STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIRECTORY OF

ALASKA LEGAL BULLETINS

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ACKNOWLEDGMENTS

In 1977, Ronald J. Rice was an officer and instructor for the Anchorage Police Department. He recognized a need to keep Alaska law enforcement officers better informed on the complexities and changes taking place in constitutional law, and thus began writing and distributing Legal Bulletins consisting of a brief synopsis of selected United States Supreme Court and Alaska Court case opinions. His wife, Mary, assisted in the editing and typing of these bulletins throughout the years and in 1982 was recognized for "her dedicated service to police officers of the state." Mary lost her life in October 2008 to breast cancer and she is greatly missed. Mary was the driving force behind the organization of this project; her great enthusiasm and commitment is unsurpassed. Ron and Mary's dedication to this project these past 41 years brought about an ever-increasing circulation of the bulletins and, henceforth, the publication of this manual.

Retiring from the Anchorage Police Department in 1985, Ron accepted a position with Corporate Security with the Atlantic Richfield Company (ARCO), which is now ConocoPhillips Alaska, Inc., and has continued to be very supportive to the community by recognizing the value of this information and allowing Ron his time and company resources to continue to be used to produce the manual.

Many thanks to the Department of Public Safety for their years of cooperation and support of this manual.

In 2001, the Alaska Police Standards Council undertook the task of distributing the bulletins and maintaining the Manual. You can download the manual or copies of the bulletins at their website: **http://www.dps.state.ak.us/APSC/legalbulletin.aspx**.

We would also like to acknowledge and thank Rhonda Rice Gerharz, for the time and effort she expended in proofreading and indexing the revisions of the complete manual. Rhonda also took on the editing and typing role after Mary passed away in October 2008. Rhonda was formerly the administrative aide to the Chief Justice of the Alaska Supreme Court and is currently Chief Investigator for the Alaska Division of Workers' Compensation Special Investigations Unit.

LEGAL BULLETIN TABLE OF CONTENTS

LEGAL BULLETIN TABLE OF CONTENTS

J. VEHICLE EXCEPTION

M. WARRANTS, AFFIDAVITS AND INFORMANTS

N. PROBATION OFFICER AND PRIVATE PERSON SEARCHES

O. RIGHT TO COUNSEL - LINEUP AND HANDWRITING

Definition

Right to Counsel - Lineup
BLUE v State, bulletin no. 2

Right to Counsel - Handwriting Exemplars
ROBERTS v State, bulletin no. 5

Post Arrest Show Up
VESSELL v State, bulletin no. 46

Right to Counsel Prior to Commencement of Adversarial Proceeding
THIEL v State, bulletin no. 125

Voice Identification Lineup
WHITE v State, bulletin no. 133

Investigative Vehicle Stop - Search of a Glove Compartment
DUNBAR v State, bulletin no. 134

Investigatory Seizure of Home Invasion Suspects Leads to **Show-Up**
HAAG v State, bulletin no. 298

Show-up of Suspects Involved in Shooting/Home Invasion
ANDERSON, Jonathan v State, bulletin no. 302

P. RIGHT TO COUNSEL AND WAIVERS DURING CUSTODIAL INTERVIEWS

Definition

Confession Obtained by Exploitation of an Illegal (seizure) Arrest
KAUPP v Texas, bulletin no 294

Adoption of the Objective Reasonable Standard for Determining Custody
HUNTER v State, no bulletin

Non- custodial interview of juvenile at police station did not require Miranda.
WARDEN v ALVARADO, bulletin no. 281

Question first, give warnings and repeat questions violate Miranda
Missouri v SEIBERT, bulletin no. 284

Question first, give warnings and repeat questions (AK case) violate Miranda
CRAWFORD, Phillip v State, bulletin no. 287

Certain Circumstances Allow Statements Taken in Violation of MIRANDA to be Used for Impeachment
State v. BATTS

Two Statements Taken in Violation of Miranda Does Not Require Suppression of 3rd & 4th Statements
KALMAKOFF v State, bulletin no. 334 (**REVERSED SEE BULLETIN 356)**

Custodial-Interrogation Statements Elicited Without Miranda Will Negate any Post-Miranda Statements
KLEMZ v State, bulletin no. 324

SELECTED JUVENILE CASES

Q. MISCELLANEOUS CASES OF INTEREST

A. ABANDONED PROPERTY

Abandoned property is most commonly defined as property that the owner has voluntarily relinquished all right, title, claim, and possession to and does not intend to reclaim it or resume ownership, possession, or enjoyment.

Abandoned property consists of discarded objects such as weapons, drugs, vehicles, luggage, etc. which can be seized without a warrant. The item(s) seized must be discovered outside a dwelling (place of residence, hotel room, etc.) or curtilage (the area surrounding the dwelling such as yard or out buildings, and vehicles).

To seize abandoned property, it must be voluntarily relinquished, not obtained because of subterfuge by the police officer. An example of involuntary relinquishment or illegal seizure would be items to be used as evidence (drugs, etc.) which were discarded by an individual who was detained without probable cause; i.e., an officer stops an individual without probable cause, the individual attempts to dispose of illegal items (drugs, etc.), the officer then retrieves the items, evidence will be suppressed.

During a surveillance operation involving a suspected criminal offender, the police will consider seizing the suspect's garbage. To properly seize garbage, it must be placed in a receptacle outside the building and curtilage of the dwelling. The officer seizing the garbage must be in a place he has a lawful right to be and the garbage must be in his "plain view" (see Plain View Doctrine). The officer must establish that the owner of the garbage had no expectation of privacy.

Remember, case law also requires reasonable suspicion, or probable cause to seize the garbage. In other words, you can't drive by residential areas on collection day, search their garbage, and hope you get lucky and find something that will give you probable cause to search the residence. The evidence would in all likely (absent some sort of exigency) be suppressed.

ABANDONED PROPERTY
SELECTED CASES

LUPRO v State (Search of Abandoned Vehicle) bulletin no. 29. After a "hit and run" fatality accident, the defendant abandoned his vehicle by pushing it into a ravine. The subsequent seizure several days later of trace evidence adhering to the vehicle was proper even though no warrant was obtained.

State v SALIT (Search of Abandoned Luggage and Hotel Room) bulletin no. 36. Carry on luggage left in sterile boarding area considered abandoned after all passengers boarded the plane. When a person "skips out" on his hotel bill, manager may enter, and the discarded property is considered abandoned.

ERICKSON v State 507 P2d 508 (Alaska 1973) (no bulletin). Where good citizen who observes drugs inside a suitcase and is acquainted with the owner brings the suitcase to the police; the police must obtain a search warrant prior to opening. There is no evidence that the owner intended to abandon the suitcase nor is the identity of the owner at issue.

SMITH v State 510 P2d 793, (Alaska 1973) (no bulletin). When garbage is placed in a dumpster located outside an apartment building that accommodates garbage from the other apartments, the owner should not have a reasonable expectation of privacy in his/her discarded garbage. The dumpster in this case was located in the parking area outside the building and was routinely collected by the municipality. It was also in "plain view" of the officers. The evidence seized from the garbage was properly cited in the affidavit in support of a search warrant for the defendant's residence.

> ***A WORD OF CAUTION: The California Supreme Court ruled that the owner of the garbage which was seized by the police when it was placed in the rear of the truck by the garbage collector had a reasonable expectation of privacy in the garbage until it had been commingled with the rest of the garbage in the truck. Although the garbage container had been on a sidewalk it had originated from a private residence.***

California v GREENWOOD and VAN HOUTEN (Seizure of Garbage as Abandoned Property) bulletin no. 119. Garbage bags left on a public street "outside the curtilage of the home" are subject to a warrantless search and seizure. There is no expectation of privacy when trash is discarded in this manner.

State v BELTZ (No Expectation of Privacy Within Garbage Cans Placed Where Driveway Met the Road) bulletin no. 320. Police removed two trash bags from a garbage can located at the end of the driveway. The container had been placed there for normal pick-up. Police discovered evidence of a methamphetamine lab. Police later asked the garbage collector to segregate BELTZ's garbage from the rest of the garbage he had already collected and to furnish them with it. Based on the evidence found in the garbage, police obtained a warrant to search the BELTZ residence. The court ruled that BELTZ had no expectation of privacy in the garbage cans that were placed at the end of his driveway. Court further stated (citing GREENWOOD & SMITH above) that the fact that the trash collector furnished the garbage to the police didn't matter because the police could have obtained the garbage themselves.

Michigan v CHESTERNUT (Investigatory Seizure of a Person Absent Probable Cause) bulletin no. 123. Police are not required to have a "particularized and objective" basis for following (not pursuing) a person who runs from a patrol car on routine patrol as long as a reasonable person would feel he was free to leave (i.e. not seized). While following, the officers observed the defendant abandon property which they recovered and used as probable cause for an arrest.

California v HODARI (Investigatory Chase of Person Who Abandoned Drugs Before Arrest) bulletin no. 157. To constitute a seizure of a person, there must be either application of physical force or submission to a "show of authority." A police officer involved in a foot pursuit (not simply following) did not seize the suspect until he was tackled. Drugs abandoned during the chase, but before the seizure were not the fruit of a seizure.

YOUNG v State (Concealment of Evidence Does Not Constitute Abandonment – No Reasonable Suspicion to Justify Handcuffing for Investigative Detention) bulletin no. 268. Young was observed by a police officer at a motel that had a reputation for drug use. When he saw the officer, he walked away and then got on his knees and put something under a door. The officer handcuffed him and then recovered the objects, which turned out to be rocks of crack cocaine. The officer has no probable cause to seize the subject nor did the subject discard or "abandon" the property. Rather, he was concealing it from the officer.

CARTER v State (Guests Expectation of Privacy In Hotel Room – Police Cannot "Evict" After Check-Out Time) bulletin no. 269. Carter rented a room from the Comfort Inn. The police had asked if they could search the room after Carter checked out. Motel manager gave permission. Normal checkout was 1:00 p.m. Police, without approval or request of manager, went to room after 1:00 p.m. told Carter he would have to leave. Evidence collected when Carter was removing his property was not "abandoned" or in "plain view."

B. CONSENT

Consent constitutes agreement and/or approval by an individual allowing a police officer to search without a warrant. In doing so, the individual waives his right as granted by the Fourth Amendment and/or Alaska Constitution, Article 1 Section 14, which prohibits warrantless searches. The State has the burden of proving the alleged consent. To establish the validity of consent, it is your responsibility to ensure the following:

1. The consent was given voluntarily and freely without duress (compulsion by threat) or coercion (to dominate by force).

2. Deception was not used to obtain consent. Examples of deception are threats against family members, physical, psychological, or religious coercion, and relating false statements.

3. The person consenting made a knowing and intelligent waiver. The person should be informed of the relevant circumstances and likely consequences.

4. Consent was clear and explicit; silence is not considered consent.

5. Consent to enter is not consent to search.

6. The person consenting must have the authority to permit the search. The rule that generally applies is only the person who has the right to occupy the premises can consent to its search.

You should obtain a written waiver signed by the person who gave consent. If the person consenting is in custody at the time consent is given, you should also ask the individual to waive his Miranda rights. The individual, by consenting to a warrantless search, waives his right as provided by the Fourth Amendment and/or Article 1, Section 14 of the Alaska Constitution.

CONSENT
SELECTED CASES

PHILLIPS v State (Consent Search of Murder Scene) bulletin no. 43. Consent to enter murder scene by occupant of a cabin even though five (5) separate entries were made is considered "ongoing" until consent is revoked.

HENRY v State (Seizure of Person/Fingerprints) bulletin no. 45. Defendant was asked to accompany police officer to police station for questioning, while there, asked for fingerprints. The seizure of this person and fingerprints upheld due to voluntary consent.

DOYLE v State (Third Party Consent to Enter) bulletin no. 52. Son (estimated age between 11 and 14) of defendant gave officers consent to enter residence, whereupon defendant (father) was arrested. Court ruled that the son had the authority to permit officers to enter residence.

SPEZIALY v State (Administrative Airport Security Search) bulletin no. 67. Evidence seized from briefcase during normal boarding of airplane upheld as administrative search. Consent to search is condition to board the aircraft.

MURDOCK & ROBINSON v State (Protective Search of Residence) bulletin no. 69. Girlfriend, age 15, who cohabited with defendant, had the authority to grant consent to enter resulting in subsequent seizure of defendants (who were hiding in another room) and weapons; upheld as protective search.

GUIRDY v State (no bulletin). To identify defendant (by means of vehicle license number) in a game violation, the investigating troopers, dressed in plain clothes, drove to the suspect's residence in a personal vehicle, drove into the driveway to turn around and were confronted by the defendant. The troopers stated they were property shopping and were invited into the defendant's residence. While in the residence, the troopers observed evidence that was later cited in their affidavit supporting a search warrant for the defendant's residence. The court upheld the troopers' entry was by the defendant's invitation and not subterfuge.

COLLIDGE v New Hampshire (no bulletin). The wife of defendant was requested to produce her husband's weapons, which included the murder weapon. Seizure upon production was upheld as consent and plain view. The husband/defendant should have assumed the risk that this could possibly occur since the wife had the authority to consent.

J.M.A. v State (no bulletin). A foster parent, although paid by the State, had the authority to consent to the search of the foster child's room.

INGRAM v State (no bulletin). Evidence against a third party was seized when the defendant initially refused to consent to the search, but then reconsidered.

U.S. v BILY (7th Cir. -- no bulletin). Although defendant had furnished written waiver, he can revoke his consent and officers must cease their search. Defendant may also restrict the search to time and place. In other words, the defendant may consent to the search of one room only and limit the time of search.

STAATS v State (Warrantless Entry into Hotel Room by Private Citizens Who Invited Police) bulletin no. 103. Hotel had double booked a room and the second party assigned to the room discovered drugs in a suitcase already in the room. The police were called, and their subsequent warrantless entry was authorized by consent of the second party.

CHRISTIANSON v State (Investigatory Stop of Vehicle with No Imminent Public Danger) bulletin no. 112. Consent to search by non-owner/driver was proper. No requirement that imminent public danger existed or recent serious harm to person or property had occurred to justify stop.

BRANDON v State (Consent to Search Residence by Non-Present Spouse) bulletin no. 136. A woman was beaten by her husband at their home and later consented to a search of the home for collection of evidence and to check on the welfare of her young son. The woman had authority to allow the search since she had equal right of possession of the premises. The fact that she was not present during the search was not relevant. Caution should be used when consent is given to search a section of the house that is normally "off limits" to the spouse, such as a private study, workshop, etc. This issue was not explored in the opinion.

GEORGIA v Randolph (Physically Present Resident Can Negate Consent Given by Co-Resident) bulletin no. 306. Janet RANDOLPH called the police to report a domestic problem and to report also that her husband, Scott, had taken her son from the residence. She informed responding officers that her husband was a chronic abuser of cocaine. Shortly thereafter, Scott returned to the residence with the boy. He denied using drugs and said that it was Janet who used both drugs and alcohol. Police asked Scott for his consent to search; he refused. Police asked Janet, who gave her consent, took the officers to Scott's bedroom where a straw containing white residue was observed. The officer left the residence to secure the straw and contact the DA who informed the officer to cease the search and get a warrant. When the officer returned to the house Janet withdrew her consent. Based on the earlier consent, a warrant was issued. Additional evidence was seized. Scott argued that because he had already refused his consent the police were not allowed to enter based on Janet's consent. The US Supreme Court agreed. This is a "shared dwelling" and when one of the co-residents (who is present) refused consent the other co-resident (who is also on the premises) cannot override the refusal.

FERNANDEZ v California (One occupant refuses consent to enter but is arrested; an hour later co-occupant gives consent) bulletin no. 369. Fernandez and four other gang members robbed a person a knife point. Responding police officers were told one of the suspects went to an apartment building. The police saw a man, later identified as Fernandez, run into the apartment building. Police heard screams and the sound of a fight coming from one of the units. They knocked on the door and Roxanne Rojas, holding a baby answered. She was crying, her face was red, and she had a bump on her nose. Police also observed blood on her shirt and hands which appeared to have come from a recent injury. When asked, she said the only other person in the apartment was her 4-year-old son. The officers said they were going to conduct a "protective search" of the apartment. At that time Fernandez, just wearing boxer shorts, came to the threshold and said: You don't have any right to come in her. I know my rights." Fernandez was arrested for domestic assault and was also identified as the robber. Police transported him to the police station. About an hour later police returned to the apartment where Rojas gave both verbal, and written consent to search. Several pieces of evidence was seized and subsequently used against Fernandez at his trial. Fernandez argued that because he had refused consent, his refusal was on-going until he changed his mind. He cited the above Georgia v Randolph case above as authority. Court said when Rojas gave consent she was physical present and that Fernandez cannot claim his refusal is on-going until he changes his mind.

WRIGHT v State (Investigative Seizure of Person/Luggage at Airport for Sniff Test by Narcotics Dog) bulletin no. 147. A request by a police officer to inspect a person's ID can be done without it turning into a constitutional seizure. A person can consent to a search of luggage without the encounter turning into an investigatory stop. Based on the officer's suspicion, luggage can be seized for a minimally intrusive canine sniff, since the suspected crime posed imminent public danger.

Florida v JIMENO (Consent to Search Vehicle) bulletin no. 159. A police officer stopped a vehicle for a traffic violation and asked the driver for consent to search his vehicle (because he earlier overheard the driver arranging a drug transaction on a public telephone). The driver consented to the search and the officer opened a folded brown paper bag found inside the vehicle that contained drugs. The driver did not place any limitations on the search and it was found to be reasonable to open the bag, but mentioned that if the container were locked, further consent to search or probable cause to justify its seizure while you apply for a search warrant would be necessary.

CLARK v State (Owner of Stolen Vehicle Gives Her Consent to Search) bulletin no. 350. The owner of a vehicle contacts the Fairbanks Police reporting her vehicle stolen. She offers the first name of "Crystal" as a possible suspect. Police find the vehicle with two persons inside. Crystal Thomas is in the driver's seat and Marteshia Clark is in the passenger seat. The owner responds to the scene of the recovery and when asked,

gives her consent to search the car for drugs and weapons. A metal cigarette case was found in the vehicle passenger compartment. The owner denies ownership of the case. When opened, the case is found to contain cocaine. Later, at the jail, Clark admits the case is hers and says she was going to trade the cocaine for marijuana. She argues that the evidence and her statements should have been suppressed because the search did not fall within a recognized exception to the warrant requirement. The court ruled this search was based on the voluntary consent of the vehicle's owner.

Alabama v WHITE (Investigatory Seizure of Vehicle Based on Anonymous Tip Leads to Consent to Search) bulletin no. 146. Under the "totality of the circumstances," the anonymous tip, as corroborated, exhibited sufficient information of reliability (reasonable suspicion) that a crime occurred or is soon to occur to justify an investigatory stop of a vehicle. Alaska has not adopted the anonymous tip principle, except where imminent danger exists (i.e. stopping a suspected DWI).

Maryland v PRINGLE (Consent by Driver/Owner Of Vehicle Leads To Arrest Of Passenger) bulletin no. 275. Baltimore Police stopped vehicle occupied by three men. The owner/driver gave permission to search the vehicle. Drugs were found in the armrest of the rear seat; all three men were arrested. Pringle, who was a front seat passenger, later admitted that the drugs belonged to him. Court ruled that a reasonable police officer could conclude that Pringle both solely, or jointly had possession of the drugs, and consequently had ample probable cause to arrest him.

MILTON v State (Warrantless Search of Third-Party Custodian's Bedroom) bulletin no. 187. Milton was a third-party custodian for Gutierrez. A probation officer conducted a search of Milton's residence based on information that Gutierrez was either using or distributing drugs. The officers entered Milton's bedroom and discovered letters and bills on a nightstand, some of which were addressed to Gutierrez. White powder was also noted on the nightstand. A suitcase inside a closet in Milton's bedroom was searched and drugs were found. Drugs were also found in Gutierrez's bedroom. The case was remanded back to Superior Court. The court ruled that when a probationer is sharing living quarters with another person, the probation officer may search all areas where the probationer has common authority to use or control even if it is not exclusive. The searching officer must have reasonable suspicion that the item to be searched is owned, shared or controlled (even if not exclusive) by the probationer. The third-party custodian has a limited expectation of privacy.

