

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"
A.F.S.C.M.E. Local 803

September 3, 2008

Ms. Judy B. Bockmon
Assistant Attorney General
Attorney Generals Office
Opinions, Appeals & Ethics Section
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

Dear Ms. Bockmon:

The Public Safety Employees Association (PSEA) has reviewed the Alaska Statutes and Administrative Code provisions that govern the confidentiality of Alaska state employee personnel records, to determine when a state official unlawfully discloses an employee's confidential personnel records. As you know, a state employee's personnel records are made confidential by statute, and protected against unauthorized disclosure. The Executive Branch Ethics Act provides for substantial penalties against state officials who unlawfully disclose an employee's personnel records. Criminal penalties may also apply.

A review of the transcript of the conversation between Frank Bailey, Director of Boards and Commissions, Office of the Governor, and AST Lieutenant Rodney Dial indicates that the Governor and her office may have had unauthorized access to Alaska State Trooper Wooten's personnel records, and improperly disclosed some information from those records to Lieutenant Dial, as well access to Trooper Wooten's confidential Workers Compensation medical records. PSEA brings this complaint for an ethics violation under AS 39.52.120 – Misuse of Official Position, AS 39.52.140 – Improper Use or Disclosure of Information, and AS 39.25.080, for the improper release of personnel records. PSEA requests an investigation into these matters.

1. AS 39.25.080: The Alaska Personnel Act, Personnel Records.

The Alaska Personnel Act, AS 39.25.080, provides that: "[s]tate personnel records, including employment applications and examination materials, are confidential and are not open to public inspection, except as provided in this section." AS 39.25.080(a). State personnel records are exempted from the Public Records Act, AS 09.25.220(3). *See also* Personnel Rules, 2 AAC 07.910(c) ("All other records [not listed in 910(b) as open for public inspection] of applicants for employment and employees in the classified and partially exempt service, including applications and resumes, are confidential and will be released only under following conditions").

The Alaska Supreme Court has emphasized that the protected personnel records were of a type similar to the examples in the statute, "employment applications" and "examination materials," which "contain details about the employee's or applicant's personal life." *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 979-80 (Alaska 1997). The exceptions to the confidentiality requirement delineated in AS 39.25.080(b), including position title and "compensation authorized," "tell ... little about the individual's personal life, but instead simply describe ... employment status." *Id.* at 980. In *Jones v. Jemmings*, 788 P.2d 732, 738-39 (Alaska 1990), as excessive force tort case, the Court indicated that police officers had a legitimate expectation of privacy in their personnel records, which contain their names, addresses, and personal financial information, noting that personnel files "contain the most intimate details of an employee's work history."

Moreover, medical or rehabilitation records in an employee's file maintained by the Workers Compensation Division or held by the Board "are not public records subject to public inspection and copying under AS 40.25." AS 23.30.107. The Alaska Workers' Compensation Act prescribes a specific process for the release of medical and rehabilitation information relative to the employee's injury. *See* AS 23.30.107(a), (b)(1) & (2).

2. AS 39.52.140: The Executive Branch Ethics Act.

The Executive Branch Ethics Act, AS 39.52.140(b), provides that a current or former public officer "may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law." AS 39.52.190 further provides that it is a violation of the Act "for a public officer to knowingly aid another public officer in a violation of this chapter." Thus, a state official who deliberately discloses a confidential personnel record in violation of the State Personnel Act, AS 39.25.080, or who aids another officer in disclosing a confidential personnel record, also violates the Executive Branch Ethics Act, AS 39.52.140(b).

The Executive Branch Ethics Act was generally designed to address instances in which public officers are acting upon personal or financial interests that conflict with their responsibilities as public officers. The Act proscribes, as a violation of the public trust, any actions that benefit a personal or financial interest through official action. *See* AS 39.52.110(a), and 39.52.120. AS 39.52.140(b) and AS 39.52.190 are the only sections that do not speak to a personal interest. AS 39.52.140(b) is aimed at preserving the public trust that confidential materials will be protected by all public officers during and after employment with the state. AS 39.52.190 addresses the prohibition against knowingly aiding another public officer in violation of the Act.

With respect to each violation of the Ethics Act, the offending public servant may suffer a civil penalty of up to \$5,000, AS 39.52.440, and be subject to disciplinary action, AS 39.52.410(a), 2 AAC 07.416(b). To the extent that violations under AS 39.52 are punishable in a criminal proceeding, criminal penalties are in addition to the civil remedies available.

