having trouble filling because of the difficulty in recruiting.

If you assume the study is correct, (An assumption I have some serious questions about) DPS needs a net 25 new troopers each year for 5 years. Because DPS currently has about 40 positions authorized but unfilled, one could say that DPS only needs 5 new positions in FY 2010 and 5 new positions in FY 2011 to have 50 positions that could be filled by new troopers. The problem is not adding new positions to the budget, just filling the positions DPS has on the books but are vacant.

The Governor asked that the staffing study be conducted under the umbrella of the recruitment and retention working group created by her Administrative Order. The Governor and OMB (yourself and Karen) should also be fully briefed before any report is made final and released. Commissioner Kreitzer was in on the teleconference yesterday morning and agreed this study will be part of the work done by her group.

I do not know the timing of things, but when the study is released could be as important as the findings of the study, since the PSEA will be voting on a tentative agreement in the next 30-60 days.

Randy

From: Sutton, Mary C (GOV)
Sent: Tue 5/6/2008 4:17 PM
To: Ruaro, Randall P (GOV)
Subject: This morning's meeting

Randy,

I was sorry to miss this morning's DPS meeting. I was out of the office all day yesterday and until noon today. Are there any documents, notes, etc. you can share?

Mary Sutton
Office of Management & Budget
Phone: 907-465-4698
Fax: 907-465-2090

9/12/2008

Exhibit 17
Page 3 of 3

PB0019

Date: 2008/06/18 18:57
Subject: Re: Sex Crimes Plan
From: "Rice, Lauren (DPS)" </O=SOA/OU=FIRST ADMINISTRATIVE GROUPE/CN=RECIPIENTS/CN=LRTCE>
To: Holloway, Audie E (DPS)

Yep!

----- Original Message -----

From: Holloway, Audie E (DPS)
To: Rice, Lauren (DPS)
Sent: Wed Jun 18 19:22:23 2008
Subject: Re: Sex Crimes Plan

I do want to meet. Meet tomorrow?

----- Original Message -----

From: Rice, Lauren (DPS)
To: Holloway, Audie E (DPS)
Cc: Monagan, Walt C (DPS); Tepas, Katherine H (DPS); Leveque, Matthew C (DPS); Glass, John D (DPS)
Sent: Wed Jun 18 17:04:16 2008
Subject: Sex Crimes Plan

Col.,

Now that the dates have been set for the DC trip, we need to put together an organized, well-thought out plan for the Congressional Delegation to review. We still need the other department's numbers as well.

I think if we have a general brain-storming meeting about what you and

the Commissioner envision (in terms of a presentation), Katie and I can then gather the relevant materials and assemble them. I have spoken with my contacts in Sen. Murkowski's office and they say the Senator will want to see a detailed project and a specific request. We will send her staff briefing materials before the actual meeting so she will be familiar with the plan. During the meeting, she will basically want to hear our specific financial proposal or request.

Randy Ruaro/the Governor's office does not know about this meeting in particular. However, they have asked that federal money be identified and hopefully secured before we meet with the Governor. Obviously, including the federal delegation is critical for us to secure federal funding. I will tell Randy and the new Gov Legislative Liaison sometime this week or next.

I am wondering if Sherry Hill may be helpful in researching some possible funding sources before the DC trip. That way, we can provide the senators' offices with not only a request, but possible ways to fulfill the request.

Please let me know when/if you want to meet on this.

Thank you.

Lauren Rice

Legislative Liaison / Special Assistant for Commissioner Walt Monegan

Department of Public Safety

(w) 269.5591 / 465.2649

(c) 351.2722

Exhibit 18
Page 3 of 3

(10/01/08) : 05535

You replied on 7/1/2008 11:02 AM.

Rehfeld, Karen J (GOV)

From: Ruaro, Randall P (GOV) **Sent:** Mon 6/30/2008 9:58 PM
To: Rehfeld, Karen J (GOV)
Cc: Goode, Kelly C (GOV)
Subject: Crime Lab / Sexual Assault Initiative
Attachments:

Karen:

On the crime lab, are the options:

1. Fund phase 1 of construction for some amount in gf?
2. Try to get the project approved on a statewide bond issue again?
3. Fund all phases of construction in gf? (\$80 million?)
4. COP's like the DEC virology lab?
5. AHFC Bonds?

A common theme to any option is that DPS must get up to speed in explaining the need for the new lab, why it is so expensive, basically why each square foot of space is needed and what it will be used for, etc.

We should also ask DPS what the gain is in efficiency for the entire justice system if the new lab is built.

I don't know enough about budgets and the options to know which one works best.

On the sexual assault initiative, should we ask DPS to brief us on how they are using the funding left over from nearly 40 vacant positions they have in the budget now? Couldn't Walt just make an administrative decision to dedicate 10 of these positions to sexual assaults and have them work certain areas of the state where the problem is the worst by far, like Western Alaska, before giving him permission to seek 40 more positions to hire former troopers to focus on sexual assaults?

Again, I know very little about budgets, but thought I would mention this.