HILBISH v State (Consent to Search Authorized by a Temporary Occupant) bulletin no. 189. A daughter and her family visiting her father and his companion were granted permission by the companion to camp in the front yard of their residence. The daughter, suspecting her father was dead under a tarp in the yard because of a strong smell and conversations with her father's companion, gave consent to search for police to look under the tarp. Actual authority to give consent is not required if the person has apparent authority to give consent. The daughter had joint access to or control of the place to be searched. The daughter, as a temporary occupant of the residence and having the run of the area, had actual authority over the portion of the yard examined by the police and there was nothing in the record to suggest the companion revoked the daughter's authority to consent.

WAHL v State (Consent to search camper owned by property owner but occupied by guest upheld) bulletin no. 381.Home owner allowed WAHL, a homeless person to stay in her camper located on her private property. Six weeks after he moved in a female neighbor was found murdered in her home. Police quickly developed WAHL as a suspect. Police contacted the property owner who gave police consent to search the camper. Blood-stained boots were found under the camper, which was off the ground on jacks. The boots were admitted into evidence at his trial. Property owner had authority to give consent because she herself had access both inside and outside the camper to store camping gear, cushions and other items.

Vernonia School District v ACTON (Mandatory Drug Testing of Students Participating in School Athletic Programs) bulletin no. 191. Athletes were required to submit to a drug testing program in order to participate in sports programs. This test was unsupported by probable cause. A search, unsupported by probable cause can be constitutional when special needs (which existed in this drug infested school district), beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.

Board of Education v EARLS (Mandatory Drug Testing of Students Participating in Extracurricular Activities) bulletin no. 258. The mandatory drug testing for students who participate in after school activities such as cheerleading, choirs, Future Farmers of America, etc. does not violate the Fourth Amendment.

JOUBERT v State (Lack of Consent to Probation/Parole Officer Negates Search of Parolee's Premises) bulletin no. 208. A search of a probationer's residence can take place under the terms of the probationer's release agreement upon request of the probation officer, but the parolee must communicate in some way with the probationer before conducting a search.

Ohio v ROBINETTE (Warning Not Required for Consent to Search) bulletin no. 209. During a traffic stop, an officer asked consent to search the driver's vehicle. Consent was given, and the search was conducted, which resulted in seizure of contraband and arrest of the suspect. The question at issue is does the Fourth Amendment require that a lawfully seized defendant be advised he is free to go and that he can refuse to have his vehicle searched, before consent to search is recognized as voluntary. **NO**.

BROWN, Susan v State (Warning or Probable Cause is Required by State Constitution) bulletin no. 328. During traffic stop for insufficient illumination of her license plate, a State Trooper, who failed to tell her why he had stopped her, asked for and received consent to search her person and vehicle. A crack pipe was found in the lining of her coat. She was arrested for possession of the pipe and during the search incident to that arrest, the trooper found cocaine in her purse. The Court of Appeals ruled that the Alaskan Constitution (Article I § 14) affords the citizens of this state greater right then they are guaranteed under the (Fourth Amendment) U.S. Constitution. The court said, absent probable cause, the trooper should have advised (unlike ROBINETTE above) BROWN that she had a right to refuse consent to search her person and vehicle.

MARINO v State (Limited Waiver of Fourth Amendment) bulletin no. 216. During a murder investigation, police obtained blood and urine samples, but assured the suspect they would only be used in the murder investigation and not for drug offenses. He was later charged and convicted of murder as well as possession of drugs. The blood/urine tests had detected drugs in his system. The State exceeded the scope of the suspect's consent, because he had limited the consent to take the samples for the murder investigation only.

MACKELWICH v State (Anonymous Tip Leads to Consent to Search) bulletin no. 222. Troopers received an anonymous tip that moose poaching had occurred and that the suspect was possibly involved with drugs. They visited the site and received consent to search, reference the illegal moose kill. During the search, a locked shed was noticed and, standing outside the shed, you could smell an odor of marijuana. A search warrant was later applied for and executed. The issue is, if a State statute allowing a warrantless search for fish and game violations is allowed with a properly prepared signed statement, is this written statement necessary if the occupants consent to a search. **NO.**

State v JAMES (Warrantless Search of Probationer's Residence as Condition of Probation) bulletin no. 229. A probation officer searched the defendant, who was on probation and subject to warrantless searches of his person, personal property, residence or any vehicle in which he might be found. The defendant initially refused to allow the probation officer entry into his residence. The probation officer, accompanied by police, made a warrantless entry into the residence and seized drugs. Under the provision of his probation, the probation officer was authorized to conduct the search even without the consent of the defendant. Further, when another person is involved, such as a shared living situation, the officer may search all parts of the premises that the probationer has common authority to use.

BOND v U.S. (Manipulation of Passenger's Carry-On Luggage) bulletin no. 240. Border patrol officer checked bus and, in so doing, squeezed a soft luggage bag where he felt a brick like object. He got consent to search and found methamphetamine. Court ruled that officer's "physical manipulation" of a passenger's carry-on luggage violates the Fourth Amendment. It should be noted, however, that the government in this case did not argue the consent aspect.

HASKINS v Anchorage (Consent to Enter is Not Consent to Search) bulletin no. 248. APD was invited into entryway of residence by wife of DUI suspect. She said she would go and get him. The officers followed her

to a lower level of the residence. Court said they had no right to do so and that consent can be limited to time and place.

FITTS v State (Mother Has Authority to Give Consent To Search Bedroom Where Guest Is Staying With Her Son) bulletin no 249. Mother gave police consent to search the bedroom of her 16-year-old son where another person was also staying. Both subjects had been involved in the armed robbery of a taxi driver. The gun and money were found in the room.

CARTER v State (Guests Expectation of Privacy in Hotel Room – property not in plain view when unlawfully evicted by police) bulletin no. 269. Police do not have authority, unless granted by hotel management, to enforce 1 o'clock checkout time to evict a person from their room. Nor, is evidence in their "plain-view" while the person is removing his personal effects (after being ordered to vacate the room) admissible evidence. The police had no lawful right to be in the room.

BAXTER et al v State (Traffic Stop Leads to Consent to Search Person And Vehicle, Search Of Wallet As Incident To Arrest And Issuance Of Search Warrant 2 Months Later) bulletin no. 272. North Pole Police Officer stopped Lara JOHNSON for a burned-out headlight. She had no driver's license. Officer asked if she was carrying drugs and she replied she was not. She gave the officer consent to search her person and vehicle. Officer noticed a bulge that turned out to be coffee filters and two pill bottles. The coffee filters contained white powder that the officer thought was meth. She was arrested for no valid driver's license. At the police station, a more thorough search was conducted. In her wallet was a folded piece of paper containing a list of what the officer thought was items needed for a meth lab. He photocopied the list returning the original to the wallet. Two months later, search warrant issued for JOHNSON'S residence. Three persons present. Discovered a meth lab. All arrested for conspiracy to produce. All searches upheld as consent and incident to arrest. Officer had probable cause to believe evidence of drug enterprise might be in the wallet.

MOORE v State (Consent is tainted by prior illegal search) bulletin no. 300. Police accompany social worker to check on welfare of a child. Police suspect that MOORE is also suspected of being involved in drug activity. On arrival, one of the officers goes to the rear of the residence where he sees an electrical extension going to a shed. The officer looks in the shed and discoverers a methamphetamine laboratory. He goes to the front of the house and informs the other officer what he has found. The officer informs MOORE that if he does not give consent the officer will seize the house and apply for a warrant. MOORE gives consent and a methamphetamine laboratory is found. While MOORE is out on bail, the court issues an arrest warrant. When police respond to his residence they detect an odor associated with drugs. MOORE gives consent to search his house. Chemicals used in the manufacturing of methamphetamine and methadone are discovered and seized. MOORE argues that the consent was based on the prior illegal search of the shed and that the evidence must be suppressed. The court agrees! The court made note of the fact that the State did not argue any other justification (e.g. emergency, etc.) of this search other then consent.

C. EMERGENCY

An emergency constitutes a warrantless search of a building, vehicle, or person if the search is believed necessary to save a life or prevent injury or serious property damage.

The elements of the emergency aid doctrine are:

1. You must have reasonable grounds to believe that an emergency is at hand and an immediate need exists for assistance to protect life or property.

2. The search should not be motivated primarily for an intended arrest or seizure of evidence.

3. A "reasonable basis" approximating probable cause must be established for the search to be considered an emergency.

REMEMBER: The search must cease (Mincy v. Arizona) when the emergency is over. You may, however, apply for a warrant using the information obtained during the emergency and items found in your "plain view" while the emergency search was conducted are subject to seizure.

Two examples of warrantless searches are as follows:

- As the respondent to a scene, you notice blood on the outside of the house. Further evidence, such as a broken window, indicates that a serious crime has been committed. This evidence entitles you to conduct a warrantless entry to determine if a person (victim or burglar) is in need of medical attention. Items observed in your "plain view" while making the search are subject to seizure.

- A prompt warrantless search should be conducted of an area in which a homicide has occurred to determine if there are other victims or the killer is still on the premises. Since there is not a "murder exception" to the warrant requirement, the search must stop after determining that the killer is not on the premises and/or other individuals are not in need of aid. After obtaining a warrant, items that were in your "plain view" during the emergency search may be seized.

EMERGENCY
SELECTED CASES

HOTRUM v State (Gunshots and Yelling Justifies Warrantless Entry) bulletin no. 305. Troopers respond to a 911 call reporting gunshots and yelling coming from a residence. On arrival, they see vehicles in the driveway, the door to the arctic entryway open with a key in the dead bolt lock position and they can hear loud music coming from within the residence. They make repeated statements to the effect "state troopers is anybody there?" Because they are not sure what has happened at the home or whether someone might need assistance, they enter the home. Behind a door that is covered with a blanket, one of the troopers discovered forty-three marijuana plants. In the living room they discover a bed with two feet protruding from under a sheet. There is also a semi-automatic pistol lying on the floor next to the bed. They discover the loud music is coming from a stereo which they shut off. At this point the troopers believe that they are dealing with a homicide. They pull back the blankets and discover Hotrum who is sound asleep. When they wake him, he tells the troopers that they have no right to be in his residence as that it is private property. Hotrum is subsequently charged with the possession of the marijuana. The court ruled that all the evidence could be used against Hotrum because the entry to the residence was lawful under the emergency aid doctrine.

Utah v STUART et al. (Belief that an Occupant is Injured Justifies Warrantless Entry into Home) bulletin no. 308. At about 3:00 am, four police officers respond to a loud party call. When they arrived, they could hear some sort of altercation occurring within the house that sounded like a fight. The noise seemed to be coming from the back of the house. The officers looked in the front window but were unable to see anything. The officers then went to the rear of the house where they observed several juveniles in the back-yard drinking beer. They could also see that a fight was taking place in the kitchen. They observed a juvenile hit an adult. A police officer opened the screen door and announced his presence. No one responded to the announcement. The police then entered the kitchen and cried out "police" again. The fight stopped. Several adults were arrested and charged with contributing to the delinquency of minors and other charges. They argued that the police had no right to make a warrantless entry and that they had also violated the "knock-and-announce" provision of the Fourth Amendment. The court ruled that the warrantless entry was justified because the role of a peace officer includes preventing violence and restoring order. The manner of the entry was also reasonable because the officer had announced his presence prior to the entry.

Michigan v Fisher (Warrantless Entry into Private Residence Based on Emergency-Air Doctrine) bulletin no. 345. Police officers called to a disturbance where "a man was going crazy." On arrival, officers observed a pickup truck in front of the residence. The pickup had extensive front-end damage and it appeared that the fencepost along the side of the property had been damaged. There was blood visible on the hood of the pickup as well as clothing within it. Police observed Fisher in the residence and could see that he had a cut on his hand. The rear door to the residence was locked and a couch was placed to block the front door. Police asked if he would like medical attention. Fisher refused to answer and, using profanity, told the officers to leave and get a search warrant. One of the officers was able to open the front door and upon entering the residence noticed that Fisher was pointing a rifle at him. Fisher was subsequently arrested and charged with several felonies involving weapons. The court ruled that the warrantless entry was justified as an exception based on the emergence-aid doctrine.

FINCH v State (Warrantless Search of Hotel Room) bulletin no. 22. Police officers made a warrantless entry into a hotel room looking for a suspect and seized evidence of an assault that had occurred earlier. The court ruled that an "emergency" did not exist, and a warrant should have been obtained. In this case, since two police officers were involved, the Court suggested that one officer should have remained at the scene while the other applied for a warrant, since there was not available evidence to indicate the suspect was in the hotel room.

SCHULTZ v State (Emergency Search of Burning Building) bulletin no. 23. Evidence collected, and photographs taken by a fire marshal during a fire was upheld as an emergency and in plain view.

Anchorage v COOK (Emergency Search of Vehicle) bulletin no. 26. Police had a duty to determine the well being of individual found "slumped over" the wheel of a car and, upon doing so, inadvertently discovered the individual was intoxicated, so his arrest was valid.

State v MYERS et al (Search Incident to Legitimate Entry) bulletin no. 28. In early morning, during routine security check of buildings, police discover an unlocked door to a theater and, upon entry, found the manager and his associates using drugs.

MINCY v Arizona (Warrantless Search of Murder Scene) bulletin no. 31. Murder is not an exception to the warrant requirement. The police remained on the premises four days and seized over 300 pieces of evidence without obtaining a warrant. Although the initial entry and seizure of evidence was upheld as an emergency and "plain view," subsequent entries by other officers was ruled in error. A search warrant should have been obtained after the initial emergency ceased to exist.

PAYTON v New York (Warrantless Entry into Private Residence to Effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time; however, in plain view was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted that enable police to violate the constitution. Twenty-five states (including Alaska) have enacted statutes that allow police to make a warrantless entry into a private residence based on probable cause. The U.S. Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

GALLMEYER v State (Emergency Entry to Private Residence) bulletin no. 54. Police made warrantless entry into residence to arrest an individual who had threatened to shoot his wife and child.

GIBSON v State (Emergence Entry to Private Residence Requires Immediate Need to Act) bulletin no. 337. Police answered a 911 call from a female who said a man was threatening to stab her in the head. On arrival they heard a woman screaming. Moments later the female came out of the residence asking the police to help her; she was bleeding from the head and had a swollen eye. GIBSON appeared at the door, saw the police, and went back inside. Police, at the point of guns, ordered him out of the house. GIBSON was tased, handcuffed and placed in an ambulance because of injuries received because of the tasing. The female had gone back into the residence to get dressed. She was ordered to come out and she was also put in an ambulance. She told the police that no one else was in the residence. A police officer said he had been lied to about this sort of thing in the past, so he decided to check the residence to see if anyone else, possibly injured, was in the residence. No one else was in the residence but a methamphetamine laboratory was discovered. The court ruled that the entry was illegal. To justify the entry as an emergency exception to the warrant requirement he State must show “true necessity” – an immediate threat to life, health, or property.

STATE v Gibson (Emergency Entry to Private Residence Requires only “**Reasonable Belief”** State Supreme Court reversing no. 337 above) bulletin no. 357. The Alaska Supreme Court reversed the ruling of the (see bulletin no. 337) Alaska Court of Appeals ruling that all that is required for police to make a warrantless entry is a “reasonable belief of an emergency.”

AHVAKANA v State (Emergency Entry into Residence for Domestic Violence Upholds Entry & Seizure of Evidence in “plain View), bulletin no 361. Police responded to a report of domestic violence. Victim who opened the door was bloody but said suspect was not there. Police made warrantless entry and discovered suspect hiding in the closet. His bloody clothes were seized from the residence. Court ruled entry was justified as emergency and that the clothes were in their (police) “plain view.”

RAYBURN (police officer) v HUFF (Protective Search of Residence) bulletin no. 359. Police investigate student who was rumored to have said he was going to “shoot up the school.” He had been absent 2 days.

Police go to his residence, knock, no answer, call house phone, no answer, call mother's cell phone who answers stating she is in house. Does not invite officers in but comes outside with son. When asked about weapons she runs into the house followed by officers. Father is in house as well. No criminal case was filed and the father files a (1983) civil suit. 9th circuit rules in favor of father and against police. US Supreme Court takes the case and reverse 9th circuit ruling that officers had right to enter to preserve life or avoid serious injury.

JOHNSON v State (Warrantless Seizure of a Person from Private Residence) bulletin no. 66. Shortly after raping her, the suspect threatened the victim saying that he would "blow her away." Warrantless entry was upheld as emergency and protective.

MURDOCK & ROBINSON v State (Protective Search of Residence) bulletin no. 69. After being admitted to residence by defendant's live-in girlfriend, noises emitting from another room led to further investigation, which revealed the presence of defendants as well as weapons which had been used in a prior homicide. Court ruled entry was made with consent and subsequent search upheld as protective, and the inadvertent discovery of weapons were seizeable under the "plain view" doctrine.

WARDEN v Hayden 387 US 294 (no bulletin). Warrantless entry of private residence occurred five minutes after robbery. The entry was upheld since it was made to prevent the escape of the suspect. If a sought-after person is discovered, the police are justified in extending the scope of their search to the remainder of the premises for the limited purpose of assuring that no hostile and possibly dangerous persons are hiding in other rooms. Upon making such a search, the doctrine of "plain view" applies and evidence observed is subject to seizure. These cases involve both the emergency and hot pursuit exceptions as well as the "plain view" doctrine.

WAY v State (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person know by officer to have previously had a weapon), bulletin no 290. Police have responded to an apartment where they have been informed that a fugitive is located. All the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon this special handling was permissible.

Arizona v HICKS (Probable Cause Required to Seize Evidence in Plain View Resulting from Emergency Entry) bulletin no. 110. During an emergency search following a shooting, police seized expensive stereo components from a residence because they "looked out of place." Although it was later determined that the components had been stolen, the police lacked that specific knowledge (immediately apparent) at the time of seizure so the court suppressed the evidence.

SATHER v State (Investigative Seizure and Emergency Search of Vehicle) bulletin no. 135. When a driver is found slumped over the wheel of a car, the officer has a duty to perform an investigative seizure of the car and an emergency entry to determine if the person needs medical attention. During the entry, the driver who was in plain view, was found to be intoxicated and that information was used toward probable cause for arrest.

OZHUWAN v State (Investigatory Seizure of Person Absent Reasonable Suspicion) bulletin no. 138. Even though a vehicle is parked in an area where criminal activity is known to occur, you must have reasonable suspicion that the vehicle is involved in or soon to be involved in such activity before performing an investigatory stop. When the investigatory stop is made solely to check on the welfare of the occupants, there still must be reasonable suspicion that the occupants might need assistance.

WILLIAMS v State (Emergency Entry into Private Residence) bulletin no. 165. A suspect called his former foster mother and said he thought he killed his girlfriend. She notified police about the call and further stated that she had recently seen WILLIAMS with an infant. Police checked several locations and saw "blood stains" in front of a suspect apartment. They heard music, but no one answered their knock. They entered and found a homicide victim. Police had a reasonable basis to conclude that immediate entry was required to protect life, and the entry was not motivated to seize evidence or make an arrest.

HARRISON v State (Warrantless Entry into Private Residence Based on Emergency Aid Doctrine) bulletin no. 181. A trooper went to serve a warrant and noticed through a window someone "face down" on the kitchen table. Repeated knocking on the door did not elicit a response. The trooper entered the residence to check on the welfare of the person and noticed, in plain view, what she thought to be drugs on the same table. A warrant was obtained to seize the drugs and the person was subsequently arrested. The initial entry was based on an emergency and the drugs in plain view were used as a basis for obtaining a search warrant.

McNEILL v State (9-11 Domestic Violence Response) bulletin no. 235. Police remained on premises in response to a 911 call to investigate a domestic violence case. Police refused to leave until McNEILL "told them what was going on." McNEILL was subsequently arrested.

State v BLANK (Arrest Not Required to Get Blood or Breath If Exigency Exists In Vehicle Accident Involving Death Or Serious Injury) bulletin no. 278. Troopers obtained a breath sample from BLANK shortly after she had been involved in a fatal hit and run. The court did not consider consent. The court did overrule the LAYLAND (AK 1975) case which had ruled that to take blood from a suspect, the suspect must be under arrest thereby making the seizure "incident to arrest." In overruling LAYLAND, the court said that so long as an exigency exists, the subject does not need to be under arrest. Three requirements must be satisfied: (1) probable cause to arrest; (2) delay necessary to obtain the warrant might result in the destruction of evidence; and (3) the blood (breath) draw was done in a reasonable manner. The court in this case also ruled that AS 28.35.031(g) was constitutional. That's the statute that allows for warrantless seizures of breath or blood from a person who has been involved in an accident that causes death or physical injury to another person.