3. AS 11.56.850(a)(1) and (b): Official Misconduct.

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 “performs an act relating to the public servant’s office but constituting an unauthorized exercise of the public servant’s official functions, knowing that that act is unauthorized.” AS 11.56.850(a)(1). Official misconduct is a class A misdemeanor. AS 11.56.850(b). The disclosure of a state employee’s confidential personnel records, in violation of the State Personnel Act and the Executive Branch Ethics Act, in an effort to advocate the discharge of that employee, should constitute official misconduct.

In *Larson v. State*, 564 P.2d 365 (Alaska 1977), the Alaska Supreme Court construed former AS 11.30.250 [replaced by AS 11.56.820], which prohibited the theft or destruction of public records by an “officer” having custody of the records. Upon upholding the conviction of a former state employee who stole traffic tickets while employed with the Alaska District Court as a deputy clerk, the Supreme Court broadly defined “officer” to include practically any public employee whose misconduct is at all related to his/her official duties, found the defendant to be an “officer” at common law, and declared his crime to be a form of official misconduct: “the breach of a duty of public concern by one who ... is ... entrusted with the public welfare.” 564 P.2d at 370 (quoting *State v. Begyn*, 167 A. 2d 161, 165 (N.J. 1961)). AS 11.30.250 had as its underlying purpose the punishment of those in a position of trust who interfered with, tampered with or misappropriated public documents. *Id.* at 371.

4. The Bailey Telephone Conversation with Dial Reflects Unauthorized Disclosure of Personnel Records.

The following passages from the transcript¹ indicate that Mr. Bailey possessed information that could only have been obtained from AST Wooten’s personnel and Workers’ Compensation claim records, and then freely shared that information with Lieutenant Dial:

Pages 8-9:

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

¹ See attached Transcript

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Assistant Attorney General
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Dial: Wooten did?

Bailey: Yes ... And yet he is -- you know, and then there was some really funny business about a Worker's Comp claim, I think, that came up. And you know, I was talking to Brad Thompson a little bit about that and his whole goal was to just get Wooten back working. But you know, he lied on his application when he applied. He -- he said that he didn't have any physical impairments and come to find out, he was rated in the military and that was discovered after he retired.

Pages 14-15:

Bailey: But especially the fact about him lying on his application. ...

Dial: And -- and where did -- and, Frank, where did you get that information from? I used to be a recruiter, so I'm just -- and I know how that ... that information a lot of times is extremely confidential. So I'm just -- I'm trying to find out how it was determined by anybody that -- that he had indicated something on his application that look -- later found was not to be true.

Bailey: Well, I'm a little bit reluctant to say, but in -- over in Admin is where, you know, we've -- we hold Workers' Comp right in there. And the situation where he declared Workers' Comp, but then was caught on an eight-mile snow machining trip days -- days after, you know, that -- that started coming up there. So we collected statements that we forwarded on to Workers' Comp there. And so we started seeing the

Dial: Oh, okay. I got it.

Bailey: ... the application from that point.

Dial: And that's while -- while he was a trooper?

Bailey: Correct.

Dial: Really? Okay.

Pages 21-22:

Dial: ... [J]ust so that I've got it straight, let's see here, I've got some of the following concerns that you have expressed. One that -- that he lied on his initial application.

Bailey: Correct.

Dial: And that was mainly regarding a pre-existing injury?

Bailey: Correct.

Dial: Okay. And then issues concerning may have illegally shot a moose?

Bailey: Right

Dial: Okay. And Workers' -- Workers' Comp issue?

Bailey: Uh-huh. The Workers' Comp issue is pretty much -- I believe he's back on full duty now. ... That was pretty much dealt with. And then the tasing of his kid, I don't know if that was ever verified or what. I think there was some kind of investigation on that at one point, but it's just horrible. We can't -- you know, can't understand why he would do that.

Dial: And then we've got use of patrol car off duty, ...