Randy

From: 'John Katz' <jwkatz@ALASKADC.org>
To: <Ruaro>; GOV <Randall P>
CC: <Rehfeld>; GOV <Karen J>; <Makin>; GOV <Aneet S>
Sent: 7/7/2008 4:58:40 AM
Subject: Re: S.1200 - Reauthorization of the Indian Health Services Act

The amendments to the Indian Health Care Improvement Act have passed the Senate and are pending on the House calendar. Aneet, could you advise Randy on the specific provisions he mentioned.

Randy, if further amendments are necessary, we will need to look beyond the current legislation. The Indian Health Care Improvement Act is no longer in a parliamentary situation that is amenable to major changes.

We have been looking at the Tribal Justice Act to work on Alaska specific provisions in the areas of sexual assault and otherwise. That legislation is in an early phase. While it applies to tribes located in Indian country, we have been told that Alaska provisions might be possible. Accordingly, we have opened a dialog with public safety and Health and Social Services.

If possible, I'd like to get more information about Commissioner Monagan's potential trip to DC. We could contact him directly or work through you.

If he intends to approach the Congressional delegation, this should be carefully planned. It is late in the appropriations process to suggest new budget requests. Also, relations with Senator Stevens have improved significantly, and I don't want to do anything that jeopardizes that.

If the Commissioner intends to approach the Justice Department, we will need a careful plan. There is quite a history there. Justice is mainly geared to deal with tribes in Indian country. We have made progress in obtaining federal funds from their programs. But, further homework, including some preliminary contacts, would probably be required.

Let's stay in touch on both issues.

John W. Katz
*Director of State/Federal Relations
and Special Counsel to the Governor*
jwkatz@alaskadc.org
(202)624-5858

>>> On 7/6/2008 at 2:54 PM, in message
<26E753999AE091438533E36232EBBCB3C36F9C@SOAJNUMSG01.soa.alaska.gov>, "Ruaro, Randall P (GOV)"
<randall.ruaro@alaska.gov> wrote:

John:

Would it be possible to get an update on the status of S.1200 or any other bill / vehicle for reauthorizing the Indian Health Service Act? It had some provisions in it about IHS centers developing new treatment programs for assaults on children and victims of sexual assault that I was tracking.

Exhibit 20
Page 1 of 2

AGO010283

Also, as an FYI, Commissioner Monegan may be traveling to DC at the end of the month. He is pursuing his statewide plan to add 30 retired troopers to take over sexual assault investigations from existing troopers. We met with Karen Rehfeld last week. He does not have a green light on this initiative as we want to vet it with other agencies involved, and review whether putting the funding into troopers would get the best results as opposed to DHSS and new treatment and education programs.

Randy

From: 'Rehfeld, Karen J (GOV)' <karen.rehfeld@alaska.gov>
To: <Katz>, GOV <John W>; <Ruaro>, GOV <Randall P>
CC: <Kim>, GOV <Anna C>; <Makin>, GOV <Aneet S>
Sent: 7/7/2008 8:00:32 AM
Subject: RE: S.1200 - Reauthorization of the Indian Health Services Act

My two cents is that this needs to be communicated to Walt (again) from someone he will listen to. Randy and I spent an hour on the phone with him last week and I do not believe he was receiving our message at all. I am not convinced that vertical prosecution will ultimately change the behavior that is causing this deplorable situation to exist. KJR

Karen J. Rehfeld, Director
Office of Management & Budget
465-3568

karen.rehfeld@alaska.gov

From: John Katz [mailto:jwkatz@ALASKADC.org]
Sent: Monday, July 07, 2008 6:56 AM
To: Ruaro, Randall P (GOV)
Cc: Kim, Anna C (GOV); Rehfeld, Karen J (GOV); Makin, Aneet S (GOV)
Subject: RE: S.1200 - Reauthorization of the Indian Health Services Act

Regarding a possible trip by the Commissioner. I see two problems. The first is that we don't have internal alignment, and that's always a prerequisite to bringing an issue to DC.

Second, a request for funding at this time is out of sequence with our other appropriations requests and could put a strain on the evolving relationship between the Governor and Senator Stevens. This is especially true if State funds might be available for a scaled down version. Also, Congress and the Congressional delegation are moving away from funding internal domestic programs. In the current situation, we should be exploring the possibility of grants from the Justice Department.

I think this is important enough on substantive and strategic grounds that it might be worth a session involving Mike Nizich and the rest of us. The purpose would be to develop a consensus on how to proceed and to determine whether the proposal is consistent with the Governor's objective that Alaska become more self-sufficient.

Since this involves DC, I could talk to the Commissioner and/or Mike Nizich but will defer to you on how we should proceed. Thanks for bringing this matter to our attention.

John W. Katz

Director of State/Federal Relations

and Special Counsel to the Governor

jwkatz@alaskadc.org

(202)624-5858

>>> On 7/7/2008 at 10:10 AM, in message
<26E753999AE091438533E36232EBBCB3BC1F72@SOAJNUMSG01.soa.alaska.gov>, "Ruaro,
Randall P (GOV)" <randall.ruaro@alaska.gov> wrote:

Thanks John.