D. HOT PURSUIT

If you have probable cause to believe the person you are pursuing is armed and has just committed a serious crime, you may search the building in which he has taken refuge (or in which you are pursuing him) for ensuring your own safety, the safety of the public and the prevention of escape. Please note this is a warrantless search and your authority is extremely limited.

HOT PURSUIT
SELECTED CASES

GRAY v State (Hot Pursuit of Fleeing Felon) bulletin no. 25. Police were in hot pursuit of a vehicle with suspected armed robbers. The vehicle stopped momentarily, and several persons fled. Police maintained pursuit of the vehicle, which was subsequently stopped, and the driver was arrested. During a warrantless search of the vehicle, police found a purse on the front seat. They conducted a warrantless search of the purse and information contained within it lead to the identity and arrest of one of the suspects. The search was upheld.

STATE v SIFTSOFF (Hot Pursuit of "speeder" into Residence) bulletin no. 349. Police pursued a speeding vehicle. The driver stopped in a trailer park and began to walk into the trailer. The officer told the offender, who he recognized as Siftsoff, to not go into the trailer. Siftsoff went in any way. After calling for backup the officer entered the trailer and arrested Siftsoff who was later indicted for (1) felony failure to stop at the direction of a police officer; (2) misdemeanor reckless driving and; (3) misdemeanor driving under the influence. The Alaska State Court of Appeals ruled that this warrantless entry could not be justified as "hot pursuit" because there was little danger that Siftsoff could escape. There was no indication that he was armed and dangerous and that he would pose a threat to himself or anyone else, and that the officer had no probable cause to believe that Siftsoff had committed a "serious offense."

WARDEN v Hayden 387 US 294 (no bulletin). The court upheld the right of officers to conduct a warrantless search of premises to locate an armed suspected felon who had entered the house moments before the officers arrived. Subsequent protective search, which produced the gun and other evidence, was also upheld on "plain view" theory.

E. SEARCH INCIDENT TO ARREST

You may search an individual or vehicle as incident to a lawful arrest. Before allowing any evidence seized during the arrest process, the court must first determine if the arrest was lawful. The criteria for this determination is as follows:

1. Was there probable cause to make the arrest and was the probable cause based on:

    a. Good citizen information?
    b. Official reports? (e.g. radio dispatcher)
    c. Reliable informant?

2. Did the officer witness the offense?

You may search the arrested person for contraband, fruits of the crime, instrumentalities, and other evidence. The search of the arrested person is allowed to:

1. Protect the arresting officer.
2. Prevent escape or suicide.
3. Prevent the destruction of evidence.

The search should be made contemporaneously (same time) with the arrest. If the corrections officer discovers evidence as an "incident to incarceration", application must be made to the court for a search warrant. The Alaska Supreme Court has thus far refused to allow seizure of evidence from a corrections officer as an inventory exception to the warrant requirement.

During the search of a person incident to his arrest, if evidence or contraband, which is “immediately apparent,” is inadvertently discovered, it may be seized under the "plain view" doctrine. See Brown v Texas, bulletin no. 68.

When a search is conducted incident to arrest, the items and area searched must be in the immediate presence or physical control of the suspect at the time of arrest.

If a person has been arrested for a violent crime (rape, homicide, assault) you may, as an incident to arrest, search for trace evidence, i.e., pubic combing, hair, swabbing skin for body fluids, swab hands for gun shot residue, fingernail scrapings and like evidence. Clothing of the defendant should be obtained prior to the booking process. If you fail to do so the corrections officer will require a warrant.

If a private person or a security guard makes a search and the evidence is in your "plain view" at the time of your seizure, the evidence is admissible so long as the person who made the search was not acting as your agent.

For seizure of conversations by tape recorder as incident to arrest, see Section L - Participant Monitoring.

SEARCH INCIDENT TO ARREST
SELECTED CASES

DUNCAN v State (Probable Cause to Arrest Based on Information Supplied by Good Citizen) bulletin no. 327. Good citizen called the Anchorage Police Department to report drug activity in front of his store. He informed the dispatcher that the individual had just sold some drugs about a minute before he called the police. He said the same individual had been in front of his store the day before and was selling drugs. He went on to describe the suspect and the clothing he was wearing. Two officers responded. Based on the description given by the good citizen, the officers thought the suspect might be Duncan whom they (the officer) had prior contact with and knew he was involved in drugs. On arrival the officers patted him down and then searched him; cocaine was found in his hatband. Duncan argued that the officers exceeded the lawful scope of a pat-down search. The court ruled that the officers, based on the information supplied by the "good citizen," had ample probable cause to arrest Duncan and that the subsequent search was an incident to that arrest.

TUTTLE v State (Evidence Obtained from Illegal Arrest Must Be Suppressed) bulletin no. 325. Police arrested TUTTLE at a hotel for disorderly conduct. Police found cocaine in the back seat of the patrol car that was used to transport him to jail. The patrol car had been checked by the officer earlier and TUTTLE was the only person who had been in the back seat. Based on this information, police obtained a warrant to search his hotel room where more cocaine and a handgun were seized. TUTTLE argued, successfully, that the evidence (cocaine) must be suppressed because the police lacked probable cause to arrest him for disorderly conduct. The statute requires: (1) make unreasonable noise, (2) with reckless disregard for the fact that this unreasonably loud noise is disturbing the peace and privacy of "at least one other (not the police) person and (3) after being informed that the noise is disturbing someone else's peace and privacy, the person persisted in making unreasonably loud noises after being explicitly warned that the noise was disturbing other people's peace and privacy.

ZEHRUNG v State (Search and Seizure) bulletin no. 1. ZEHRUNG was arrested for failure to appear. During the booking process, the corrections officer found a credit card that turned out to be the property of the victim of a rape/robbery which had occurred several months prior. The evidence was ruled inadmissible because it was not seized by the arresting officer as incident to the arrest, but by the jailer as incident to incarceration. The officer should have obtained a warrant before seizing the credit card at the jail.

JEFFERY ANDERSON v State (ZEHRUNG affirmed – right to post bail prior to booking; inevitable discovery doctrine applies because defendant would have been booked anyway) bulletin no. 282. Subject arrested on outstanding F/A warrant; bail $1,000. Officer failed to inform defendant that he would be given a reasonable opportunity to post bail prior to booking. Corrections officer found a Tupper-ware container containing white powder. The container was given to the arresting officer. Laboratory test later confirmed presence of methamphetamine. Officer then informed defendant of his right to bail. As it turned out defendant was unable to post bail and remained in jail for 4 days. Court ruled that ZEHRUNG still applies and that the officer should have informed ANDERSON of his right to post bail prior to booking but also said the evidence could be admitted under "inevitable discovery doctrine" because the evidence would have been found during the booking process.

CHIMEL v California, 395 US 752 (no bulletin). Limits the search to the arrestee's person and the area within his immediate control. The search for weapons allowed for the safety of the Officer and the prevention of destruction of evidence.

COLEMAN v State (Investigative Stop) bulletin no. 3. Investigative stop of vehicle resulted in seizure of evidence from the floor of the car. Plain view led to probable cause to arrest and subsequent search of the person as incident to the arrest.

McCOY v State (Search Incident to Arrest) bulletin no. 6. After initial "pat down" search at the scene, the defendant was searched 30 minutes later at the police station. The police station is approximately seven

miles from the scene. The Court rules that the second search (at the police station) was contemporaneous with the arrest. Specifically, the second search was performed at the police station not the jail.

AMBROSE v State (Search Incident to Arrest & Bindle (immediately apparent) bulletin no. 346. Pat-down during search incident to arrest resulted in seizure from shirt pocket that contained cocaine. Package could have contained a weapon which justified removal from shirt pocket and "bindle" was "immediately apparent" as single-purpose container used to carry illegal drugs.

DAYGEE v State (Plain View Search of Vehicle) bulletin no. 10. Evidence seized from vehicle after arrest admitted as incident to arrest and not "inventory."

WELTIN v State (Search Incident to Arrest) bulletin no. 13. Drugs found on individual at police station after initial "pat down" at the scene of arrest admitted. The same as McCoy above, the second search was performed at the police station not the jail.

Anchorage v BUFFINGTON et al (Involuntary Chemical Test - OMVI) bulletin no. 21. The Alaska Supreme Court ruled that whereas the seizure of blood for testing in DWI cases is not against the Constitution, it is against the law (the Statute re Implied Consent) as written.

***NOTE**: The Legislature has since revised certain aspects of this statute, which allows blood to be taken without the consent of the defendant under certain circumstances. YOU SHOULD BE AWARE OF ALASKA STATUTE 28.35.035(a), (b) and (c) entitled ADMINISTRATION OF CHEMICAL TESTS WITHOUT CONSENT.*

REEVES v State (Search Incident to Incarceration) bulletin no. 27. Warrantless seizure of a balloon (containing drugs) by a corrections officer during the booking inventory process ruled inadmissible because the balloon was not "immediately apparent" to the corrections officer and the police officer failed to find the balloon during the arrest. The Court ruled that since the police officer missed the evidence during the search incident to the arrest and the corrections officer was not aware of the contents of the balloon, a warrant should have been obtained.

PHILLIPS v State (Search incident to arrest by arresting officer who is also corrections officer) bulletin no. 360. Cordova police officer arrested Phillips for sexual assault. At the police station, which also houses the jail, the officer seized Phillips boots which were sent to the crime laboratory where trace evidence was discovered consistent with the victim's bodily fluids and tissue. Phillips argued this was an inventory search incident to incarceration and that the officer should have obtained a warrant. The court ruled this was a search incident to arrest conducted by the arresting officer and that the officer did not have to obtain a search warrant.

DUNAWAY v New York (Involuntary Seizure of a Person) bulletin no. 33. Subject picked up for questioning, accompanied officers to police station, waived his Miranda rights and subsequently gave a statement admitting his involvement in a homicide. The confession was suppressed because the police lacked "probable cause" to seize (arrest) the defendant. There was nothing to suggest that the defendant consented to accompany the officers to the police station for the interview. Although the police complied with the 5th (self incrimination) and 6th (right to counsel) amendments by obtaining a Miranda waiver, the defendant's 4th amendment (right to unreasonable seizure) right was violated.

SUMDUM v State (Warrantless Entry into Motel Room) bulletin no. 37. The motel manager had assumed guest had left without paying his bill, opened the door to the room while the police were in the public hallway and saw the defendant lying on a bed. Defendant was in the "plain view" of the police and the subsequent search of his person produced evidence that was incident to his arrest.

FREE v State (Stop and Frisk) bulletin no. 39. Informant tip led to "stop and frisk" of defendant which produced a weapon, thus leading to probable cause for arrest and subsequent search of defendant's person.

HINKEL v Anchorage (Search of Purse - Incident to Arrest) bulletin no. 41. Search of purse located in defendant's vehicle after she was handcuffed and locked in police car upheld.

THORNTON v U.S. (Search of Vehicle applies to "recent occupant" when arrested outside vehicle) bulletin no. 280. Police ran a license check of a person who was "acting suspiciously" and learned the tags had been issued to another vehicle. Before the officer could get turned around to stop the vehicle, the driver had parked the vehicle in a lot, locked the doors and was standing near the vehicle. The driver was acting nervous and the officer asked him for identification. THORNTON consented to a "pat-down" and the officer found drugs on his person. The officer then searched his vehicle and found a 9-millimeter pistol under the front seat. Search of vehicle upheld as "incident to arrest."

ARIZONA v GANT, (Search of vehicle as incident to arrest only permissible if the arrestee might be able to access evidence of the offense or a weapon) bulletin no. 338. Subject arrested for DWLS. He was about 12 feet from the vehicle when arrested. He was handcuffed and placed in a locked police car. The officers searched the vehicle as an incident to arrest and found cocaine in GANT's coat pocket. The court ruled that the evidence must be suppressed because the officers could not reasonably expect to find evidence of the crime for which he was arrested (DWLS) in his vehicle.

DEEMER v State, (Search of vehicle for identification as incident to arrest) bulletin no. 351. Police stopped DEEMER for failure to signal a turn. She lied about her identity, but a police officer recognized her. A subsequent record check revealed an outstanding warrant for failure to appear on a prior criminal offense. DEEMER was arrested on the warrant, handcuffed, and placed in the back seat of a police car. The car was searched and on the back seat, in her coat pocket, police found drugs, paraphernalia, a scale and some baggies. Under the front seat a handgun was also found. She was charged with multiple felonies and argued (based on GANT above) that the police had no right to conduct this search. Court ruled the police could make this search as incident to arrest to look for identification because she had given false information when initially concocted and the coat would be a likely place for her to keep identification.

CRAWFORD, Kirk v State. (Search of vehicle's console) bulletin no. 279. CRAWFORD was stopped for speeding. The officer noticed that he was fidgeting in the front seat and kept looking in the mirror (towards the officer) and was making motions inside the vehicle. CRAWFORD refused to get out of the vehicle and the officer forcibly removed him, handcuffed him and placed him in the back of his police car. The officer then returned to CRAWFORD's vehicle and saw a baseball bat between the bucket seats. The officer opened the center counsel and found some crack cocaine and paraphernalia. Because the officer had a real suspicion that CRAWFORD possessed a weapon, he was allowed to look in the console for a weapon.

CRAWFORD appealed this case (CRAWFORD v State, opinion no. 6029 – June 30, 2006) to the state supreme court who upheld the seizure of evidence as an incident to arrest. They stated: "…...that a vehicle's center console can be an item immediately associated with the driver's person. When a driver is seated in the vehicle, the center console can generally serve the same function as clothing pockets; it is commonly used to hold money, a cellular telephone, and personal hygiene items." The search in this case was a valid warrantless search incident to arrest.

PITKA v State, bulletin no. 380 (Search of Astray in Vehicle) Police searched the ashtray of a subject arrested for DUI and who they had reasonable suspicion was also under the influence of a controlled substance. Cocaine was found in the ashtray. The court ruled that the state offered no evidence that the ashtray was" immediately associated" with PITKA and suppressed the evidence.

LYONS v State (Search of Vehicles Glove Compartment Upheld as Incident to Arrest) bulletin no. 331. Police received information that LYONS had made threats to his former wife and her current husband and that he was en route to their residence. Police waited for his arrival in the parking lot. When he arrived, police instructed him to get out of the car. He did so, and later claimed that he had locked the door in the process. One of the officer's present at the scene entered the car and found a handgun in the glove compartment. LYONS was charged with weapons offenses including being a convicted felon in possession of a firearm. Lyons argued that the scope of the search was illegal and that because he was already outside the car when they arrested him, the seizure could not be justified as an "incident to arrest." Court ruled that the (unlocked)

glove compartment was within “his immediate control,” and the arrest was made immediately upon his exiting the vehicle.

UPTEGRAFT v State (Vehicle Search - Plain View Incident to Arrest) bulletin no. 44. Information developed after armed robbery led to "investigative stop" of suspect vehicle, which subsequently resulted in arrest and search of vehicle.

New York v BELTON (Search of Vehicle Incident to Arrest) bulletin no. 50. Search of jacket found on car seat after arrest upheld.

ELSON v State (Search of Person Incident to Arrest) bulletin no. 51. Cocaine sniffer seized at scene of arrest upheld, however, subsequent seizure of other evidence by jailer ruled inadmissible.

UNGER & CAROTHERS v State (Involuntary Seizure of Person) bulletin no. 53. Police made unlawful entry into private residence to arrest defendant. Although the defendant waived his Miranda rights and voluntarily provided a statement to the police, the statement was suppressed because of the illegal seizure of the defendant.

DUNN v State (Warrantless Seizure of Jacket) bulletin no. 63. Investigatory stop of vehicle suspected of being involved in shooting of a police officer developed probable cause to arrest passenger and subsequent search of a coat found inside vehicle following arrest and handcuffing of suspect upheld.

LINDSAY v State (Involuntary Seizure of Person) bulletin no. 92. Defendant was transported in police vehicle to police station and subsequently gave a statement regarding involvement in a burglary that assisted in the recovery of stolen property. The Court suppressed the confession and the evidence (stolen property) because the defendant had been illegally seized -- the police lacked probable cause to arrest and could not establish that the defendant voluntarily accompanied them to the police station.

STEPHENS v State (Search for Identification Incident to Arrest) bulletin no. 93. At the time of arrest for three counts of assault, the subject refused to identify himself to the arresting officer. The arresting officer searched the subject's wallet for identification and, in the process, found several packets of cocaine. The court ruled that the cocaine could be used at trial because it was inadvertently discovered while the officer was making a legitimate search for identification.

MATHISON v Oregon (no bulletin). Police received information that the subject had committed a burglary but lacked probable cause to arrest him. A police officer called the subject and asked him to come to the police station for an interview. Subject subsequently confessed. Although there was not probable cause to arrest, the confession was ruled permissible because the subject had voluntarily honored the request of being interviewed at the police station, thereby waiving his fourth amendment right.

SCHMERBER v California 384 US 757 (Involuntary Seizure of Blood from DWI Defendant) (no bulletin). At the time of his arrest for drunk driving, the subject refused to voluntarily furnish a blood sample. The police requested one be taken by a physician. The results were subsequently used against the subject. The court ruled that the blood was properly taken as "destructible evidence" as incident to the arrest and that there was not time for the police to obtain a warrant.

MISSOURI v McNeely (Seizure of Blood – Exigency Does Not Exist in Every Case – warrant required), bulletin no. 366. McNeely failed field sobriety tests and refused to take breath, or blood test to determine his blood alcohol concentration (BAC). Arresting officer transported him to the hospital and directed a technician to draw blood. This was over McNeely’s objections. BAC was 0.154% well above legal limit of 0.08%. Court ruled in this case there was no exigency and the officer should have got a warrant. Court said there are times when exigency might exist, but these are “case by case.” Court also remarked on the ease of obtaining telephonic warrants if you are in a rural area and availability of judge or magistrate during 24-hour increments.

State v SPENCER (Consent not Required For Breath Test, bulletin no. 378). Trooper observed SPENCER operating a 4-wheeler and observed signs of intoxication. SPENCER was given field sobriety tests but was reluctant to comply. He was DUI. He argued that the trooper unlawfully coerced him to perform the tests. Court ruled that consent is not required and that police are entitled to administer the test so long as they have a "reasonable suspicion" that a motorist is driving under the influence.

Maryland v KING (Collection and Analysis of DNA Samples Obtained from Arrested Person) bulletin no. 368. KING was arrested for felony assault. Maryland statutes allowed for police to obtain a DNA sample for this sort of charge. His sample was sent to the FBI who controls the CODIS data base and the sample hit on a 6-year-old rape case; KING was charged and convicted of the rape. He argued that the DNA evidence should be suppressed because it was obtained without a warrant. Court ruled that DNA is like a fingerprint and other types of information used to identify a person and upheld the seizure as also being minimally (inside cheek swab) intrusive.

RICKS v State (Search Incident to Arrest) bulletin no. 132. Search of clothing incident to arrest must be in the immediate presence or physical control of the suspect at the time of arrest. In this case, the coat was fifteen feet away from the suspect and the search was suppressed.

DUNBAR v State (Investigative Vehicle Stop Search of Glove Compartment) bulletin no. 134. During a legitimate "Terry stop" and a subsequent frisk for weapons of a suspect in a vehicle, it is permissible to look inside an unlocked glove compartment for weapons since this compartment was in easy reach of the suspects and will be again when the suspects get back in their car. A search of an unlocked glove compartment incident to arrest is also permissible. This only applies to unlocked glove compartments.

Maryland v BUIE (Protective Search of Residence) bulletin no. 139. When executing a warrant in a home or building where there is reasonable suspicion that other people might be in the house that could pose a danger to the arresting officers, a limited sweep of adjoining portions of the house where "an attack could be launched" can be done. This protective sweep is not a full search incident to arrest, but any material in plain view which the officer had probable cause was evidence of a crime can be seized. **CAUTION**: You may only look in areas were a person could reasonably be expected to hide.

DEAL v State (Search of Vehicle Incident to Arrest - Inadvertent Discovery of Evidence of Another Crime) (no bulletin). While an officer searched a vehicle subject to search incident to arrest, he noticed in plain view evidence of another crime. This material was inadvertently discovered during the search incident to arrest and was immediately apparent as evidence because the person arrested was a suspect in another crime and the evidence was immediately associated with that crime. This is a 1980 case that was referenced in another decision.

GRAY v State (Inventory Search Subject to Incarceration) bulletin no. 149. A person arrested for a minor misdemeanor offense where bail has been set and the person is given a reasonable opportunity to post bail before being incarcerated cannot be subjected to remand and booking procedures, although a pat down search is permissible. In this case, the emptying of pockets is not considered part of a pat down search and drugs found during this search were suppressed.