5. Request for Wooten's Workers Compensation Records and Return of the Official Records

The Governor's Office had previously requested Trooper Wooten's Workers' Compensation files be sent to the Anchorage Worker's Compensation office and copied for the Governor's Office staff. In Mr. Bailey's taped phone conversation with Lt. Dial, it was clear that the Governor's office acquired this information.² Following the press coverage about this confidential information being shared with the Governor's office staff, the file was then returned to the Juneau office for storage. The request to have these files returned was made by Mike Monagle, Administrator for the Fisherman's Fund Advisory & Appeals Council and the Second Injury Fund sections of the Division of Workers Compensation on August 21, 2008.³ No explanation was given for requesting that the files be returned to the Juneau office. Mr. Monagle would have no business reason to be requesting these files. Such records are confidential and cannot be disclosed without the consent of the employee. In this case, the employee, Trooper Wooten was not contacted to give his consent and no consent has been given. Trooper Wooten has filed Petitions for Protective Orders to stop the Governor from obtaining these files.

² See Pages 8-9 and 14-15 of the Transcript

³ See attached Routing Slip and memo from a worker at Workers Compensation in Anchorage.

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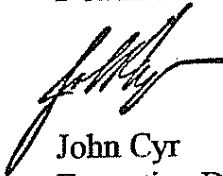
It is also noted that on Pages 8-9 of the Transcript of the phone conversation with Lieutenant Dial, Frank Bailey also discloses that he has been in discussion with Brad Thompson, Division Director, Department of Administration, Division of Risk Management, concerning Trooper Wooten's Workers Compensation Records. In his capacity as the Director of Risk Management, this information should not have been released to the Governor's office.

Therefore, PSEA requests that you and the Personnel Board open an investigation and inquiry in this matter and make a determination if Frank Bailey, Brad Thompson, Mike Monagle, and/or the Governor, engaged any ethics violations under AS 39.52.120 – Misuse of Official Position and AS 39.52.140 – Improper Use or Disclosure of Information, and/or improperly disclosed Trooper Wooten's personnel records, under AS 39.25.080.

Thank you for your attention to this matter. If there are any questions, or if more information is needed, please contact me.

Sincerely,

PUBLIC SAFETY EMPLOYEES ASSOCIATION



John Cyr
Executive Director

cc: Stephen F. Sorensen, General Counsel
Trooper Wooten

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TRANSCRIPT OF CONVERSATION

11

BETWEEN

12

FRANK BAILEY AND TROOPER RODNEY DIAL

13

FEBRUARY 29, 2008

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1 UNIDENTIFIED SPEAKER: Good morning. State
2 Trooper's office. May we help you?

3 MR. BAILEY: Hey, good morning. I'm looking
4 for 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
10 good day, sir.

11 MR. BAILEY: Great. Thank you.

12 LIEUTENANT DIAL: Good morning, Frank. How
13 are you doing?

14 MR. BAILEY: I'm doing good, Rodney. How are
15 you doing?

16 LIEUTENANT DIAL: Good.

17 MR. BAILEY: Good. Good. Hey, I've got a
18 question that's a little bit awkward to ask, and so I
19 want to be real respectful. I mean, if this is
20 something you don't feel comfortable with, that --
21 just tell me straight up, and I respect that fully.

22 But as you know, I mean, things are really
23 ramping up with the contract negotiations right now.

24 LIEUTENANT DIAL: Uh-huh.

25 MR. BAILEY: And we hear that there's going

1 to be quite a bit of communication going around on the
2 PSEA side coming from, say, John Cyr and things like
3 that.

4 Is there -- do you feel comfortable keeping
5 us in the loop on that, if any of that does come
6 through in writing?

7 LIEUTENANT DIAL: You mean if -- if I learn
8 what they're asking for, or what?

9 MR. BAILEY: Yeah, yeah. I mean, with --
10 what typically has happened in the past is we'll get,
11 you know, some -- I mean, we saw this happen on the
12 ASEA and the SU side where, you know, Jim Duncan or
13 one of these folks will send out an e-mail that really
14 doesn't have all the facts quite right, but it'll get,
15 you know, just forwarded to God and everybody.

16 And it's -- it's things like that that we
17 really -- we'd like to know if something comes out
18 like that, if possible.

19 LIEUTENANT DIAL: Oh, you mean anything that
20 would be forwarded to legislators or something like
21 that?

22 MR. BAILEY: Yeah. Well, even to members,
23 you know. Yeah, I mean, I can -- to legislators,
24 we'll typically see it, but I mean, you know,
25 something that -- that -- what typically is to mean

1 as, you know, kind of an effort to get members, you
2 know, rising up to talk to legislators.