S.1200

It's been some time since I read it, but I believe the provisions are very short language sections that would require IHS clinics to offer a child abuse treatment program and give discretion to IHS to offer an adult program. Statistics from a 2001 survey by Bernard Segai, now the Director of Health Services for UAA, showed that nearly 90% of native women entering treatment for substance abuse in a Fairbanks clinic had been physically or sexually abused before the age of 13 in their home and that 70% of these acts occurred after the perpetrator had been drinking. Increasing the amount of education and treatment programs at IHS facilities for abuse could be very helpful to Alaskans. If the bill stays as it was when I read it, and the adult programs are left to the discretion of the secretary, we may want to figure out a plan to urge the Secretary to exercise that discretion to set up some of these programs in Alaska facilities.

Tribal Justice Act

I am not familiar with this bill, but will try to read up on it when I get some time.

Commissioner Monegan's Trip to DC

I believe Commissioner Monegan intends to approach the Congressional delegation about federal funding for at least part of his sexual assault statewide initiative. Walt's "vertical prosecution" plan is to hire back roughly 30 former troopers to work only on sexual assaults in Alaska. Persons arrested would be prosecuted, defended, and tried by additional new attorneys and judges dedicated to prosecuting sexual assaults. He envisions this plan as relieving much of the workload on current troopers and resulting in about 30 new arrests a year. He does not have OMB's approval to pursue this plan. Despite this fact, Commissioner Monegan has made the plan at least partially public by talking to the delegation on previous trips (Liz Cannell) and reps of certain native organizations.

John. I am skeptical of several points of the Commissioner's statewide plan and I am not convinced that putting funds into more troopers is more effective than trying to partner with IHS and native organizations on education, prevention, and treatment programs. I have been urging the Commissioner to pursue a much scaled back version of this statewide plan and pursue a mobile unit of 4-6 troopers that could move around the state and help line troopers with sexual assault investigations. Since Walt has 56 vacant positions, I feel he should be able to hire troopers for the mobile unit from existing funds and set up this unit administratively. He disagrees.

Randy

From: John Katz [mailto:jkatz@ALASKADC.org]
Sent: Mon 7/7/2008 4:58 AM
To: Ruaro, Randall P (GOV)
Cc: Rehfeld, Karen J (GOV); Makin, Aneet S (GOV)
Subject: Re: S.1200 - Reauthorization of the Indian Health Services Act

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John W. Katz

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Randy

5959 301

From: Nizich, Michael A (GOV)
Sent: Saturday, July 12, 2008 1:07 PM
To: Monegan, Walt C (DPS)
Subject: RE: DPS Commissioner

Ok, sorry to hear that Walt and thank you for your service.

-----Original Message-----

From: Monegan, Walt C (DPS)
Sent: Saturday, July 12, 2008 12:35 PM
To: Nizich, Michael A (GOV)
Subject: RE: DPS Commissioner

I have decided, thank you no.

-----Original Message-----

From: "Nizich, Michael A (GOV)" <mike.nizich@alaska.gov>
To: "Monegan, Walt C (DPS)" <walt.monegan@alaska.gov>
Sent: 7/12/2008 12:28 PM
Subject: RE: DPS Commissioner

Walt, have you decided on accepting the position we discussed yesterday?

Mike

From: Monegan, Walt C (DPS)
Sent: Saturday, July 12, 2008 12:08 PM
To: Colberg, Talis J (LAW); Bishop, Clark C (DOL); Campbell, Craig (MVA); Galvin, Patrick S (DOR); Hartig, Lawrence L (DEC); Irwin, Tom E (DNR); Hogan, William H (HSS); Kreitzer, Annette E (DOA); Lloyd, Denby S (DFG); Notti, Emil R (CED); Schmidt, Joseph D (DOC); Von Scheben, Leo (DOT)
Cc: Nizich, Michael A (GOV); Glass, John D (DPS)
Subject: DPS Commissioner

Effective yesterday afternoon, I have been replaced as the Commissioner of DPS. The Acting Commissioner is John Glass whom you will find to be knowledgeable, experienced, upfront, true to his word, and man of integrity. Please welcome him as you each had welcomed me.

I have enjoyed working with all of you, and that includes you too, Annette. You are men and women skilled and committed to helping the Boss in making life better for all Alaskans. Given the gathering storm of a questionable fishing season and the escalating price of fuel in our state, there will be serious stress placed upon communities and residents who will struggle with the coming winter's challenges. Last week I had asked our Troopers and Fire Marshals to outreach both to these communities and to your departments in a cooperative effort to mitigate issues that will arise like: theft; domestic violence; substance abuse; suicide; and, accidental death; that all can come from sinking reserves of fuel, money, and hope. Teamwork will never be so important.

Finally, we all know the Governor is swamped in a myriad of demands and primarily focused on AGIA, but I urge all of you to seek those few minutes to communicate your issues with her. All relationships are based upon communications; I have known and said this for years, yet I stood back because I hadn't wanted to add to her concerns. For anyone to lead effectively they must have the support of their team, and I had waited too long

1

outside her door for her to believe that I supported her. Please, choose a different path.

Thank you again for accepting me, and for being the men and women that "lean forward" in the service of Alaska.

-Walt