JACKSON, Sterling v State (Search of Wallet for Weapons as Incident to Arrest) bulletin no. 160. A police officer arrested a person for an outstanding warrant and subsequently searched his wallet (a container) for "atypical weapons" (i.e. razor blades and small knives). A small packet of cocaine was inadvertently discovered during this search. The cocaine discovery was suppressed because under Alaska law, unlike Federal law, each search for weapons in small containers must be justified by specific and articulable facts, which would lead a reasonable person to believe that such an atypical weapon might exist.

THOMAS, Gavis v. State (Search of Wallet by Police Officer as Condition of Probation) bulletin no. 303. THOMAS was on felony probation for first-degree vehicle theft and driving while intoxicated after consuming alcoholic beverages (not drugs). One of the conditions of probation required him to submit to searches for controlled substances. During one such search, a police officer found crack cocaine in his wallet. THOMAS argued that the sentencing judge was in error when he made the search for controlled substances a condition

of probation because he had not been convicted of drug related offenses. The court of appeals said the condition was not unreasonable because THOMAS had a prior history of drug abuse and allowing such searches is part of the rehabilitation process and aids in the protection of the public.

BAXTER et al v State. (Traffic Stop Leads to Consent to Search Person And Vehicle, Search Of Wallet As Incident To Arrest And Issuance Of Search Warrant 2 Months Later) bulletin no. 272. North Pole Police Officer stopped Lara JOHNSON for a burned-out headlight. She had no drivers license. Officer asked if she was carrying drugs and she replied she was not. She gave the officer consent to search her person and vehicle. Officer noticed a bulge that turned out to be coffee filters and two pill bottles. The coffee filters contained white powder that the officer thought was meth. She was arrested for no valid driver's license. At police station, a more thorough search was conducted. In her wallet was a folded piece of paper containing a list of what the officer thought was items needed for a meth lab. He photocopied the list returning the original to the wallet. Two months later, search warrant issued for JOHNSON'S residence. Three persons present. Discovered a meth lab. All arrested for conspiracy to produce. All searches upheld as consent and incident to arrest. Officer had probable cause to believe evidence of drug enterprise might be in the wallet.

State v LANDON (Search of Convicted Person by Corrections Officer Incident to Incarceration in Prison) bulletin no. 217. Drugs were found during a search of person's personal belongings prior to long-term incarceration in a correctional facility. Since this was a long-term incarceration vs. a person being detained in jail who may shortly post bail, the detailed search was upheld. See Reeves v. State.

SNIDER v State (Search Incident to Arrest) bulletin no. 225. The defendant was arrested for carrying a handgun while intoxicated. During the search of the defendant prior to placement of the defendant in the officer's vehicle, the officer discovered a crack pipe. Based on this fact, a plastic box also found in the defendant's pocket was opened and cocaine was discovered. Probable cause existed for the warrantless search and seizure of the plastic box.

KNOWLES v Iowa (Search of Vehicle Incident to a Traffic Citation) bulletin no. 230. A vehicle was stopped, and the driver issued a citation for speeding. The vehicle was searched, and drugs were found. Iowa had a statute which allowed for officers to search vehicles as an "incident to a traffic violation." The U.S. Supreme Court ruled the statute was unconstitutional and suppressed the evidence because of the illegal search. The officers did not have the consent of the owner, probable cause, nor could the search be justified as incident to custodial arrest.

Wyoming v HOUGHTON (Search of Passenger's Personal Belongings Inside a Lawfully Stopped Vehicle) bulletin no. 232. A vehicle was stopped for speeding. The driver had a syringe in his pocket and admitted it was used for taking drugs. During a search of the vehicle, they discovered drugs inside the purse of a passenger. The search was upheld. Since they had probable cause to search the vehicle, they also had cause to search everything inside the vehicle that may conceal the object of the search.

F. INVENTORY

The United States Supreme Court has recognized the inventory of an individual's effects, either from his person or vehicle, is an exception to the warrant requirement. A search such as this is made for taking an inventory of personal effects, contents of a vehicle or container -- not for the purpose of discovering evidence. Many courts have ruled these "inventory searches" valid since they are conducted in good faith, not as a pretext for a warrantless search for incriminating evidence. In some instances (during an inventory search), an officer or corrections officer will inadvertently discover contraband or evidence of another crime. Courts generally rule that this evidence or contraband is admissible because it was inadvertently discovered and in plain view of the officer.

To date, the Alaska Courts have not recognized the "inventory exception" to the warrant requirement. The Courts have concluded in each of the cases (persons or vehicles) that they have addressed that the officer should have obtained a warrant.

The Courts suggested that the "inventory" and "vehicle" exceptions to the warrant requirement are merely subcategories of the other exceptions to the warrant requirement such as "incident to arrest," emergency, investigatory stops, "prevent the destruction of known evidence," etc.

G. PROTECTIVE SEARCH

A warrantless search for the protection of law enforcement officers, as well as the public, may be conducted if the exigency of a situation makes it imperative to do so. This exception is also referred to as the "emergency" exception to the warrant requirement.

PROTECTIVE SEARCH
SELECTED CASES

GALLMEYER v State (Emergency Entry to Private Residence), bulletin no. 54. Intoxicated subject pointed a gun at his spouse which subsequently forced her to leave the residence without taking her 15-month-old child with her. Prior to police arrival at residence, the subject placed the child on the porch. The responding officer, who noticed that the subject was armed, knocked on the door to calm the subject but he refused to admit the officer. The officer entered the house, struggled with the subject, removed the gun and seized a second gun that the subject attempted to obtain from the kitchen. The Court, considering the subject's use of guns, upheld the warrantless entry due to the emergency of the situation.

JOHNSON v State (Warrantless Seizure of a Person from Private Residence), bulletin no. 66. Rape victim escaped from suspect's residence, summoned the police and reported that suspect had threatened to "blow her away" if she reported the incident. The suspect appeared at the second level window when the police knocked on the door but did not respond. The officers made a warrantless entry to affect the arrest. The Court upheld this emergency entry as an "exigent circumstance" because of the threat of violence and the possibility of destruction of evidence.

MURDOCK & ROBINSON v State (Protective Search of Residence), bulletin no. 69. In course of investigating a case involving weapons, officers approached one of the suspect's residence and were voluntarily allowed to enter. After entering, officers heard noises emanating from another room. Further investigation led to a bedroom in which several suspects were discovered hiding. The officers checked under the bed for additional suspects and discovered several weapons, which they seized. Later identification of the weapons indicated that they had been taken in a recent robbery and one had been used in a recent robbery homicide. The Court ruled that entry was made with consent and the subsequent search upheld as protective and the discovery of weapons was inadvertently in their plain view while looking for additional suspects.

WAY v State (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person known by officer to have previously had a weapon), bulletin no 290. Police have responded to an apartment where they have been informed that a fugitive is located. All the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon. this special handling was permissible.

MATTERN v State (no bulletin). Officers responding to a burglary noticed a van leaving the area. The officers stopped the suspected van, looked in the back and discovered clothing and other items later identified as the stolen goods. The Court ruled the evidence admissible because the officers, for their own protection, had a right to look in the van for possible suspects and in doing so inadvertently discovered evidence that was in their plain view.

Maryland v BUIE (Protective Search of Residence), bulletin no. 139. When executing a warrant in a home or building where there is reasonable suspicion that other people might be in the house which could pose a danger to the arresting officers, a limited sweep of adjoining portions of the house where "an attack could be launched" can be done. This protective sweep is not a full search incident to arrest, but any material in plain view which the officer had probable cause was evidence of a crime can be seized.

BRAND v State (Protective Search of Residence Requires Belief that Area to be Swept Harbors an Individual That Poses a Danger), bulletin no. 333. Police responded to a residence to investigate a threat of suicide. On arrival, the alleged victim was outside the residence and paramedics were already on location treating the subject victim. The subject victim became agitated and ran back into the house. Officers attempted to pursue the subject into the house but were met at the door by Brand who said he did not want them in the house. The officers subsequently handcuffed Brand. The subject victim had by this time come out of the house and she too was subdued. One of the officers smelled what appeared to be marijuana coming from the residence. The officers conducted a “protective search” of the residence and discovered a grow-operation. BRAND, who had been tased by the officers, was in the rear of an ambulance awaiting transport to the hospital. One of the officers asked consent (after the protective search) to search his residence. He initially declined but when the officer said he would get a search warrant BRAND consented. All the evidence (and his consent to search) must be suppressed. Police may not enter a home for a protective sweep unless they have a reasonable belief that there is an individual inside who could put them in danger. All the officers involved in this case testified that they did not have any reason to believe that there was anyone else in the home.

EARLEY v State (Protective Search of Residence Absent Reasonable Cause), bulletin no. 140. When officers were investigating a crime in an apartment, their search of the residence to ensure their safety did not satisfy the protective search doctrine, i.e. reasonable suspicion that their safety was in danger and a search narrowly limited to areas where dangerous persons could be found. There must be specific and articulable facts which would suggest that an armed and dangerous person is concealed somewhere in the residence.

H. PREVENT DESTRUCTION OF KNOWN EVIDENCE

In certain circumstances a warrantless search may be conducted to seize evidence that would be destroyed if not first seized. The exigency of the circumstance must be articulated, and probable cause must have been established prior to conducting the warrantless search.

PREVENT DESTRUCTION OF KNOWN EVIDENCE
SELECTED CASES

CLARK v State (Vehicle Search - Exigent Circumstances) bulletin no. 12. Although three individuals were suspected of involvement in the sale of drugs, only two were arrested. The suspect's rented vehicle, which was parked on a public street, was seized and searched. A quantity of drugs was discovered in the glove compartment and subsequently introduced as evidence at the defendant's trial. The Court held the warrantless search of the vehicle was due to exigent circumstances. The third suspect, whose whereabouts were unknown, could have returned to the vehicle and destroyed the evidence.

FINCH v State (Warrantless Search of Hotel Room) bulletin no. 22. Female assault victim reported event took place in hotel and that the assailant told her that he would destroy the evidence. Police arrived at the hotel and attempted to obtain entry by knocking on the door and telephoning the room. Since their efforts went unanswered and neither light nor noise were observed in the room, the hotel manager was requested to open the door. Once the door was opened, it was evident that the suspect was not present, but evidence of the assault was discovered and seized. The Court ruled the evidence inadmissible stating that an emergency did not exist. The Court further stated that one officer should have remained at the scene while the other officer obtained a warrant.

JOHNSON v State (Warrantless Seizure of a Person from Private Residence) bulletin no. 66. Warrantless entry of residence and resulting seizure of rape suspect who had threatened to "blow away his victim" upheld as "exigent circumstance." Subsequent seizure (by warrant) of bed clothing was also upheld due to the possibility of destruction of evidence prior to suspect's arrest.

McGEE v State (Warrantless Seizure of Handgun for Test Firing) bulletin no. 38. In course of investigating an assault, the police officer inquired if subject owned an automatic weapon; the subject entered his residence and returned with the suspected weapon. The officer requested the subject's permission to seize the weapon for test firing but was denied permission without a warrant. The officer seized the weapon, which was subsequently identified as the weapon used in the assault. The Court ruled the weapon admissible because it was in the officer's "plain view" when subject produced weapon and, if not seized at that time, the suspect could have disposed of it.

PAYTON v New York (Warrantless Entry into Private Residence to Effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time; however, in plain view was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted that enable police to violate the constitution. Twenty-five states (including Alaska) have enacted statutes that allow police to make warrantless entry into a private residence based on probable cause. The U.S. Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

MOORE v State (Warrantless Search of Person Present in Residence During Execution of Warrant to Avoid Destruction of Evidence) bulletin no. 163. Police executed a search warrant at a "crack house." A female in the house was subjected to a pat down search and nothing was found, although a bag of cocaine was on the floor near her feet. She was then subjected to a full search based on circumstances developed at the scene. The search was proper because probable cause was developed to justify the search. The officer knew it was common practice for females to hide drugs on their person at "crack houses," numerous individuals tried to flee the scene or avoid contact with police when the warrant was served, destruction of evidence was a distinct possibility, and the residence was not a public facility where innocent people were more likely to be present.

KENTUCKY v King (Warrantless Entry into Private Residence to Prevent Destruction of Evidence) bulletin no. 354. During controlled buy operation, the suspect dealer left the area by running towards the breezeway of an apartment complex. By the time the officers got there to make the arrest they could hear a door closing and the smell of Marijuana. There were two apartments, one on the right and one on the left. The officers could smell Marijuana emanating from the apartment on the left. The officers banged on the door and as loud as they could have and shouted "police." At that time, they could hear movement in the apartment and thought that someone might be destroying evidence. They announced they were police and made a forced entry. There were 3 persons in the apartment. Police seized marijuana, cocaine, cash, and drug paraphernalia. It turned out that the suspected drug dealer (who was later apprehended) had gone to the apartment on the right. King argued the police had no right to make the warrantless entry into his apartment. U.S. Supreme Court ruled this was an exigency and that they had a right to enter to prevent the destruction of evidence.

I. INVESTIGATORY SEIZURE OF PERSONS AND THINGS
(STOP & FRISK)

Many law enforcement officers misunderstand the investigative seizure of a person referred to as “stop and frisk.” Some officers believe that any person walking or driving on a public street is "fair game" and are subject to seizure and a "pat down" search -- nothing could be further from the truth.

The officer must justify two distinct actions:

1. THE ACTUAL STOPPING OR SEIZURE

    a. the reason the person was stopped
    b. the person's activities at the time
    c. the location and time of stop
    d. did this individual fit the description of a suspect in a recent crime
    e. was location a high crime area
    f. was the person a known criminal who carried weapons

2. THE FRISK OR SEARCH

    a. the reason necessary to frisk the individual

REMEMBER: The frisk is merely a limited pat down search of the outer clothing of the subject.

The search is allowed for your protection, so you should be able to justify and articulate the reasons the frisk was necessary. (Bulge in pocket, failure to give a good account of him/her, known background information, etc.)

In Terry v Ohio, the U.S. Supreme Court ruled that a police officer, under certain circumstances, may "stop and frisk" a person for the protection of the officer or society at large. Such action is constitutionally permissible under the Fourth Amendment. The Terry case involved a police officer with 39 years experience (35 as a detective) assigned to a high crime area in downtown Cleveland; an area he had worked for many years. One afternoon, the officer observed three men who appeared to be casing several stores. The officer did not recognize any of the individuals. He continued to observe the activities of two of the men. Within a 12 to 15-minute period, they passed one particular store approximately 12 times and each time stopped to look inside. He thought their actions were indicative of a proposed robbery, so he confronted the three individuals. He conducted a "pat down" search on the outer garments of the subjects and felt weapons in the pockets of two of the individuals. The third individual was not carrying a weapon and was released. The other two were arrested for carrying concealed weapons. One subject pled guilt and the other, TERRY, went to trial, was convicted and appealed. The U.S. Supreme Court ruled this warrantless intrusion permissible stating "...a reasonable and prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." The officer's experience, as well as the articulation of his suspicions, impressed the Court. The Court further stated that the STOP IS A SEIZURE OF A PERSON and the FRISK IS A SEARCH under the Fourth Amendment. However, the warrantless search and seizure can be classified as "exigent circumstances," if expeditious action based on an officer's immediate observations justify his conduct. Police officers are not required to take unnecessary risks in the performance of their duties.

Over the years, the Court has used the "temporary seizure" rationale as applied in the Terry case to authorize the investigative seizure of items such as packages, suitcases and vehicles by utilizing drug dogs for sniff testing to obtain warrants. This is referred to as an investigatory seizure.

During the investigative seizure of persons or things, an officer may develop probable cause to arrest or obtain a warrant. In the case of seizure of a person, an officer may, after establishing "probable cause," search as incident to the arrest.

The following criteria must be met for the Court to justify stop (seizure) and frisk (search of outer garments) of a person:

1. Established reason to believe criminal activity is under way.

2. Your observation of an individual engaged in unusual conduct leads you to believe that criminal activity may be under way and the individual may be armed and dangerous.

3. Information obtained from another source such as citizen witness, reliable informant or official report (radio dispatch, etc.) indicates that subject is involved in criminal activity.

4. Same criteria apply to motorists.

5. Initial search was limited to "pat down" of outer garments.

6. Only objects believed to be weapons were removed from the individual's clothing; however, if a weapon was discovered, then a total search as INCIDENT TO ARREST should be conducted.

7. Although a person cannot be coerced to answer your questions, his failure to do so may be sufficient justification to conduct the frisk for your own protection.

Many cases may have been "saved" if the officer would have requested (getting his/her consent) that the person accompany him to the police car or station. If it can be established that the individual willingly consented to accompany you, then it can be demonstrated that the individual waived his/her Fourth Amendment right to the seizure of their person. Remember, you have the burden to prove that the person was in custody voluntarily, without threats, promises or coercion, absent probable cause.

In order for a Terry investigative stop to occur, you must have an actual suspicion that "imminent danger exists or serious harm to persons or property has recently occurred," and that the suspicion is reasonable. When a crime occurs, even a property crime, a police officer has a right and duty to promptly investigate. This might necessarily involve stopping someone when you have reasonable suspicion that the person is involved.

The Alaska Court of Appeals has ruled that a Terry investigative stop can occur based on an anonymous (good citizen) tip, but only if imminent public danger exists. In all other cases, the information must meet the Aguilar/Spinelli two-prong test for reliability and personal knowledge.

INVESTIGATORY SEIZURE OF PERSONS AND THINGS
SELECTED CASES

TERRY v Ohio 392 US 1 (Stop and Frisk Authorized by U.S. Supreme Court) (no bulletin). A police officer, for his own protection as well as others in the area, is entitled to conduct a carefully limited search of an individual's outer garments to ascertain if weapons are in possession. Such a search is reasonable under the Fourth Amendment and any weapons seized may be introduced into evidence against the individual who possessed them.

Arizona v JOHNSON (Investigatory seizure of driver and passengers) bulletin no. 335. Gang unit of Tucson Police Department stopped a vehicle after a license check revealed that the registration had been suspended for an insurance violation. Under Arizona law, this type of infraction was a civil matter warranting the issuance of a citation. There were three persons in the vehicle. Johnson was seated in the rear seat. Officers observed that he was wearing a blue bandana and that his clothing was consistent with that worn by the Crips gang. When asked, Johnson gave a police officer his name and date-of-birth but said he did not have his identification with him. One of the officers wanted to talk to Johnson privately and asked him to get out of the car; Johnson complied. The officer felt that, based on Johnson's answers when he was in the car that she should pat him down for weapons. During this process, the officer felt the butt of a handgun. Johnson was arrested for carrying the gun and for being a felon in possession. He argued that he was cooperative and that the officer had no right to conduct the pat down. The court ruled that the same rules apply to drivers and passengers of a vehicle as it does to pedestrians who are subjected to Terry type stops. The rule is: (1) the investigatory stop must be legal; and (2) to proceed from a stop (seizure) to a frisk (search), the police officer must reasonably suspect that the person stopped is armed and dangerous.

ADAMS v Williams 407 US 143 (Search of Person in Vehicle Based on Informant Tip) no bulletin. During the early morning hours, an officer alone on duty in a high crime area was notified by a reliable informant that a person seated in a nearby car was carrying narcotics and had a gun in his waistband. The officer approached the car, tapped on the window, asked the occupant to open the door, but the occupant opened the window instead. The officer was justified in reaching through the opened window, feeling the occupant's waist and seizing the revolver found there. Drugs found on his person were incident to the arrest.

COLEMAN v State (Investigative Stop) bulletin no. 3. Subject, driving a vehicle in the park where a robbery/rape occurred, fit the description of the suspect. Stopping of the vehicle was authorized and evidence observed in the vehicle was in plain view, therefore, establishing probable cause to arrest and subsequent search incident to the arrest.

DUNAWAY v New York (Illegal Seizure of a Person) bulletin no 33. When a person is illegally seized (absent consent, probable cause or stop and frisk justification) any evidence seized, including confessions, will be suppressed.

KAUPP v Texas (confession obtained by exploitation of an illegal arrest) bulletin no. 294. At 3:00 a.m. police are allowed entry into a residence by the father of the 17-year old suspect in a murder case. They go to the suspect's bedroom, awaken him by saying "we need to go and talk." He replies OK. The police put him in handcuffs and take him from his residence to a patrol car. The suspect is dressed only in his boxer shorts, and a T-shirt; he is shoeless. This is in the month of January. Suspect is brought to the police station, placed in an interview room and advised of his *Miranda* rights. He at first denies and then admits to a "part of the crime." It is established that the police did not have enough probable cause to arrest the suspect. The question here is did the police violate the suspect's Fourth Amendment right against unreasonable seizure. The answer is "yes" and the confession must be suppressed.