3 And that's fine. That's good. We just want
4 to have an idea if the information that's being said
5 is accurate or not.

6 LIEUTENANT DIAL: Oh, sure. I mean, normally
7 I'm not much in the loop on that. I'm not in PSEA.
8 You know that, right?

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

10 LIEUTENANT DIAL: Yeah.

11 MR. BAILEY:actually. I thought -- I
12 thought maybe -- I mean, I know you're -- you've been
13 working on the Legislative side, you know, here with
14 Walt, but yeah, I thought maybe you might still be --
15 still be a member in that.

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

18 MR. BAILEY: Got you. Okay.

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

25 MR. BAILEY: Right, right. Okay.

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

5 MR. BAILEY: That would be great. That would
6 be great.

7 And, you know, I -- I can certainly keep --
8 keep names out, you know, that's no problem. I don't
9 want any, you know, in any way get -- you know, get
10 some onus or focus on you at all there.

11 LIEUTENANT DIAL: Oh, I'm not worried about
12 it because like I said, if -- if I get a-hold of it,
13 it's -- it's generally public knowledge anyway.

14 MR. BAILEY: At that point?

15 LIEUTENANT DIAL: Yeah. I don't attend any
16 of their meetings and I'm not, you know, entitled to
17 get any of their e-mail. So, I really don't know what
18 they're doing.

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

22 MR. BAILEY: Sure.

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

25 And some of that is because I'm the

1 Legislative liaison and, you know, we're -- for the
2 most part, we're all on the same side when it goes --
3 when we go down to Juneau. You know, we're asking
4 for, you know, more funding and that certain bills be
5 passed and things like that.

6 MR. BAILEY: Right, right. Yeah.

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

9 MR. BAILEY: That would be great, man. That
10 would be fantastic.

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

13 MR. BAILEY: Not -- you know, I don't know.
14 I'm sort of more over on the Governor's office side,
15 you know, so I don't really see a whole lot of that,
16 but we do hear of ads that are coming out from PSEA
17 and there has been some misrepresentation.

18 I think John Cyr, in some recent contract
19 negotiations, talked about some promises that the
20 Governor had made during the campaign which were --
21 which were completely false and that was -- you
22 know, that was sent to me and Chuck.

23 And, you know, fear was -- was horrible during
24 the campaign to the Governor, you know. I know we're
25 not supposed to hold grudges and I don't think the

1 Governor does, but those of us around her certainly
2 remember that, you know.

3 And it's -- you know, we all want the same
4 thing. We want good, healthy recruiting. We want
5 good, solid discipline for the, you know, officers
6 that, you know, use excessive force and go out of
7 the -- out of the boundaries, so that we, you know,
8 keep a good name for the department and things like
9 that, you know, and good -- you know, good healthy pay
10 for the officers, for sure, but.....

11 LIEUTENANT DIAL: Yeah. I would hope that
12 PSEA wouldn't, you know, do things like that. I
13 certainly don't see it as benefiting them. I think
14 that would be a big tactical mistake to try to -- you
15 know, to stop the Governor.

16 MR. BAILEY: Yeah.

17 LIEUTENANT DIAL: I just don't agree with
18 that kind of, you know, tactics and hopefully
19 they're not going to go that way.

20 MR. BAILEY: Yeah. Well, Rodney, just so you
21 know, they -- they're just -- I'm going to give you
22 some insight that you -- you will see here and
23 you're going to -- you know, this is going to
24 probably -- unfortunately it's going to come up again
25 and again.

1 But there's been some issues around the
2 state, like the Spitzer situation out west where he,
3 you know, had all the settlements and, you know, we
4 understand there's some mitigating circumstances, but
5 you know, that -- that really put salt in the wound in
6 rural Alaska with a situation like that.

7 There's a situation in Kenai.

8 And there's a gentleman by the name of Mike
9 Wooten, who is a Trooper in the -- in the Valley.

10 LIEUTENANT DIAL: Uh-huh.

11 MR. BAILEY: And there is -- there's a family
12 tie with the Governor there and so I think because
13 of that, my understanding is, you know, Walt has been
14 very reluctant to take any action.

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

20 LIEUTENANT DIAL: Wooten did?

21 MR. BAILEY: Yes.

22 LIEUTENANT DIAL: Uh-huh.

23 MR. BAILEY: And yet he is -- you know, and
24 then there was some really funny business about a
25 Worker's Comp claim ,I think, that came up.