FREE v State (Stop and Frisk) bulletin no. 39. Police learned through an informant that subject was involved in the theft of guns and intended to use one of the guns to commit an armed robbery. Subject is stopped and patted down. The discovery of guns led to probable cause to arrest and, as incident to arrest, the gun was introduced as evidence at subject's burglary trial.

OZENNA v State (Stop and Frisk) bulletin no. 42. Burglary occurred in early morning hours and subject, a known burglar, had been seen in area. Police see subject and observe his hand under his jacket in his waist. Subsequent pat down revealed weapon, which led to probable cause to arrest. The weapon, taken in the burglary, may be used at trial.

UPTEGRAFT v State (Vehicle Search - Plain View Incident to Arrest) bulletin no. 44. Information developed after armed robbery led to investigative stop of suspect vehicle. Weapons were observed inside the vehicle, which led to probable cause to arrest and subsequent search of vehicle as incident to arrest.

Michigan v SUMMERS (Pre-arrest Seizure of Person Executing Search Warrant) bulletin no. 49. Upon their arrival at a residence to serve a search warrant, the police encountered the subject departing. The police made a "temporary seizure" of the individual and forced him to return to the residence while the search was conducted. Search yielded evidence that lead to arrest and evidence found on his person was admissible as incident to arrest.

MUEHLER et al. v MENA (Handcuffing of persons present while police are executing a search warrant), legal bulletin no. 296. At 7:00 a.m. police executed a search warrant at the residence of a known gang-banger who was suspected of being involved in a drive by shooting. There were four persons in the residence, including MENA who was in her bedroom. All subjects were handcuffed and removed to the attached garage. INS, who was assisting the police, questioned MENA about her immigration status while she was handcuffed. The search, which lasted between 2 & 3 hours, yielded weapons, ammunition, gang related paraphernalia and some marijuana. MENA was subsequently released. She brought a civil (1983) suit and prevailed in the lower courts. The judgment against the police (MUEHLER) was upheld by the 9th Circuit Court of Appeals. The U.S. Supreme Court reversed the ruling that the detention in handcuffs during the execution of the warrant was reasonable and that the officers (INS) questioning did not violate the Fourth Amendment.

WAY v State (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person know by officer to have previously had a weapon), bulletin no 290. Police have responded to an apartment where they have been informed that a fugitive is located. All of the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon this special handling was permissible.

UNGER & CAROTHERS v State (Involuntary Seizure of Person) bulletin no. 53. Police made unlawful entry into private residence to arrest defendant. Although the defendant waived his Miranda rights and voluntarily provided a statement to the police, the statement was suppressed because of the initial illegal seizure of the defendant.

KOLENDER v Lawson (Loitering Statute) bulletin no. 70. Stop and frisk is not justifiable if the statute is unconstitutional. Monetary damages cannot be assessed against police if they are enforcing a law on the books.

HIIBEL v Sixth District Court of Nevada (Stop and Identify Statute does not violate Fourth or Fifth Amendments) bulletin no. 283. Police responded to a reported assault. On arrival defendant was standing outside his truck and the female victim was inside the truck. The officer informed the man that he (the officer) was investigating a repotted assault and asked the man, who appeared to be intoxicated, to identify himself. The man refused. The officer asked the man on 11 occasions and told him that if he did not identify himself that he would be arrested. He refused and was arrested. The court said this is unlike KOLENDER in that the officer was investigating a crime and that a part of that investigation would include identifying possible suspects. Requiring a person in these circumstances does not violate either the Fourth or Fifth Amendments. You cannot however, obtain incriminating statements, only identity.

McBATH v State (Investigate Stop Leads to Identity of Passenger with pre-existing warrants) bulletin no. 295. Police stop a vehicle with an expired license plate. The driver of the vehicle is arrested for DUI. Police call for a tow truck to impound the vehicle. The passenger is informed that he is free to go, and the police even offer to call him a cab. The arrested driver asks the passenger to remove a toolbox and some unopened beer from the rear of the vehicle. Fearing a possible later claim of missing items, the police ask the passenger for his name. At first, he refuses to identify himself then gives them a phony name.

He ultimately does furnish the police with his correct name and they run a check and learn there are two outstanding warrants for his arrest. As an incident to that arrest McBATH is searched and some drugs are found on his person. He argues that the evidence should have been suppressed because it had been seized as a result of an unlawful investigative stop. The court ruled that regardless of the potential illegality of the investigative stop (of McBATH) the pre-existing warrant was an independent, untainted ground for his arrest. The court also pointed out that the evidence was not found until **after** McBATH was arrested on the strength of the warrant.

U.S. v PLACE (Sniff Test by Trained Narcotics Dog) bulletin no. 75. Under certain circumstances, it is permissible to make an investigatory seizure of luggage for K-9 sniff test.

WARING & ROBINSON v State (Warrantless Seizure of Person) bulletin no. 76. Mere suspicion or "gut feeling" does not justify a stop and frisk. The officer, absent consent or probable cause, must have articulated facts

justifying a stop and/or frisk. A "fishing expedition," irrelevant of the fact that a thief was apprehended, will not sufficiently justify your actions.

MAJAEV v State (Hand gestures by police - to stop, come to me etc, - result in seizure) bulletin no. 347. You must have a “reasonable suspicion” to justify the seizure of vehicle and/or person.

LINDSAY v State (Involuntary Seizure of Person) bulletin no. 92. Individual illegally seized (no probable cause or stop and frisk justification) and any evidence seized, or confessions received will be suppressed.

POOLEY v State (Sniff Test by a Trained Narcotics Detection Dog) bulletin no. 96. Police made a temporary investigative seizure of luggage based on reasonable suspicion that the luggage contained drugs.

GIBSON, Thomas v State (Investigatory Seizure of Package for Dog Sniff) bulletin no. 98. Seizure of package made by private individual employed by an airfreight company was released to police. Court ruled seizure by the individual justifiable on the grounds of reasonable suspicion, since the size of the package allegedly containing tea was sent airfreight.

WILKIE v State (Dog Tracking Evidence) bulletin no. 100. Since trained tracking dog located suspect, police had probable cause to arrest.

SIBRON v New York 392 US 40 (Eight Hours Surveillance Does Not Justify Stop and Frisk) no bulletin. During an eight-hour period, police officers followed and observed a suspect who conversed with known drug dealers and stopped at a restaurant for coffee. Surveillance does not justify a stop and frisk.

YBARRA v Illinois (no bulletin). Although the police had a warrant entitling them to search a bar and the bartender, they could not frisk all occupants of the bar unless their articulated circumstances justified such action. Since this bar was open to the public, not all occupants were subject to the search warrant, only those specifically named.

REICHEL v State (Seizure of parolee by police who suspect he is in violation of conditions of his release) bulletin no. 289. Homer police observe REICHEL in a bar. One of the officer’s suspects that he is violating his conditions of release on parole by being in the bar. Police follow him outside, seize him and call his probation officer who directs the police to arrest him. This takes about twenty minutes. The court ruled, affirming ROMAN above, that the police did not have the authority to make the investigative stop.

O'CONNOR, et al v Ortega (Search of Government Employee's Desk by Supervisor) bulletin no. 111. Government employees do not forfeit their Fourth Amendment rights because the government rather than a private employer employs them. There is no requirement that an employer must obtain a warrant to enter an employee's office, desk or file cabinet when there is a work-related need.

CHRISTIANSON v State (Investigatory Stop of Vehicle with No Imminent Public Danger) bulletin no. 112. Consent to search by non-owner driver was proper. No requirement that imminent public danger existed or recent serious harm to person or property had occurred to justify stop.

State v GARCIA (Investigative Seizure of Person and Luggage at Airport) bulletin no. 116. Officers working airport surveillance may perform an investigative stop only when they have a reasonable suspicion that imminent public danger exists or that serious harm to persons or property has recently occurred. Further, when seizing luggage, they must again have reasonable suspicion before conducting even a minimally intrusive dog drug detection search or seizure of luggage. In this case, the reasonable suspicion clause was not met because the circumstances relied on could have described a large category of travelers who could have been subjected to virtually random seizures.

LeMENSE v State (Investigative Seizure of Person and Luggage at Airport) bulletin no. 117. Investigative stop of a suspected drug courier upheld because the suspicion for the stop was reasonable (unlike State v GARCIA) and a reasonable person would have concluded that the suspect was free to terminate the encounter and walk away. Conversations with the suspect developed further suspicion that justified subjecting luggage to a drug detecting dog search that alerted on the bag, and application for a warrant for the luggage.

Illinois v CABALLES (Drug Dog’s Sniff Test During Lawful Traffic Stop) bulletin no. 292. A State Trooper had stopped CABELLES for speeding. A second trooper overheard the radio transmission of the stop and responded to the location with his drug dog. While the first trooper was in the process of writing CABELLES a traffic citation the second trooper walked his dog around CABELLES’ vehicle. The dog alerted at the trunk. Based on the alert the troopers searched the trunk, found marijuana and arrested CABELLES. This was not an unnecessarily prolonged stop and the dog alert was sufficiently reliable to provide probable cause to conduct the search.

FLORIDA v HARRIS (Dog Sniff on lawful traffic stop alerting to residual odor) bulletin no. 363. Vehicle stopped because it had an expired license plate. The driver was acting "nervous, unable to sit still, shaking, and breathing rapidly." The officer asked Harris for consent to search the vehicle; Harris refused. The officer's K-9, Aldo, did a "free air" sniff around the vehicle and alerted on the driver's door handle. The officer felt he had probable cause and conducted a search of the vehicle. Nothing the dog had been trained to detect (methamphetamine, marijuana, cocaine, heroin, and ecstasy) were found. But the officer did find, and seize 200 loose pseudoephedrine pills, 8000 matches, a bottle of hydrochloric acid, two containers of antifreeze, and a coffee filter full of iodine crystals – all ingredients for making methamphetamine. Harris was arrested, and convicted of being in possession of pseudoephedrine, for use in manufacturing methamphetamine. He appealed, and the Florida Supreme Court ruled that there was not ample evidence to support the probable cause based on the K-9. The U.S. Supreme Court reversed ruling that there was ample evidence of training and certification on the record for both the dog, Aldo, and the handler office. The court further ruled that even though there were no drugs in the vehicle that Aldo was trained to detect trained drug dogs do alert to residual odor which is enough to establish probable cause.

RODRIGUEZ v U.S. (Dog sniff after completion of a traffic stop) bulletin no. 375. RODRIGUEZ was stopped for "driving on the shoulder" of a Nebraska highway. After checking to see if RODRIGUEZ had a valid driver's license, vehicle registration, insurance, and that there were no outstanding warrants for RODRIGUEZ and his passenger, Scott POLLMAN, the officer issued RODRIGUEZ a warning ticket for driving on the shoulder. The officer then asked RODRIGUEZ for consent to have his K-9 walked around the vehicle; RODRIGUEZ refused consent. The officer then ordered RODRIGUEZ out of his vehicle and instructed him to stand by the front of the patrol vehicle until a second officer arrived. About 8 minutes later a second officer arrived and the K-9 circled the vehicle twice. About half way through the second search the K-9 alerted to the presence f drugs. A search was conducted, and a large bag of methamphetamine was seized. RODRIGUEZ was charged and convicted. He argued that because of the prolonged seizure of his vehicle that occurred after the citation was issued that the evidence should be suppressed. The U.S. Supreme Court Agreed ruling the prolonged seizure (waiting for the second officer) was unreasonable and violated the Fourth Amendment.

FLORIDA v Jardins (Warrantless presence of drug-sniffing dog on a homeowner's porch is a search within the meaning of the Fourth Amendment) bulletin no. 364. To verify a tip police brought a trained drug-detection dog to the front porch of the suspect residence. When the dog alerted police obtained a warrant based on the alert. Search was conducted, and drugs were seized. Court ruled that the use of the sniffing dog on a homeowner's porch is a search within the meaning of the Fourth Amendment. The porch is a part of the curtilage (area immediately surrounding the house) and as such the use of the dog rendered the warrant invalid.

KELLEY v State. (Warrantless after midnight "drug sniff" by Trooper on private property,) bulletin no. 374. State Troopers received an anonymous tip that there was a marijuana grow operation going on at a specified residence. Sometime after midnight two Troopers went the residence which was in a rural area some distance from the main highway. They parked in the driveway, rolled their windows down, and could smell the odor of "growing or recently harvested marijuana." They applied for and was issued a search warrant. When the warrant was executed numerous marijuana plants and other evidence of a commercial grow operation was seized. KELLEY was charged and convicted: she argues that the troopers had no legal right to approach her home at that time of night. The Court of Appeals agreed, ruling that this was not a "knock and talk" (no effort was made to contact the residence) and that even though the area maybe "expressly or impliedly open to public use" all of the circumstances in the case: the time of night, the troopers conduct, the states failure to advance any reason why the troopers could not gather their evidence during the day, or to believe that KELLEY impliedly consented to such a late nigh visit, violated Article 1 Section 14 of the Alaska Constitution.

STEPOVICH v State (Investigatory seizure of person justified based on reasonable suspicion of criminal activity; subsequent "sniff-test" by trained drug detection dog permissible.) Fairbanks police officer observed two men in the rear parking lot of a bar. It was one o'clock a.m. and both men were "face-to-face" about 18 inches apart. Their hand was cupped at about waist length and both men were looking at their hands. The officer commanded them to stop, one STEPOVICH began to walk around a Dumpster. The officer could see that STEPOVICH had both hands in front of him but lost sight when STEPOVICH went around the Dumpster. Both subjects finally complained with the officer's orders to stop and STEPOVICH said "I was just taking a leak, no big deal." The officer went around the Dumpster and discovered a paper slip of cocaine on the fresh snow. STEPOVIC was arrested and the officer discovered $865. Cash and a small plastic jar containing gold nuggets worth somewhere between $8000. and $9000. Later, at the Fairbanks Police Station, a trained drug-detection dog, alerted on the cash and nuggets. Court ruled (1) the officer had reasonable suspicion to believe criminal activity (drug sales) was occurring; and (2) the fact that the drug alerted on the nuggets and cash could be presented to the jury.

MARTIN v State (Observations of illegal activity made by looking through a window while standing on deck of private residence accessible by public are lawful) bulletin no. 365. Police were attempting to determine which unit, of a 5-apartment complex, the suspects entered. One of the officers went to the hallway/deck area of the complex,

and the first apartment he came to he looked in the window. The blinds were down but one of the blinds was broken, and through the slot he observed ingredients used to make methamphetamine. Based on his observations the officer obtained a warrant and seized the evidence. Court ruled that (1) the officer had a right (no trespass) to be on the deck as it was open to the general public, and (2) the contraband was in his plain view when he made the observation.

SMITH v State (Investigative Stop of Vehicle with No Probable Cause) bulletin no. 121. A vehicle can be stopped when the police officer has grounds to believe the license of the driver has been suspended or revoked.

SMITH (Bryon) v State (Investigatory Stop of Vehicle Based on Anonymous Call Reporting DWI) bulletin no. 277. Anonymous caller to Ketchikan Police reports intoxicated male getting into Toyota with Arkansas license plates. Officer responds and observes Toyota pulling away from curb. Driver SMITH is intoxicated and blows a .225 on breath test. He has four prior DWI convictions (one is a felony) from Arkansas. He is charged in AK with felony DWI. He argues that the stop, based on the anonymous caller, was illegal. Court ruled that the police had reasonable grounds to stop the vehicle and such calls (re intoxicated person driving) require “immediate police action to prevent dangerous conduct.” Also said exigent circumstances were present.

Michigan v CHESTERNUT (Investigatory Seizure of a Person Absent Probable Cause) bulletin no. 123. Police are not required to have a "particularized and objective" basis for following (not pursuing) a person who runs from a patrol car on routine patrol, as long as a reasonable person would feel he was free to leave (i.e. not seized). While following, the officers observed the defendant abandon property that they recovered and used as probable cause for an arrest.

United States v SOKOLOW (Investigative Seizure of Person and Luggage at Airport) bulletin no. 130. Police can stop and detain a person for investigative purposes, if the police officer has a reasonable suspicion that criminal activity "may be afoot.”

DUNBAR v State (Investigative Vehicle Stop; Search of Glove Compartment) bulletin no. 134. During a legitimate "Terry stop" and a subsequent frisk for weapons of a suspect in a vehicle, it is permissible to look inside an unlocked glove compartment for weapons, since this compartment was in easy reach of the suspects and will be again when the suspects get back in their car. A search of an unlocked glove compartment incident to arrest is also permissible. This only applies to unlocked glove compartments.

SATHER v State (Investigative Seizure and Emergency Search of Vehicle) bulletin no. 135. When a driver is found slumped over the wheel of a car, the officer has a duty to perform an investigative seizure of the car and an emergency entry to determine if the person needs medical attention. During the entry, the driver, who was in plain view, was found to be intoxicated and that information was used toward probable cause for arrest.

ALLEN v State (Investigatory Seizure Based on Anonymous Tip) bulletin no. 137. An anonymous caller reported to police that someone in a vehicle was selling drugs. The vehicle was stopped, and the driver was arrested for DWLS. The stop was not valid because there was no immediate danger to the public, unlike DWI information from an anonymous caller. Since imminent public danger did not exist, there was no
information whether the Aguilar v. Texas two-prong test was satisfied to make the stop valid, i.e. informant had personal knowledge and was reliable.

WILLIAMS, Antonio v State (Investigatory Stop of Vehicle Based on (corroborated) Anonymous Tip) bulletin no. 315. Fairbanks police received a call from an anonymous female who reported that WILLIAMS and two of his friends had rented a vehicle to drive to Anchorage and pick up cocaine and marijuana which they intended to sell in Fairbanks. The caller, who made three separate calls over two days, said she had seen them with drugs before; knew they sold the drugs and had even told them that what they were doing was wrong. The caller told police that the vehicle they were using was a rental and that it had been rented under the name of “Dequan Thomas.” Police learned (through a subpoena) that someone using that name had rented the described vehicle from Hertz. The anonymous informant reported that the subjects had departed Anchorage for Fairbanks at 4:30 p.m. Police calculated the estimated time it would take to drive and maintained surveillance on the highway. The vehicle, occupied by three subjects, including WILLIAMS, was stopped. A strong smell of marijuana was detected. The vehicle was seized, and a search warrant was obtained. Cocaine, marijuana and a hand-gun were seized. Court ruled that because the police had corroborated all the information supplied by the anonymous source, they had reasonable cause to stop the vehicle. The smell of marijuana reinforced the stop (seizure) of the vehicle and subsequent arrest of WILLIAMS.

OZHUWAN v State (Investigatory Seizure of Person Absent Reasonable Suspicion) bulletin no. 138. Even though a vehicle is parked in an area where criminal activity in known to occur, you must have reasonable suspicion that the vehicle is involved in or soon to be involved in such activity before performing an investigatory stop. When the

investigatory stop is made solely to check on the welfare of the occupants, there still must be reasonable suspicion that the occupants might need assistance.

GIBSON, William v State (Investigatory Stop of a Vehicle Without Imminent Public Danger) bulletin no. 141. An investigatory stop of a person (in a vehicle) can be made to investigate a crime that was reported to be in progress or just occurred, even if no imminent public danger exists. As a practical matter, police must be able to investigate crimes and have a reasonable suspicion, based on witness information, that the person stopped was involved.

ADAMS, John v State (Investigatory Stop of Person is Justified But "frisk" is not) bulletin no. 291. During the evening hours Fairbanks police observe a vehicle parked near a school that had recently been burglarized and vandalized. The driver was outside the car. ADAMS, the passenger was inside. The driver said he had pulled over because he had just picked up a shipment of baleen at the airport and because of the offensive odor he was going to move it. ADAMS said they had pulled over to fix the cover for the spare tire on the front of the vehicle. The officer said ADAMS appeared jittery and was constantly taking his hands in and out of his pockets. The officer decided to pat-down ADAMS for weapons and felt a hard-cylinder-shaped object that he immediately recognized as a crack pipe. When the officer removed the pipe, a plastic bag containing white powder (later identified as cocaine), came out. At the suppression hearing the officer testified that although ADAMS appeared nervous during the contact about one-half the people he interviewed are also nervous. He also said that it could be possible that ADAMS was taking his hands in and out of his pocket was because it was a cold night. The officer also said that he felt the need to search about half the people he contacts. The court said the officer was unable to articulate a reason to conduct the pat-down. Whereas the stop and interview were justified the pat-down was not.

ERICKSON v State (Illegal Pat-Down Search Requires Suppression of Evidence) bulletin no. 313. Vehicle was stopped for not having a front license plate. The car was occupied by two males. Neither subject was wearing a seatbelt. ASPIN check revealed that the driver was on probation for robbery. The passenger told the officer he did not have any identification on him but gave his name as Chris ERICKSON and also furnished a date of birth. ASPIN did not have this name in file. The officer ordered ERICKSON out of the car and did a pat-down search. During the pat-down, the officer felt what "he was 100 % sure" was an identification card in ERICKSON's pocket. ERICKSON was then arrested for giving false information. During the subsequent search, drug paraphernalia and residue was found on his person. The court answered two questions: (1) could the officer order ERICKSON out of the car and (2) was the pat-down authorized? The officer could order him out of the car but there was nothing to indicate that ERICKSON was either armed or dangerous, so he was not allowed to search him. The not wearing a seat belt is an infraction that, at the time, carried a $15.00 fine.

Michigan State Police v SITZ, et al (Sobriety Checkpoint) bulletin no. 144. All vehicles passing through a checkpoint were briefly stopped and drivers examined for signs of intoxication. These stops did not violate the Fourth Amendment because: 1) checkpoints were selected pursuant to guidelines and all vehicles were stopped; 2) data indicated the stops would promote roadway safety; and 3) the State's interest in preventing drunk driving outweighed the degree of intrusion upon individual motorists. This stop was classified as an "investigatory" stop. Alaska Courts have not, yet, addressed this issue; it remains an "open question" until they have occasion to decide a case based on the Alaska Constitution.

Alabama v WHITE (Investigatory Seizure of Vehicle Based on Anonymous Tip) bulletin no. 146. Under the "totality of the circumstances," the anonymous tip, as corroborated, exhibited sufficient information of reliability (reasonable suspicion) that a crime occurred or is soon to occur to justify an investigatory stop of a vehicle. Alaska has not adopted the anonymous tip principle, except where imminent danger exists (i.e. stopping a suspected DWI).

Illinois v LIDSTER (Information (re fatal H&R) Seeking Checkpoint) bulletin no. 276. One week later, and on the same day of the week after a 70-year-old bicyclist was killed in a hit and run accident, the police set up an information-seeking checkpoint at the location of the accident. Each car was stopped for about 10 or 15 seconds and the occupants were asked if they could provide any information about the accident. The drivers were also furnished with a flyer about the fatal hit and run. The defendant's mini van swerved and almost hit a police officer who was manning the checkpoint. The defendant was subsequently arrested for DUI. He maintained that the checkpoint violated the Fourth Amendment. The Illinois Supreme Court agreed with him, but the U.S. Supreme Court reversed.

WRIGHT v State (Investigative Seizure of Person/Luggage at Airport for Sniff Test by Narcotics Dog) bulletin no. 147. A request by a police officer to inspect a person's ID can be done without it turning into a constitutional seizure. A person can consent to a search of luggage without the encounter turning into an investigatory stop. Based on the officer's suspicion, luggage can be seized for a minimally intrusive canine sniff since the suspected crime posed imminent public danger.

McGAHAN and SEAMAN v State (Sniff Test of Warehouse by Trained Narcotics-Detection Dog) bulletin no. 155. A citizen informant notified police of suspicious activity at a warehouse and suspected a marijuana growing operation. Police observed the same circumstances and, based on reasonable suspicion, used a dog to sniff the warehouse exterior using an area accessible to the public. The dog alerted, and a search warrant was subsequently issued which led to seizure of a marijuana growing operation. Subsequent search warrants were issued for the homes of the warehouse occupants. This type of "sniff" would probably be considered a search if the building were a personal dwelling such as a residence.

California v HODARI (Investigatory Chase of Person Who Abandoned Drugs Before Arrest) bulletin no. 157. To constitute a seizure of a person, there must be either application of physical force or submission to a "show of authority." A police officer involved in a foot pursuit (not simply following) did not seize the suspect until he was tackled. Drugs abandoned during the chase, but before the seizure were not the fruit of a seizure.

TAGALA v State (Non-Custodial Interrogation) bulletin no. 158. A non-custodial interview was properly conducted with a shooting suspect without advisement of *Miranda* rights. A second interview was held, but this time *Miranda* warnings were given. During this second interview, the suspect invoked a limited assertion of his right to remain silent by refusing to discuss his involvement in drug sales, but at the same time indicating he was still willing to discuss the shooting. This limited assertion was found to be proper and discussions about the shooting after the limited assertion were admissible.

MOORE v State (Warrantless Search of Person Present in Residence During Execution of Warrant to Avoid Destruction of Evidence) bulletin no. 163. Police executed a search warrant at a "crack house." A female in the house was subjected to a pat down search and nothing was found, although a bag of cocaine was on the floor near her feet. She was then subjected to a full search based on circumstances developed at the scene. The search was proper because probable cause was developed to justify the search: the officer knew it was common practice for females to hide drugs on their person at "crack houses," numerous individuals tried to flee the scene or avoid contact with police when the warrant was served, destruction of evidence was a distinct possibility, and the residence was not a public facility where innocent people were more likely to be present.

WILLIE v State (Investigative Seizure of Carton Containing Alcohol Prior to Issuance of a Search Warrant) bulletin no. 168. Probable cause was developed by a VPSO to seize a carton thought to contain alcohol (reliable informant and observations of the suspect's being intoxicated in a dry village). The box was seized so they could apply for a search warrant. Handling the box prior to opening it gave new information to the VPSO that the box contained alcohol and additional ample probable cause for issuance of a search warrant.

BEAUVOIS v State (Investigatory Stop of Vehicle Without Probable Cause) bulletin no. 173. A robbery of a store occurred at 2:50 am. The victim furnished police with a description of the suspect, who had departed on foot, as well as his direction of travel. In a campground in that direction of travel a vehicle was seen leaving the area and this was the only vehicle moving. The vehicle was stopped on this basis alone. The stopping of the vehicle was justified because: 1) a serious felony had just occurred in the general area, 2) most people would be asleep; and 3) there was only one vehicle moving and these people may have seen something which could aid their investigation.

GOODLATAW v State (Investigatory Stop of DWI Suspect Vehicle Based on Anonymous Tip) bulletin no. 175. An investigatory stop need not be supported by probable cause - reasonable suspicion is sufficient. In this case, an anonymous tipster reported a suspected DWI. The suspect was stopped without any observations indicating the driver was possibly intoxicated. Further investigation during field sobriety testing led to an arrest.

HAYS v State (Investigatory Stop of Vehicle - No probable Cause) bulletin no. 177. A misdemeanor theft had just occurred and a “locate” was issued for the suspect vehicle. A vehicle was stopped that generally matched the description, but it had the wrong number of occupants and the wrong license plate. The vehicle was not involved in the theft, but it turned out that the driver had a revoked license. Although a well-founded suspicion that a crime had just occurred can justify a stop even though it is a minor crime, there was no practical necessity to immediately stop the vehicle without further information to justify the stop of this particular vehicle, i.e. there was not enough probable cause to stop the vehicle.

Minnesota v DICKERSON (Investigatory Seizure of Crack Cocaine Based on "Plain Feel") bulletin no. 178. During a Terry "stop and frisk," a warrantless seizure of evidence can be based on the object being "immediately apparent by plain feel." In this case, the seizure of cocaine was not valid because the contraband was not immediately apparent as cocaine until repeated manipulation by the officer, but the concept of "plain feel" was validated.

State v WAGAR (Pat-down Search for Weapon Turns Up Cocaine Vial) bulletin no. 273. During a pat-down frisk a police officer felt a hard object, approximately three inches long, in the subject’s T-shirt pocket. The officer asked the subject what the object was, and he said he didn’t know. The officer manipulated the object, so he could look into the pocket and discovered that it was a glass vial containing white powder. It was seized and tested positive

for cocaine. WAGAR was charged with possession. The state supreme court, reversing the court of appeals, said the officer was justified in examining the object because it could have been a potential weapon.

AMBROSE v State (Pat-down Search for Weapons as Incident to Arrest Reveals Package That Could Contain Weapon – On removal Package is Found to be "Bindle" that Officers Testifies is Single-purpose Container Used to Carry Illegal Drugs) bulletin no 346. Officer stops a vehicle because it did not have a rear bumper. APSIN checks reveal that the driver was a convicted sex-offender who was not in compliance with registration requirements. During the search "incident to arrest" the officer felt a small rectangular object. Fearing the object could contain a weapon, such as a razorblade, the officer removed the object and discovered it was a bindle; a single-purpose container he knew is used to carry illegal drugs. The container contained cocaine. The initial seizure was upheld as a weapons search. The search of the bindle was justified because it was" immediately apparent" to the officer that bindles are used to carry illegal drugs.

JONNA ROGERS-DWIGHT v State (Investigatory Seizure of Person Absent Reasonable Suspicion) bulletin no. 193. While making a traffic stop, the officer contacted another vehicle that had also stopped with the intention of informing the driver that she was free to leave. During this contact, he observed classic signs and suspected the driver had been drinking. The officer had reason to contact the driver and as a community caretaker had a responsibility to act.

Michel S. WEIL v State: (Community caretaker stop upheld) bulletin no. 352. About 2:30 a.m. a State Trooper saw a man operating a four-wheeler near a main highway. The four-wheeler had a dog tethered to the machine and they were about twenty feet from the main road. The Trooper was concerned that if the four-wheeler crossed the main road it could create a dangerous situation for motorists as well as the driver of the four-wheeler and the dog. The Trooper activated his overheads and upon contacting driver WEIL discovered he was intoxicated. Breath test was .226 percent. WEIL argued the Trooper lacked probable cause. The court said the stop was justified to avoid a potential threat to public safety.

WHREN and BROWN v U.S. (Traffic Stop for a Minor Violation by Plainclothes Officers Passes "Reasonable Officer Test") bulletin no. 202. Officers made traffic stop when their suspicions were aroused because the vehicle had made an illegal turn at unreasonable speed. The constitutional reasonableness of a traffic stop does not depend on the actual motivations of the individual officers. The usual rule is "probable cause to believe the law has been broken outbalances private interest in avoiding police contact."

NEASE v State (Traffic Stop for Equipment Violation of Driver With DUI History) bulletin no 293. Juneau police officer observed NEASE drinking in a downtown bar. About a week before, the same officer had chased NEASE's vehicle because of speeding. By the time the officer got to the vehicle NEASE was outside of it. He was obviously intoxicated but denied that he had been driving the vehicle. The officer did not arrest him but said he would get him next time. On the day of this event the officer saw (after having seen him in the bar) the vehicle parked in a restaurant parking lot. While turning around to return to the lot NEASE had gotten into the vehicle and entered the highway. The officer followed NEASE who committed no traffic violations. When NEASE stopped at a red-light the officer noticed that there was an inoperative brake light. NEASE was stopped, found to be intoxicated, and arrested for DUI. NEASE argued that this was a "pretext" stop and that the officer had no probable cause to stop him. The court ruled that when the officer observed the equipment violation he had probable cause to make the stop.

Maryland v WILSON (Ordering a Passenger Out of a Lawfully Stopped Vehicle) bulletin no. 214. Police ordered a passenger out of a vehicle. When the passenger exited the vehicle, police observed a quantity of crack cocaine fall to the ground. The passenger was arrested. The Supreme Court considered this additional intrusion on the passenger as minimal but did not consider in this case whether the passenger could be detained the entire duration of the stop.

RYNEARSON v State (Seizure of Luggage at Airport Based on Anonymous Tip) bulletin no. 221. An anonymous tip was received stating the defendant was transporting drugs in her luggage. The court determined that Aguilar-Spinelli was satisfied since the information furnished satisfied personal knowledge and further information provided demonstrated reliability. The court also determined that the stop prior to obtaining the search warrant where the officers learned that the defendant was carrying a prescription for Valium was not wholly innocuous.

State v PRATER (Investigative Stop of Suspected DUI Based on Police Dispatcher Information) bulletin no. 226. The defendant was stopped based on a police radio locate. This type of information can be considered in determining whether there is reasonable suspicion to justify the stop. The information is justified if the dispatcher has reasonable suspicion that imminent public danger exists. This reasonable suspicion can be based on a sufficiently detailed telephone report.

KNOWLES v Iowa (Search of Vehicle Incident to a Traffic Citation) bulletin no. 230. A vehicle was stopped, and the driver issued a citation for speeding. The vehicle was searched, and drugs were found. The vehicle was illegally searched because the officers did not have the consent of the owner, probable cause, nor incident to custodial arrest.

Illinois v WARDLOW (Seizure of Person Fleeing from Known Narcotics Trafficking Area) bulletin no. 236. Police tactical unit observed Wardlow in known drug trafficking area. When he saw police, he ran. Police apprehended and "patted down," during which time a gun was found. No Fourth Amendment violation here.

Florida v J. L. (Seizure of Juvenile Based on Anonymous Tip Lacked Probable Cause) bulletin no. 239. Anonymous caller reported a young black male at a intersection was carrying a gun. Anonymous tip, in and of itself, is not sufficient to conduct pat down.

BOND v U. S. (Manipulation of Passengers Carry-On Luggage) bulletin 240. Border patrol officer checked bus and, in so doing, squeezed a soft luggage bag where he felt a brick like object. He got consent to search and found methamphetamine. Court ruled that officers "physical manipulation" of a passenger's carry-on luggage violates the Fourth Amendment. It should be noted however, that the government in this case did not argue the consent aspect.

CASTLE v State (Illegal Seizure of Passenger in Vehicle) bulletin no. 241. Police stop a vehicle for an equipment violation. It turns out that there is an outstanding warrant for the arrest of the driver. While taking the driver to the police car, the officer tells CASTLE, a passenger, to stay in the car. CASTLE says, "I have to leave." The officer says, "Hold on I'll be right back." CASTLE runs from the scene and is later apprehended. He has some drugs on his person. Court says officer had no probable cause to seize the passenger. Neither safety concerns nor anything to suggest he had committed a crime in the officer's presence.

BRENDLIN v California (Evidence Seized from Illegally Seized Passenger Must Be Suppressed) bulletin no. 321. Police observed a vehicle with a temporary registration form with the number "11" affixed. The vehicle was being driven by a female. Police decided to stop the vehicle despite the fact, as they later testified, there was nothing unusual about the temporary registration and they knew that the "11" meant the temporary registration was good until the end of November. The stop occurred on November 27. Police recognized the passenger, BRENDLIN, as a person they thought was on parole. Records check revealed there was a no-bail warrant for BRENDLIN's arrest. The charge was violating conditions of his parole. During the search of his person and the vehicle, as incident to the arrest, police discovered evidence that lead to BRENDLIN being charged with "possession and manufacture of methamphetamine." He argued that because the police did not have probable cause, or reasonable suspicion to stop the car, the evidence seized from him should be suppressed. The USSC agreed. They ruled the stop amounted to an illegal seizure under the Fourth Amendment and that passengers as well as the driver of the vehicle are "seized." Because of the illegal stop, the evidence must be suppressed.

JOSEPH v State (Police Did Not Have Grounds for Investigatory Stop/Seizure of a Person) bulletin no. 316. Unknown person calls 911 to report two men smoking a "joint" at a location. Responding officer sees two men fitting the description talking to two women who are sitting in a minivan. The officer calls one of the men to him and can smell the odor of marijuana coming from the rear where the men and women are. The officer decides to handcuff the man for his protection. Currently the second man begins to walk away. The officer tells him to stay put and asks a community patrol volunteer who is on the scene to watch the handcuffed man. The second man runs away. As the officer gains on him the man throws out a plastic baggy containing a white chalky substance about the size of a golf ball. The running man is caught and identified as JOSEPH. The baggie is seized and found to contain 20 individually wrapped packets of rock cocaine. The court ruled that the officer did not have lawful grounds for chasing JOSEPH and subject him to an investigative stop. The baggie was thrown away after the chase began. This means the officer, by way of the chase, had attempted to seize JOSEPH and the evidence was not abandoned. The evidence must be suppressed.

COFEY v State (Illegal Seizure of Person Requires Evidence to be Suppressed) bulletin no. 344. Police responded to a reported fight, or disorderly conduct call. The dispatcher had related that some of the persons involved had departed the area in a vehicle. On arrival the officer saw two persons on the street to the rear of the residence. On of the individuals ran away. COFEY was going to leave the area but the officer activated his overhead lights and instructed him to stay because he wanted to talk to him. During the conversation Cofey put his hands in his pockets on several occasions. The officer could see something hard in one of the pockets so, at gun point, told Cofey to take his hands from his pockets. Cofey complied by putting his arms up in the air. Cofey had a baggie containing cocaine in his hand. The hard object observed by the officer turned out to be a cell phone. Prior to the officer's contact Cofey had done nothing to suggest that he was either armed, or dangerous. Cofey was charged and convicted for possession of the cocaine. The court ruled that the evidence (cocaine) must be

suppressed because the officer had clearly seized Cofey when he activated the overhead light and this seizure was not supported by a reasonable suspicion that Cofey or a reasonable person in Cofey's position would not feel free to leave. The court goes on to say that there is nothing to preclude an officer from asking to speak with a person.

MILLER, Michael v State (REVERSED May 2009 see bulletin no. 339) (Investigatory Stop of Vehicle Was Not Supported by Reasonable Suspicion) bulletin no. 317. Unknown person calls 911 to report a man and woman arguing in the parking lot of a local bar. The caller said the argument was verbal, not physical, and said she did not know if they were a coupe or maybe a brother and sister. The caller reported they were standing next to a white Subaru. A police officer responded and saw a white Subaru occupied by two females and a male getting ready to leave the area. The officer activated the overhead lights stopping the vehicle. The officer asked the occupants if they needed assistance and they all reported they did not. The officer smelled alcohol on the driver, MILLER, and asked him to take a breath test; he refused. MILLER was subsequently arrested for DUI and failure to give a breath test. He argued that there was no reason to stop the car and the evidence should be suppressed. The court agreed stating "verbal arguments, (citing JONES bulletin 243) standing alone, do not justify detention." There was no objective basis for the officer to believe that a crime had been committed.

The Alaska Supreme Court reversed (see bulletin no. 339) the Court of Appeals ruling that the police officer was justified in making the investigative stop. The court ruled that the police officer did have a reasonable suspicion that a domestic violence incident had occurred and that the stop was not a pretext to stop the vehicle to find evidence that MILLER was driving while intoxicated.

NAVARETTE, Lorenzo & Jose v California Unidentified female called 911 to report a pickup truck had run her off the road. She furnished a description of the pickup including color and license plate number. A bout 18 minutes later and q19 highway miles away CHP observed the truck and stopped it. When the officers approached they could smell marijuana. Subsequent search resulted in the seizure of 30 pounds of marijuana from the bed of the truck. Defendants argued the stop violated the Fourth Amendment. Court ruled Fourth Amendment permits brief stops such as this where an officer has a reasonably objective basis for suspecting criminal activity, such as DUI.

HAMILTON v State (Investigatory Stop of Vehicle with Obscured License Plate) bulletin no. 263. Police stop a vehicle that had recently been observed where a homicide had taken place. A male occupied the vehicle. Prior to the stop, the officer noticed that the rear license plate was covered with snow. The officer first brushed the snow away, so she could report the number to dispatch and then contacted the driver whose hands were "covered with blood." Because of the stop, evidence was seized from both the car and the person of HAMILTON. The court ruled the stop was justified because of (1) the obscured license plate; and (2) for investigatory purposes because the driver might have had information (witness) concerning the homicide.

HAAG v State (Investigatory Seizure of Armed Robbery Suspect Leads to Show-Up) bulletin no. 298. Police respond to report of two black males wearing dark clothing and ski masks are in process of committing home invasion/armed robbery. Police arrive within minutes and see HAAG running from the direction of the victim's residence. Police seize HAAG at gun point and handcuff him. Although he is a white male, he is dressed in black and has on dark gloves. Police transport him back to the scene where a witness identifies him by his size and clothing. Later police find a Rx bottle in the name of the victim in the rear seat of the patrol car where HAAG had been confined. They also find a gun in the area HAAG was running. Court ruled this was a proper investigative seizure and that the subsequent show-up was proper.