1 And you know, I was talking to Brad Thompson
2 a little bit about that and his whole goal was to
3 just get Wooten back working.

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

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

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

15 LIEUTENANT DIAL: Uh-huh.

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

20 LIEUTENANT DIAL: Right.

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

23 LIEUTENANT DIAL: That's not good.

24 MR. BAILEY: It would be ugly.

25 LIEUTENANT DIAL: Right.

1 MR. BAILEY: I mean, you know, and I don't
2 think anybody wants that, but you know, Todd and
3 Sarah are scratching their heads. You know, why on
4 Earth hasn't -- why is this guy still representing the
5 department? He's a horrible recruiting tool, you
6 know.

7 LIEUTENANT DIAL: Uh-huh.

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

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

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

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

25 LIEUTENANT DIAL: Right.

1 MR. BAILEY: no action has really been
2 taken.

3 LIEUTENANT DIAL: Yeah. You know, Frank, I
4 met the Governor years ago when she was Mayor in
5 Wasilla and I remember she came to Police Memorial
6 Day one time.

7 And it wasn't too long after that I became
8 aware there was an issue there with Wooten and just
9 that they were related at one point. And I guess, you
10 know, that marriage went bad at one point.

11 MR. BAILEY: Right.

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

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

17 LIEUTENANT DIAL: Yeah. Other than that, I
18 don't know a lot of, you know, what's going on with
19 that. I'm sure the Commissioner and Colonel would be
20 much, much more up on that. I -- I'm sure everybody
21 would hate to see the Governor brought into that.

22 MR. BAILEY: Right, right.

23 LIEUTENANT DIAL: You know, I will -- you
24 know, I'll certainly -- if there's anything I can do
25 for you guys, please let me know. Certainly I can do

1 that.

2 MR. BAILEY: Yeah.

3 LIEUTENANT DIAL: And anything I learn about
4 PSEA.....

5 MR. BAILEY: Yeah.

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

7 You know, when I do see those guys that are
8 campaigning for PSEA, I mean, if I had my two cents'
9 worth, and if they're willing to accept it, I would
10 say, you know, you'd be complete fools to try to, you
11 know, take on the Governor. I mean, let's have a
12 spirit of cooperation with this whole thing and see
13 what we can do.....

14 MR. BAILEY: Sure. Absolutely.

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

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

25 LIEUTENANT DIAL: Yeah. You know, anything

1 of that nature, I would suspect real highly that they
2 would keep far away from me.

3 MR. BAILEY: Yeah.

4 LIEUTENANT DIAL: I mean, they know what I
5 do, they know what I do, and you know, if I learned
6 of something that was going to make the Department
7 look bad or the Governor look bad, I mean, I'd pick up
8 the phone immediately and call the Colonel and the
9 Commissioner.

10 MR. BAILEY: Right.

11 LIEUTENANT DIAL: You know, there will not be
12 any protecting, certainly on my part, of anything that
13 would cause any embarrassment to the administration in
14 any way.

15 MR. BAILEY: Uh-huh.

16 LIEUTENANT DIAL: So you know,.....

17 MR. BAILEY: Yeah, that's awesome.

18 LIEUTENANT DIAL:so I got your guys' back
19 on that so you don't have to worry about that.

20 MR. BAILEY: Cool.

21 LIEUTENANT DIAL: But yeah.

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

25 But the general -- the general feeling is,

1 you know, they just can't figure out why this guy is
2 still working for -- especially -- you know, I know
3 it's difficult in a union environment, you know,
4 you've got to work within those lines.

5 But especially the fact about him lying on
6 his application. You know, I hired -- I hired
7 hundreds of people in the -- in the airline world
8 and if we found out later that they had lied on their
9 application, we -- we terminated them. You know, it
10 was very simple.

11 And they were -- they had a very strong
12 union and it was just one of those.....

13 LIEUTENANT DIAL: And -- and where did --
14 and, Frank, where did you get that information from?
15 I used to be a recruiter, so I'm just -- and I know
16 how that.....

17 MR. BAILEY: Yeah.

18 LIEUTENANT DIAL:that information a lot
19 of times is extremely confidential. So I'm just --
20 I'm trying to find out how it was determined by
21 anybody that -- that he had indicated something on his
22 application that look -- later found was not to be
23 true.