WAY v State (Investigatory Stop of Vehicle with Obscured License Plate Leads to Search Warrant) bulletin no. 288. AST had a tip that a van owned by WAY was being used as a mobile methamphetamine lab. A trooper saw the van driving past him and attempted to read the license plate but discovered that the plate had been bent in an upward position so as to make the numbers ineligible. The van was stopped, and the odor of iodine was smelled. White powder was noticed in plain view and an item used in the manufacture of methamphetamine was also observed. A search warrant was obtained to search the van. No citation was ever issued regarding the obscured license plate. WAY was subsequently charged with misconduct involving a controlled substance. He argued that the troopers lacked probable cause to stop the van and that the stop was merely a pretext to stop the van to investigate the methamphetamine tip. The court ruled that the troopers had ample probable cause to stop the van because AS 28.10.171(B) requires that vehicle license plates must be clearly legible.

CLARK, Scott v State (Stop of Vehicle with Expired Registration and Broken Taillight – no MIRANDA issue) bulletin no. 297. Anchorage Police stopped a vehicle with expired registration and a broken taillight. The driver was asked to produce his driver's license, vehicle registration, and proof of insurance. He told the officer that he did not have insurance and was cited for this violation. At trial, he argued that his admission should be suppressed because the officer failed to give him his MIRANDA warnings. The court ruled that "routine" traffic stops do not implicate the constitutional right to remain silent.

JONES v State (Illegal Seizure of Person in Landlord/Tenant Dispute) bulletin no. 243. While investigating a dispute between a landlord and tenant, the tenant, JONES, was ordered outside. He had committed no crime in the presence of the officers and wanted to leave. Because his hands were in his fanny pack, the officers told him to keep his hands where they could see them. He decided to leave the area and was tackled by the officers. Drugs were found. They had no right to seize JONES because he had not committed a crime. He was also convicted for resisting arrest. The court sent that case back for further review, but the drugs must be suppressed.

Illinois v McARTHUR (Seizure of Residence While Awaiting Search Warrant) bulletin no. 245. Police responded to a domestic violence call. Wife said husband had some drugs hidden in the house. Police asked for consent to search, he refused. He was ordered outside the residence and was not allowed entry (cigarettes & phone calls) without an officer. Second officer applied for and obtained a search warrant. Seizure is reasonable.

RILEY v California (Seizure of Cell Phone as Incident to Arrest Requires Warrant Before Searching Stored Data) bulletin no. 372. Riley was arrested, and his car impounded. During the search of his person as incident to the arrest police removed a "smart phone" from his pants pocket. Police examined the contents of the phone and found a photo of him standing by a vehicle that was suspected of being involved in an earlier shooting. This information was used at his trial on for the previous shooting. Court ruled it was ok to seize the phone, but prior to searching the data you need a warranty.

ALBERS v State (Under Certain Circumstances You May Order A "Detained" Person to Unclench Their Hands) bulletin no. 254. ALBERS was seized pursuant to legitimate stop. He refused to unclench his hands. When ordered to do so at the point of a gun he did so and in the process dropped some drugs. If police can articulate that the subject is concealing something that may harm them, they may order the subject to open his hands, even if he is not under arrest.

McGEE v State (Itemizer "sniff test" Lacked Probable Cause) bulletin no. 257. Police intercepted a FedEx package and subjected it to an itemizer "sniff test." They lacked probable cause to justify the initial seizure of the package.

BOCHKOVSKY v State (Investigative Seizure by FedEx Manager Resulted in Reasonable Suspicion for Canine Sniff, and Search Warrant) bulletin no. 376. FedEx Manager called State Troopers because he was suspicious of a package. Trooper responded with a canine, but before allowing the dog to sniff the Trooper examined the package. The package was shipped overnight, shipping fee paid in cash, and the trooper (who had checked several data bases) concluded that the name of the person to whom the package was shipped was fictitious. The name on the return address had a WA address and there was no such person in that city. Dog was then utilized and alerted; search warrant issued, and drugs seized.

YOUNG v State (Concealment of Evidence Does Not Constitute Abandonment – no reasonable suspicion to justify handcuffing for investigative detention) bulletin no. 268. Young was observed by a police officer at a motel that had a reputation for drug use. When he saw the officer, he walked away and then got on his knees and put something under a door. The officer handcuffed him and then recovered the objects, which turned out to be rocks of crack cocaine. The officer has no probable cause to seize the subject nor did the subject discard or "abandon" the property. Rather, he was concealing it from the officer.

REICHEL v State (Seizure of parolee by police who suspect he is in violation of conditions of his release) bulletin no. 289. Homer police observe REICHEL in a bar. One of the officer's suspects that he is violating his conditions of release on parole by being in the bar. Police follow him outside, seize him and call his probation officer who directs the police to arrest him. This takes about twenty minutes. The court ruled, affirming ROMAN above, that the police did not have the authority to make the investigative stop.

J. VEHICLE EXCEPTION

As early as 1925 (Carroll v U.S.), the U.S. Supreme Court has recognized the "automobile exception" to the warrant requirement. Over the years, this exception has been expanded to include boats, airplanes, motor homes and other motorized vehicles. This exception is allowed if probable cause was shown that items of evidence were in the vehicle and it was not practicable to obtain a warrant. The Court reasoned that due to its mobility, the vehicle could be moved prior to the officer obtaining a warrant. The Court, of course, reviews the "exigency of the circumstance" in each case and often suggests, if possible, the car be seized and held until a warrant is obtained.

In these cases, all that is waived is the prior approval of a judge or magistrate. The officer must later justify that the warrantless seizure, and subsequent search, was based on probable cause.

Remember – seizure and search are two separate operations. You may have occasion to seize the vehicle and then apply for a warrant to search it.

To date, the Alaska Supreme Court has not totally recognized the automobile exception to the warrant requirement. The Court has addressed several cases involving seizures made from automobiles, but decided that these seizures were made because of other recognized exceptions such as incident to arrest, plain view, emergency, etc. Although mobility of the vehicle was addressed, it is still considered a subcategory of other exceptions.

VEHICLE EXCEPTION TO WARRANT REQUIREMENT
SELECTED CASES

CHAMBERS v Maroney 399 US 42 (Warrantless Search of Vehicle) (no bulletin). If probable cause exists to search an automobile, it is reasonable under the Fourth Amendment to: 1) either seize and hold the automobile before presenting the probable cause to a magistrate; or 2) carry out an immediate search without a warrant.

South Dakota v OPPERMAN (Inventory Search) bulletin no. 8. Although the U.S. Supreme Court upholds "inventory exception" to the warrant requirement, the Alaska Supreme Court does not.

DAYGEE v State (Plain View Search of Vehicle) bulletin no. 10. Upon arrest of the driver and passenger of the vehicle, police saw drugs on the back seat and later discovered and seized additional drugs in a container. Search upheld as incident to arrest.

CLARK v State (Vehicle Search - Exigent Circumstances) bulletin no. 12. Although three individuals were suspected of being involved in the sale of drugs, only two were arrested and the whereabouts of the third was not known. The suspect's rented vehicle, parked on a public street, was seized and searched. A quantity of drugs was discovered in the glove compartment and subsequently introduced as evidence at the defendants' trial. The Court upheld the warrantless search of the vehicle due to the exigent circumstance that the third suspect whose whereabouts were unknown could have returned to the vehicle and destroyed the evidence.

State v DANIEL (Inventory Search of Impounded Vehicle) bulletin no. 19. Defendant was arrested for DWI and transported from scene by the arresting officer. While the defendant was en route to jail, a second officer conducted an inventory search of the impounded vehicle (as required by the State Administrative Rules per the Commissioner of Public Safety). During the inventory search, a firearm along with a quantity of drugs was discovered in a closed unlocked attaché case located on the rear seat. The Court ruled this evidence inadmissible citing that the Administrative Rule which requires such warrantless searches violates the Alaska Constitution, specifically Article 1, Sections 14 and 22, which governs unlawful searches.

Anchorage v COOK (Emergency Search of Vehicle) bulletin no. 26. Evidence of intoxication and seizure of person upheld when police discovered the individual slumped over the wheel and, upon removal from the vehicle, it was noted that he was under the influence.

LUPRO v State (Search of Abandoned Vehicle) bulletin no. 29. After a "hit and run" fatality accident, the defendant abandoned his vehicle by pushing it into a ravine. The subsequent seizure several days later of trace evidence adhering to the vehicle was proper even though no warrant was obtained.

LACY v State (Warrantless Seizure - Person/Evidence - By Roadblock) bulletin no. 32. Police made investigatory stop of vehicle and developed probable cause to arrest.

HINKEL v Anchorage (Search of Purse - Incident to Arrest) bulletin no. 41. After arrest for DWI, the individual was handcuffed and locked in a police car. Subsequent search of her purse (located in her vehicle) yielded a gun, which was ruled admissible as evidence since it was seized as incident to arrest.

New York v BELTON (Search of Vehicle - Incident to Arrest) bulletin no. 50. Upon arrest of subject, the coat removed from front seat of vehicle was searched and drugs were discovered.

U.S. v ROSS (Warrantless Search of Vehicle) bulletin no. 59. In this case, the U.S. Supreme Court reaffirmed the automobile exception to the warrant requirement. The police received information from an informant of the name of an individual allegedly involved in drug trafficking. When the police observed the suspect driving on a public street, he was stopped, his vehicle searched (including the trunk) and drugs and other evidence were seized. The Court ruled the evidence admissible since there was ample probable cause and it was not practical to obtain a warrant. The prior approval of the magistrate was waived.

DUNN v State (Warrantless Seizure of Jacket) bulletin no. 63. Investigatory stop of vehicle provided probable cause to arrest passenger. Subsequent search of jacket found in vehicle and seizure of evidence from pocket thereof upheld.

Texas v BROWN (Plain View Search of Automobile) bulletin no. 68. Drivers license checkpoints established by police to stop all vehicles and examining officer recognized (immediately apparent) a balloon commonly used as method of transporting drugs.

California v CARNEY (Automobile Exception of Warrant Requirement) bulletin no. 94. The search of an entire motor home was upheld because the police had probable cause to believe drug transactions were taking place in the motor home that was parked in a public parking lot.

U.S. v JOHNS (Delayed Warrantless Search) bulletin no. 91. It is not necessary for a search of a vehicle to be contemporaneous with its seizure if the seizure was lawful.

CRUSE v State (no bulletin). Inventory exception to warrant requirement is not recognized by the Court, even though it is based on police policy. Police performed an inventory search of a vehicle based on police policy and applied for a search warrant to recover what they discovered. The police did not inform the magistrate about the inventory search. The Alaska Supreme Court upheld the warrant but stated that police should not withhold information from a judge when obtaining a warrant.

COOPER v California 386 US 58 (Forfeited Vehicle) (no bulletin). Vehicle is seized by government because of its illegal use in transporting drugs (by statute). Search conducted weeks later did not require a warrant. Theory - a warrant is not required to search your own property.

MATTERN v State (Protective Search) (no bulletin). Officers stopped a vehicle suspected of being involved in a burglary, looked in the back and observed items later identified as the stolen goods. The Court ruled the evidence admissible because the officers, for their own protection, had a right to look in the van for possible suspects and, in doing so, inadvertently discovered evidence that was in their plain view.

CARROLL v U.S. 267 US 132 (Vehicle Exception) (no bulletin). The U.S. Supreme Court first recognized the automobile exception to the warrant requirement in this case. The Court cited the mobility of the automobile and the need to take immediate action. In this case, the vehicle was used to transport bootlegged alcohol.

New York v CLASS (Entry into Vehicle to Examine Vehicle Identification Number) bulletin no. 102. Police had made a lawful vehicle stop for traffic violations. Second officer attempted to obtain VIN from dashboard; however, papers on the dashboard obscured the VIN. Entry into the vehicle to examine VIN was proper and evidence (gun) observed and seized was in plain view.

CHRISTIANSON v State (Investigatory Stop of Vehicle with No Imminent Public Danger) bulletin no. 112. Consent to search by non-owner driver was proper. No requirement that imminent public danger existed or recent serious harm to person or property had occurred to justify stop.

California v ACAVEDO (Search of a Vehicle and Containers with Probable Cause) bulletin no. 185. Where police have probable cause to believe evidence or contraband is in a vehicle, they may search the vehicle and containers found within, without a search warrant as a "vehicle exception" to the warrant requirement. Police must establish that they had probable cause prior to the search. If a "locked container" (e.g. brief case) is found during the search, you should seize it and then apply for a warrant to search it. This case reinforces other cases that deal with the "vehicle exception" to the warrant requirement, the most recent being US v Ross (Legal Bulletin no. 59).

Florida v JIMENO (Consent to Search Vehicle) bulletin no. 159. A police officer stopped a vehicle for a traffic violation and asked the driver for consent to search his vehicle (because he earlier overheard the driver arranging a drug transaction on a public telephone). The driver consented to the search and the officer opened a folded brown paper bag found inside the vehicle that contained drugs. The driver did not place any

limitations on the search and it was found to be reasonable to open the bag, but mentioned that if the container were locked, further consent to search or probable cause to justify its seizure while you apply for a search warrant would be necessary.

Maryland v PRINGLE (Consent by Driver/Owner Of Vehicle Leads To Arrest Of Passenger) bulletin no. 275. Baltimore Police stopped vehicle occupied by three men. The owner/driver gave permission to search the vehicle. Drugs were found in the armrest of the rear seat; all three men were arrested. Pringle, who was a front seat passenger, later admitted that the drugs belonged to him. Court ruled that a reasonable police officer could conclude that Pringle both solely or jointly had possession of the drugs, and consequently had ample probable cause to arrest him.

KNOWLES v Iowa (Search of Vehicle Incident to a Traffic Citation) bulletin no. 230. A vehicle was stopped, and the driver issued a citation for speeding. The vehicle was searched, and drugs were found. The vehicle was illegally searched because the officers did not have the consent of the owner, probable cause, nor incident to custodial arrest. The Iowa legislature enacted a statute that allowed police to search a vehicle as an "incident to a traffic violation." The U.S. Supreme Court ruled that this statute violates the U.S. Constitution.

Wyoming v HOUGHTON (Search of Passenger's Personal Belongings Inside a Lawfully Stopped Vehicle) bulletin no. 232. A vehicle was stopped for speeding. The driver had a syringe in his pocket and admitted it was used for taking drugs. During a search of the vehicle, they discovered drugs inside the purse of a passenger. The search was upheld. Since they had probable cause to search the vehicle, they also had cause to search everything inside the vehicle that may conceal the object of the search.

COLLINS v Virginia (Entry onto private property to remove tarp from motorcycle that police thought was stolen was illegal) bulletin no. 382. Police discovered a photo on Collin's social page of a motorcycle they thought was stolen in his driveway. Officers went to the location, saw a motorcycle parked in an enclosed area by the walkway that was covered with a tarp. Officer entered the property, removed the tarp, checked the license on it and the VIN and determined it was stolen. The tarp was covered back up and the officers waited until Collin's returned home at which time he was arrested. He argued that had no right to enter his property and move the trap. He said this was clearly a search. The U.S. Supreme Court agreed stating this area is the curtilage of the home and protected by the Fourth Amendment as an area adjacent to the home and to which the activity of home life extends

K. PLAIN VIEW

QUESTION: MAY ONE SEIZE WHAT ONE SEES?

ANSWER: IT DEPENDS UPON WHERE ONE IS WHEN ONE SEES IT.

You may, without a warrant, seize any contraband or evidence of a crime that is in your "plain view." That is, "when the contraband or evidence is observed from a place in which you are lawfully present." Your initial intrusion must be justified either by a warrant or by an exception to the warrant requirement. The plain view exception to the warrant requirement allows officers, in the execution of a valid search warrant, to seize articles which, although not included in the warrant, are reasonably identified as contraband or known evidence of another crime.

The "plain view" exception to the warrant requirement will not apply if the officer has made an improper search (invalid warrant, no probable cause, etc.) or arrest.

The Plain View Doctrine as stated in Brown v Texas (see bulletin no. 68) has three minimum requirements.

1. The officer must lawfully make an "initial intrusion" or otherwise be in a proper position from which he can view a area.

2. The officer must discover the incriminating evidence inadvertently and cannot use plain view as a pretext.

3. It must be immediately apparent that the items observed may be evidence of a crime, contraband or otherwise subject to seizure.

In Horton v California (see bulletin no. 145), the Supreme Court ruled that incriminating evidence need not be discovered inadvertently, overruling that requirement in Brown v Texas.

If an officer observes contraband during a lawful traffic stop, it is subject to warrantless seizure under the plain view doctrine. However, if a vehicle is stopped for a reason that cannot be articulated, such as traffic violation or investigative stop of suspect vehicle, seizure of any evidence observed will be suppressed.

OPEN FIELD DOCTRINE:

An open field is not an area protected under the Fourth Amendment. It has been said that the distinction between the search of a dwelling and the search of an open field, not within the curtilage, is as old as the common law.

PLAIN VIEW
SELECTED CASES

ANDERSON v State (Expectation of Privacy) bulletin no. 9. In the process of executing a search warrant for drugs, the police discover a 35mm slide transparency. The slide, upon being held to a light, depicted the defendant engaged in unlawful sex acts with a minor. The Court ruled that the defendant had an expectation of privacy in the slide. The discovery of the slide could not be inadvertent because it was unlikely that the drugs would be concealed by the slide.

KLENKE v State (Plain View Search) bulletin no. 15. In the process of serving a search warrant to seize property taken during a burglary, the police discovered items taken in other burglaries. Although these additional items were not listed on the warrant, they were subject to seizure as outlined per the requirement of the Plain View Doctrine:

1. The officers knew the items were stolen.

2. The officers were lawfully present (serving the warrant) when the property was seized.

3. The additional items were immediately apparent as property that had been stolen in other burglaries. There was not any suggestion that the officers were on a "fishing expedition" regarding the seized items.

State v SPIETZ (Plain Sight Is Not Plain View) bulletin no. 18. The police, while making an arrest outside the residence, observed drugs inside the house through an open door and subsequently made a warrantless entry into the residence and seized the drugs. The Court ruled the evidence inadmissible, since there was no evidence of exigency as there were no other occupants in the residence who may have destroyed the evidence and the search was not considered as incident to the subject's arrest. The Court stated that an officer should have remained to guard the residence while a search warrant was being obtained.

PISTRO v State (Plain View Search by Public Access) bulletin no. 20. While investigating the theft of a truck, police officers left the public road and entered the private driveway of the suspect. While en route to the residence, the officers observed parts of the truck through a garage window. Entry of the driveway was not considered trespassing, as the driveway was implicitly open to public use by anyone desiring to speak to the occupants of the house.

State v MYERS, et al (Search Incident to Legitimate Entry) bulletin no. 28. In early morning during routine security check of buildings, police discovered an unlocked door to a theater and, upon entry, discovered the manager and his associates using drugs. The Court ruled that the police are expected to make such security checks and the crime was inadvertently discovered while performing these duties, thus the evidence was in their plain view.

PAYTON v New York (Warrantless Entry into Private Residence to effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time, however, in plain view, was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted that enable police to violate the constitution. Twenty-five states (including Alaska) have enacted statutes that allow police to make warrantless entry into a private residence based on probable cause. The US Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

CHILTON v State (Plain View Search) bulletin no. 35. While on routine foot patrol, officers taking a path between several streets observed a subject standing in front of a window using drugs. The officers contacted

and arrested the subject. The government was not able to prove that the officers had not trespassed by using the path and the evidence was suppressed because of unlawful intrusion. (SEE FIRST REQUIREMENT OF PLAIN VIEW DOCTRINE).

SUMDUM v State (Warrantless Entry into Motel Room) bulletin no. 37. The motel manager had assumed guest (suspected of involvement in burglary) had left without paying his bill, opened the door to the room while the police were in the open public hallway and saw the defendant lying on a bed. Entry into the room was permissible because the suspect was in the "plain view" of the police who had probable cause to arrest him. The subsequent search of his person produced evidence, which was justified as incident to arrest.

McGEE v State (Warrantless Seizure of Handgun for Test Firing) bulletin no. 38. In course of investigating an assault, the police officer inquired if subject owned an automatic weapon. The subject entered his residence and returned with the suspected weapon. The officer requested the subject's permission to seize the weapon for test firing but was denied permission without a warrant. The officer seized the weapon that was identified as the weapon used in the assault. The Court ruled the weapon admissible because it was in the officer's "plain view" when subject produced the weapon and if not seized at that time the suspect could have disposed of it.