24 MR. BAILEY: Well, I'm a little bit reluctant
25 to say, but in -- over in Admin is where, you know,

1 we've -- we hold Workers' Comp right in there.

2 And the situation where he declared Workers'
3 Comp, but then was caught on an eight-mile
4 snowmachining trip days -- days after, you know,
5 that -- that started coming up there. So we collected
6 statements that we forwarded on to Workers' Comp
7 there. And so we started seeing the.....

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

9 MR. BAILEY:the application from that
10 point.

11 LIEUTENANT DIAL: And that's while -- while
12 he was a Trooper?

13 MR. BAILEY: Correct.

14 LIEUTENANT DIAL: Really? Okay.

15 MR. BAILEY: Yeah.

16 LIEUTENANT DIAL: And --

17 MR. BAILEY: And I think he went to a desk
18 job. You know, I think that that situation has pretty
19 much, you know, leveled itself out. They put him at
20 the desk for a while on some light duty, et cetera, et
21 cetera, so.....

22 LIEUTENANT DIAL: And, Frank, has the
23 Administration expressed these concerns to the
24 Commissioner and the colonel?

25 MR. BAILEY: Yeah.

1 LIEUTENANT DIAL: Okay.

2 MR. BAILEY: Yeah.

3 LIEUTENANT DIAL: You know, and I don't know
4 anything about it.

5 MR. BAILEY: Yeah.

6 LIEUTENANT DIAL: But just so you know,
7 they -- maybe there is an Administrative investigation
8 going on. I mean, did they indicate that to you at
9 all?

10 MR. BAILEY: Everything that has come back
11 to -- to Todd and the Governor is basically stay --
12 stay away, there's nothing we can do.

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

20 LIEUTENANT DIAL: Well, is there -- is there
21 something I can do for you or for the Governor in that
22 regards? I mean, I could -- I would certainly like to
23 call and just, you know, run this by the Commissioner,
24 you know, our conversation, to see if there's
25 something I don't know about it that maybe we can, you

1 know, provide to you additional information or
2 something of that nature. I mean,..... --

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

6 LIEUTENANT DIAL: Megan Peters?

7 MR. BAILEY: Yeah. Is she Special Assistant?

8 LIEUTENANT DIAL: Megan Peters is our Public
9 Information Officer for the Department.

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

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

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

25 But you know, to answer your question, I

1 don't know that there is. I would hope that there is
2 something going on there. But if there is, the
3 Governor certainly is unaware of it, Todd is unaware
4 of it. You know, her sister is continuing to go
5 through difficult -- difficulties there.

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

12 LIEUTENANT DIAL: Okay.

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

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

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

25 MR. BAILEY: Yeah. That would be very

1 interesting. And if there's anything that you need in
2 terms of, you know, statements from the school or from
3 anything like that, you know, just tell us what --
4 tell me what you need and we'll -- we'll get it for
5 you.

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

8 LIEUTENANT DIAL: Well, you know, the best
9 way I can answer that would be it depends. It depends
10 on what he is assigned to, if he is on standby, if he
11 has the permission of his supervisor, a whole bunch of
12 different things. So I can't just say one way or
13 another on that.

14 MR. BAILEY: Right, right.

15 LIEUTENANT DIAL: Generally the officer in
16 the field that is not assigned some special duty that
17 requires that he be available immediately off duty,
18 generally for those officers, they are not allowed to
19 use their vehicles off duty.

20 MR. BAILEY: Yeah.

21 LIEUTENANT DIAL: So -- but you know, I
22 couldn't make a blanket statement.....

23 MR. BAILEY: Sure.

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

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

5 LIEUTENANT DIAL: Well, I -- absolutely,
6 Frank. I mean, if -- if the -- you know, and I'm
7 going to -- I'm going to call the Commissioner and
8 just make sure that, you know, they are aware of these
9 concerns. Because if there is some wrongdoing that is
10 going on or alleged to be going on that the Department
11 is not aware of, I'm sure that they'll want to be
12 aware of it.

13 MR. BAILEY: Yeah.

14 LIEUTENANT DIAL: You know, it's very
15 important for us that the Governor have a -- you know,
16 a good opinion and impression of the Department. I
17 mean, we care very deeply about what she thinks about
18 the Department. And you know, I.....

19 MR. BAILEY: Yeah.

20 LIEUTENANT DIAL:I don't want it to
21 appear that we don't, so.

22 MR. BAILEY: You know -- you know, I -- I
23 appreciate that so much. And I'm telling you
24 honestly, I mean, she -- you know, she really likes
25 Walt a lot.

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

6 LIEUTENANT DIAL: Well, please tell her that,
7 you know, I certainly am concerned and I will
8 immediately get on the phone after we're done and see
9 if there's something that the Department does not know
10 about this, something more that could be done, maybe
11 some additional information that you don't have that I
12 can pass on.

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

17 MR. BAILEY: Correct.

18 LIEUTENANT DIAL: And that was mainly
19 regarding a pre-existing injury?

20 MR. BAILEY: Correct.

21 LIEUTENANT DIAL: Okay. And then issues
22 concerning may have illegally shot a moose?

23 MR. BAILEY: Right.

24 LIEUTENANT DIAL: Okay. And Workers' --
25 Workers' Comp issue?

1 MR. BAILEY: Uh-huh. The Workers' Comp issue
2 is pretty much -- I believe he's back on full duty
3 now.

4 LIEUTENANT DIAL: Okay.

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

6 And then the tasing of his kid, I don't
7 know if that was ever verified or what. I think there
8 was some kind of investigation on that at one point,
9 but it's just horrible. We can't -- you know, can't
10 understand why he would do that.

11 LIEUTENANT DIAL: And then we've got use of
12 patrol car off duty, and then a concern that the
13 Governor could be subpoenaed in for, what, a child
14 custody case, is that what it would be?

15 MR. BAILEY: Correct.

16 LIEUTENANT DIAL: Okay.

17 MR. BAILEY: Yeah.

18 LIEUTENANT DIAL: All right. Okay. And then
19 also, you know, anything regarding PSEA that I come
20 across.

21 MR. BAILEY: Yeah. That -- that would be
22 fantastic, Rodney.

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

1 LIEUTENANT DIAL: The 748-5816?

2 MR. BAILEY: 5816.

3 LIEUTENANT DIAL: Okay. And are you normally
4 at the Anchorage office?

5 MR. BAILEY: You know, for the Session, I've
6 been in Juneau quite a bit. So I'm -- I'm here about
7 four days a week. I fly back here in a couple of
8 hours.

9 LIEUTENANT DIAL: In Anchorage, is your
10 number 269-7450?

11 MR. BAILEY: 7459.

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

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

15 LIEUTENANT DIAL: I'm just writing all this
16 down here real quick.

17 MR. BAILEY: Yeah.

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

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

24 LIEUTENANT DIAL: Yeah. No problem. Any
25 time.

1 MR. BAILEY: All right. Take care.

2 LIEUTENANT DIAL: Bye.

3 MR. BAILEY: Bye bye.

4 (End of phone conversation)

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CERTIFICATE

UNITED STATES OF AMERICA)

)ss.

STATE OF ALASKA)

I, Sunshine V. Morrison, Notary Public and Certified Reporter and Transcriber with Accu-Type Depositions, do hereby certify:

That the foregoing pages numbered 2 through 24 contain a true, accurate and complete transcript of the telephone Conversation between Frank Bailey and Trooper Rodney Dial on February 29, 2008, as transcribed by Jeanette Blalock, Notary Public and Certified Court Reporter and Transcriber with Accu-Type Depositions, and as proofread and listened to by Sunshine Morrison, to the best of our knowledge and abilities from a link of the *Anchorage Daily News'* audio file supplied to me via internet by Mr. Stephen Branchflower.

DATED this 14th day of August, 2008.

Sunshine V. Morrison, CR 7575

Here is a copy of the file routing slip for the Wooten file that was in the Anchorage office. A request came in to return all Wooten's files to Juneau. The person who was asked to route the files was told the files were being copied for the governor.

State of Alaska
Department of Labor & Workers' Compensation
3301 Eagle Street
P.O. Box 1000
Anchorage, Alaska 99507

Alaska Department of Labor and Workforce Development
Inter-Office Route Slip

Mail Station # 07-2310

Attention: Michelle Williams

- Action
- Information
- Circulate
- Signature
- Comment
- Contact Me
- Initial & Return
- For Your File

Remarks:

*Worstan,
as requested*

Mail Station	By	Date
072310	<i>gg</i>	8-21-08

07-4004 (9/99)