UPTEGRAFT v State (Vehicle Search - Plain View Incident to Arrest) bulletin no. 44. Information developed after armed robbery led to "investigative stop" of suspect vehicle. Evidence observed inside the car led to probable cause to arrest and subsequent search of the vehicle.

Texas v BROWN (Plain View Search of Automobile) bulletin no. 68. The police established a driver's license checkpoint which required all vehicles to stop. During this stop, while the subject was extracting his license and registration, the officer noticed a balloon tied in the fashion in which he knew drugs were transported. The Court ruled that the balloon was in the officer's plain view and the contents were "immediately apparent" to the officer, thus making the seizure lawful and subsequent search lawful as incident to the subject's arrest.

DAVIS v State (no bulletin). The Court ruled that although the police did observe the illegal fish in a shed, their method of observation, being on their knees looking under a crack in the door, was not plain view and a warrant was required.

State v DAVENPORT (no bulletin). Although police were unsuccessful in their attempt to seize a weapon used in an assault as provided in the search warrant, they did seize several furs that were known to have been taken in a burglary six month prior. The officers were lawfully on the premises and the furs were "immediately apparent." There was no evidence to suggest that the officers used the warrant (for the gun) as a pretext to seize the furs.

OLIVER v U.S. (Warrantless Search on "Open Field") bulletin no. 82. Whereupon entering a field through a fence posted "No Trespassing," police discovered acres of marijuana growing. The Court ruled that the defendant had no exception to privacy because the field was not in the area (curtilage) surrounding his house. (SEE OPEN FIELD DOCTRINE.)

New York v CLASS (Entry into Vehicle to Examine Vehicle Identification Number) bulletin no. 102. Police had made a lawful vehicle stop for traffic violations. Second officer attempted to obtain VIN from dashboard; however, papers on the dashboard obscured the VIN. Entry into the vehicle to examine VIN was proper and evidence (gun) observed and seized was in plain view.

Arizona v HICKS (Probable Cause Required to Seize Evidence in Plain View Resulting from Emergency Entry) bulletin no. 110. During an emergency search following a shooting, police seized expensive stereo components from a residence because they "looked out of place." Although it was later determined that the components had been stolen, the police lacked that specific knowledge (immediately apparent) at the time of seizure so the court suppressed the evidence.

California v GREENWOOD and VAN HOUTEN (Seizure of Garbage as Abandoned Property) bulletin no. 119. Garbage bags left on a public street "outside the curtilage of the home" are subject to a warrantless search and seizure. There is no expectation of privacy when trash is discarded in this manner.

Michigan v CHESTERNUT (Investigatory Seizure of a Person Absent Probable Cause) bulletin no. 123. Police are not required to have a "particularized and objective" basis for following (not pursuing) a person who runs from a patrol car on routine patrol, if a reasonable person would feel he was free to leave (i.e. not seized). While following, the officers observed the defendant abandon property that they recovered and used as probable cause for an arrest.

Florida v RILEY (Plain View Observation of Greenhouse from Helicopter) bulletin no. 127. Plain view observation of drug activity by helicopter upheld since the helicopter was flying legally and private/commercial aircraft could have legally observed the marijuana grow operation. The grow operation was not visible from ground level.

Maryland v BUIE (Protective Search of Residence) bulletin no. 139. When executing a warrant in a home or building where there is reasonable suspicion that other people might be in the house that could pose a danger to the arresting officers, a limited sweep of adjoining portions of the house where "an attack could be launched" can be done. This protective sweep is not a full search incident to arrest, but any material in plain view which the officer had probable cause as evidence of a crime can be seized.

AHVAKANA v State (Emergency Entry into Residence for Domestic Violence Upholds Entry & Seizure of Evidence in “plain View), bulletin no 361. Police responded to a report of domestic violence. Victim who opened the door was bloody but said suspect was not there. Police made warrantless entry and discovered suspect hiding in the closet. His bloody clothes were seized from the residence. Court ruled entry was justified as emergency and that the clothes were in their (police) “plain view.”

DEAL v State (Search of Vehicle Incident to Arrest - Inadvertent Discovery of Evidence of Another Crime) (no bulletin). While an officer searched a vehicle subject to search incident to arrest, he noticed in plain view evidence of another crime. This material was inadvertently discovered during the search incident to arrest and was immediately apparent as evidence because the person arrested was a suspect in another crime and the evidence was immediately associated with that crime. This is a 1980 case that was referenced in a recent decision.

HORTON v California (Plain View Seizure of Evidence Not Discovered "Inadvertently") bulletin no. 145. The "plain view" doctrine does not require that evidence seized during a "lawful" search (by warrant or valid exception to the warrant requirement) be discovered inadvertently. In this case, a valid search warrant was served and evidence in plain view was discovered that was not listed on the warrant, even though the officers fully expected to find it. The items were immediately apparent as evidence and seized under the plain view doctrine.

GRAY v State (Inventory Search Subject to Incarceration) bulletin no. 149. A person arrested for a minor misdemeanor offense where bail has been set and the person is given a reasonable opportunity to post bail before being incarcerated, cannot be subjected to remand and booking procedures, although a pat down search is permissible. In this case, emptying of pockets is not considered part of a pat down search and drugs found during this search were suppressed.

BROWN v State (Plain View Seizure of Regurgitated Balloon Containing Drugs) bulletin no. 156. An inmate had a contact visit with another person who handed a balloon to the inmate, which was immediately swallowed by the inmate. A corrections officer observed this. The defendant was given a medication that forced him to regurgitate. The balloon was seized and opened without a warrant. The intrusion (by the corrections officer) was lawful. It was immediately apparent that the balloon probably contained contraband and it was also in plain view.

California v HODARI (Investigatory Chase of Person Who Abandoned Drugs Before Arrest) bulletin no. 157. To constitute a seizure of a person, there must be either application of physical force or submission to a "show of authority." A police officer involved in a foot pursuit (not simply following) did not seize the suspect until he was tackled. Drugs abandoned during the chase, but before the seizure were not the fruit of a seizure.

Minnesota v DICKERSON (Investigatory Seizure of Crack Cocaine Based on "Plain Feel") bulletin no. 178. During a Terry "stop and frisk," a warrantless seizure of evidence can be based on the object being "immediately apparent by plain feel." In this case, the seizure of cocaine was not valid because the contraband was not immediately apparent as cocaine until repeated manipulation by the officer, but the concept of "plain feel" was validated.

HARRISON v State (Warrantless Entry into Private Residence Based on Emergency Aid Doctrine) bulletin no. 181. A trooper went to serve a warrant and noticed through a window someone "face down" on the kitchen table. Repeated knocking on the door did not elicit a response. The trooper entered the residence to check on the welfare of the person and noticed, in plain view, what she thought to be drugs on the same table. A warrant was obtained to seize the drugs and the person was subsequently arrested. The initial entry was based on an emergency and the drugs observed in "plain view" were used as a basis for obtaining a search warrant.

WHREN and BROWN v U.S. (Traffic Stop for a Minor Violation by Plainclothes Officers Passes "Reasonable Officer Test") bulletin no. 202. Officers made traffic stop when a suspicious vehicle aroused their suspicions. The vehicle made an illegal turn at unreasonable speed. The constitutional reasonableness of a traffic stop does not depend on the actual motivations of the individual officers. The usual rule is "probable cause to believe the law has been broken outbalances private interest in avoiding police contact."

Maryland v WILSON (Ordering a Passenger out of a Lawfully Stopped Vehicle) bulletin no. 214. Police ordered a passenger out of a vehicle and when the passenger exited the police observed a quantity of crack cocaine fall to the ground. The passenger was arrested. The Supreme Court considered this additional intrusion on the passenger as minimal but did not consider in this case whether the passenger could be detained the entire duration of the stop.

MICHEL v State (Public Access with "No Trespassing" Signs) bulletin no. 228. "No Trespassing" signs posted at a residence does not reasonably exclude legitimate inquiries and visitors that would take someone to a person's door. When troopers visited the front door, they smelled marijuana and subsequently obtained a search warrant.

KYLLO v U. S. (Use of Thermal Imaging Is A Search – Not Plain View) bulletin no. 250. Federal agents suspected KYLLO had a "grow operation" going on in his residence. He lived in a triplex. The agents scanned his residence with a thermal imaging device. The device indicated that the residence was "hot." A search warrant was obtained, and evidence collected. The court said that using this device consisted of an intrusion into a constitutionally protected area.

State v COWLES (Covert Video Monitoring) bulletin no. 256. UAF police installed a concealed camera above the desk of COWLES, whose office was a ticket booth where she accepted money. They caught her stealing. Because her office was in view of the public and she shared space with a co-worker she had no expectations of privacy.

CARTER v State (Guests Expectation of Privacy in Hotel Room – Property Not in Plain View When Unlawfully Evicted By Police) bulletin no. 269. Police do not have authority, unless granted by hotel management, to enforce 1 o'clock checkout time to evict a person from their room. Nor is evidence in their "plain-view" while the person is removing his personal effects after being ordered to vacate the room. The police had no lawful right to be in the room.

L. ELECTRONIC MONITORING

Absent exigent circumstances, the Alaska Constitution requires police to obtain a warrant prior to the surreptitious seizure (by recording) of a conversation. This is commonly referred to as a Glass warrant, the name taken from the case that mandates this type of warrant. Generally, undercover officers who, in some instances, use informants to obtain evidence against a suspect handle these types of cases.

The Court has ruled that the expectation of privacy does not apply when a subject knowingly talks to a police officer and the officer may, without the subject's knowledge or consent, record conversations during the arrest process.

During a custodial interview, you must record the entire conversation. The criteria are: (1) in custody and (2) at a place of detention. A place of detention could be a police vehicle, corrections facility, or police station.

Alaska State Statute 42.20.310 addresses "eavesdropping" by third parties on telephone conversations, and explicitly states that law enforcement officers are not exempt. The interpretation of this statute, combined with the constitutional safeguards as outlined in the Glass decision, mandates that a warrant must be obtained prior to recording a telephone conversation unless exigent circumstances exist. Party consent is not sufficient. However, if a witness is providing a statement by telephone then his/her permission should be asked prior to recording.

ELECTRONIC MONITORING
SELECTED CASES

State v GLASS (Participant Monitoring) bulletin no. 16. An undercover informant used by the police to make drug buys surreptitiously recorded the defendant's conversation. The Court ruled that a person engaged in private conversation has an expectation of privacy in the conversation and the police may not seize (by recording) the conversation without a warrant. As in other search and seizure contexts, the requirement of a warrant may be circumvented if exigent circumstances exist.

State v AVERY (Recording of Inmates Telephone Calls) bulletin no. 343. It is the Department of Corrections (DOC) policy, which is required by Alaska State Statutes 33.30.231(c), to monitor the phone calls of prisoners. Calls between an attorney or the office of the Ombudsman are exempted. In this case, AVERY was making telephone calls from jail to intimidate a witness/victim from testifying at grand jury. Police obtained a search warrant to seize the calls. Calls had already been recorded and retained by DOC. AVERY argued (citing GLASS v State) that the State was required to get a warrant to initially record the calls. The Court of Appeals ruled that (citing QUINTO v State) that AVERY should have been reasonably aware that his calls were being recorded. There were signs posted above the prisoner telephones that calls were subject to being monitored and a warning that the call was subject to being recorded was played on the phone prior to the call being made.

State v MURTAUGH (Parts of the Victim Right Act of 1991 Declared Unconstitutional) bulletin no. 323. Although defense representatives are required to identify themselves when interviewing victims or witnesses, they are no longer required to inform the person being interviewed that they are surreptitiously tape recording their conversation. Witnesses and victims have the same right to decline to be interviewed either by the police or the defense. Witnesses do not “belong to either party.”

State v THORNTON (Warrantless Seizure of Telephone Conversation) (no bulletin). Absent consent of both parties, a Glass warrant is required to seize a conversation conducted by telephone.

JONES v State (Describing Place Where Conversation is to be Seized) bulletin no. 57. It is not required that the location where a recorded conversation is to take place be produced in the process of obtaining a Glass warrant. If the defendant invites a police informant into his residence, then he has given his consent to enter. It is not required that a copy of the affidavit or inventory be left at the scene by the undercover police officer after the conversation has been seized. The police are granted a time period of up to 90 days to make a "return" on electronic surveillance warrants.

O'NEILL v State (Third Parties Have No Expectations of Privacy) bulletin no. 79. Although the conversations of the arrestee and witnesses were recorded without their knowledge or consent, the expectation of privacy did not exist because all parties were knowingly talking with police officers. Seizure of these conversations was incident to arrest.

Juneau v QUINTO (No Expectation of Privacy When Talking to Police) bulletin nos. 83 & 72. In talking with a uniformed police officer, the subject did not have an expectation of privacy that the conversation would not be recorded. In this case, there was not any doubt (unlike Glass, an undercover officer) that the subject was conversing with a police officer.

PALMER v State 604 P 2d 1106 (no bulletin). The defendant in the process of performing breath test and other sobriety tests was videotaped. Since he knowingly talked to police officers, he was not entitled to be informed of the video (warned). Although he was not informed, he was not denied due process or fundamental fairness.

STEPHAN and HARRIS v State (Mandatory Recording of Statements from Persons in Custody) bulletin no. 99. Recording of the entire, not part, of the interview was required since the interview was conducted at place of detention. This ruling was based on the Alaska Constitution, which provides for more individual rights than the U.S. Constitution.

STATE v Amend: (Mandatory Recording Not Required for Arrested Person Who is Not In Custody) bulletin no. 353. Kenai Police arrested Amend for shoplifting. During the search incident to that arrest police discovered drugs. Amend, who had been given Marinda warnings at the time of his arrest, made statements as to where he got the drugs and for what purpose. The officer did not have his recorder on at the time of the Marinda warning and during the interview. Amend argued that the statements must be suppressed because the officer failed to record the statements. The Court of Appeals agreed, however, the Alaska Supreme Court reversed ruling that the statements were admissible because police are not required to record for a person who is not in custody at a place of detention.

MCLAUGHLIN v. State (Entrapment - Right to Counsel and to Remain Silent) bulletin no. 113. When an officer receives calls from a defendant awaiting trial and returns such calls, the defendant is not protected by Sixth Amendment rights when the defendant, now suspect, embarks on new criminal ventures, especially when the contacts were initiated by the defendant.

JONES v Anchorage (Telephone Trap) bulletin no. 118. A "Glass" warrant is not required to install a telephone trap when the suspect phone caller failed to exhibit any subjective expectation of privacy. Caller left numerous harassing messages on an answering machine.

THIEL v State (Right to Counsel Prior to Commencement of Adversarial Proceeding) bulletin no. 125. A suspect who is not under arrest, formally charged, or seized cannot bar police-initiated contact between an informant and the defendant by invoking his right to counsel during an investigative stop. In this case, a "Glass" warrant was obtained to record conversations between the defendant and the informant. During this event, there was no actual interference with the defendant's efforts to consult an attorney nor impairment of the attorney/client relationship.

FOX v State (Seizure of Conversation by Exigent Circumstances) bulletin no. 167. A Glass warrant was obtained to record a cocaine transaction. When the officer arrived at the residence of the person mentioned in the warrant, a different person answered the door and sold cocaine. The recorded transaction was considered an exigent circumstance given the unexpected intervention of the second person.

CARR v State (Miranda/Right to Counsel) bulletin no. 174. Two people who had been living together were both imprisoned for unrelated crimes. A child previously living with the couple reported that the male adult had sexually abused her. A Glass warrant was obtained, and the female called the male and incriminating statements were recorded. Both were still imprisoned and later the male made additional incriminating statements in a face-to-face interview with troopers with proper MIRANDA warnings. The initial conversation did not amount to MIRANDA custody because the circumstances were such that: 1) there were no inherently compelling pressures at work to undermine the individuals will to resist and compel him to speak where he would not otherwise do so freely; 2) the circumstances were not present where a reasonable person would not feel free to leave or break off the conversation; 3) incarceration alone does not automatically trigger MIRANDA; and 4) the male was not under any degree of compulsion to take the call and not inhibited from terminating the call. The interaction of custody and official interrogation was not coercive in this situation. The second issue related to whether the male's right to counsel was violated since an attorney for the related child custody issues represented him. In this case, 1) the right to counsel is not triggered by purely investigative efforts since the suspect had not been accused at this point; and 2) the right to counsel is case specific and the child custody issue was not sufficiently related to the assault case.

State v PAGE (Surreptitious Use of Video Monitoring in Private Residence) bulletin no. 198. When a person engages in a conversation that is protected from electronic monitoring, police are required to obtain a Glass warrant for video monitoring, even if they turn the sound off when the camera is placed inside a private residence where there is a reasonable expectation of visual privacy.

KYLLO v U. S. (Use of Thermal Imaging Is A Search – Not Plain View) bulletin no. 250. Federal agents suspected KYLLO had a "grow operation" going on in his residence. He lived in a triplex. The agents scanned his residence with a thermal imaging device. The device indicated that the residence was "hot." A

search warrant was obtained, and evidence collected. The court said that using this device consisted of an intrusion into a constitutionally protected area.

U.S. v Jones, Antoine. (Warrantless attachment of GPS to monitor Vehicle violates Fourth Amendment) bulletin no. 358. While Jones's vehicle was parked in a public parking lot Government agent attached a GPS device to the undercarriage of the vehicle. Over a 28-day period the government collected 2000 pieces of information as to where the vehicle had been. Using this information as a part of their investigation Jones and several co-conspirators were arrested and convicted of a number of drug charges. Jones argued that the government violated his Fourth Amendment Right by making the warrantless installation of the device. The U.S. Supreme Court agreed ruling: The government in this case occupied private property (the vehicle) for obtaining information. The Fourth Amendment protects people, not places, and that Jones had a reasonable expectation of privacy insofar as his vehicle was concerned.

State v COWLES (Covert Video Monitoring) bulletin no. 256. UAF police installed a concealed camera above the desk of COWLES whose office was a ticket booth where she accepted money. They caught her stealing. Because her office was in view of the public and she shared space with a co-worker she had no expectations of privacy.

McGEE v State (Probable Cause Required to Seize Package for Itemiser "Sniff Test") bulletin no. 257. Police lacked probable cause when they intercepted a FedEx package to submit it to an itemiser "sniff test."

State v BOCESKI (Glass Warrant Required for Surreptitious Eavesdropping; Overhead Conversation Admissible So Long As Officer In Place Where He Has A Right To Be). Bulletin no. 259. NSB Police were in the residence of an informant when they overheard a conversation taking place in the Arctic entryway. The informant had given them permission to be there. The officers had also put a tape recorder in the entryway to capture the conversation – for that they were required to have a GLASS warrant.

M. WARRANTS, AFFIDAVITS AND INFORMANTS

In the law of search and seizure, one governing principle has consistently been followed: Except in a certain number of carefully selected cases, a search of private property is unreasonable unless it has been authorized by a valid search warrant. A search, unlawful at its inception, is not validated by evidence discovered. If an officer is in possession of facts (probable cause) that would justify the issuance of a search warrant but proceeds to conduct the search without a warrant (absent exigent circumstance) all evidence will be excluded.

Following are some requirements regarding search warrants:

1. The warrant must be signed by a "neutral detached" magistrate.

2. The warrant is issued only after "probable cause" has been supported by oath or affirmation.

3. The warrant is valid only if issued pursuant to an affidavit (either written or "on the record") that sets forth the facts establishing probable cause to search a place (premises, person, vehicle) for particular items. THE FACTS MUST BE ESTABLISHED; YOUR SUSPICIONS OR GUT FEELINGS WILL NOT BE SUFFICIENT.

4. A detailed description of the place, person, vehicle, etc. to be searched as well as the items to be seized must be provided.

5. After issuance, the warrant must be served and returned to the Court within ten (10) days.

6. Alaska Statute 12.25.100 requires the officer to "knock and announce" prior to entry.

7. Daytime search warrants are based on probable cause. Criminal Rule 37(a)(2)(IV) provides that daytime search warrants must be served between the hours of 7:00 a.m. and 10:00 p.m.

8. Nighttime search warrants are based on reasonable certainty and per Criminal Rule 37(a)(2)(IV) may be served at any time.

9. Alaska Statute 12.35.015 provides for telephonic search warrants.

To obtain a warrant based on information provided by an informant, the "Aguilar/Spinelli two-prong test" must be satisfied. (See Aguilar v Texas, 378 US 108 and Spinelli v US, 393 US 410). Prong one is based on the reliability of the informant, i.e., why should you or the judge believe him; what is his track record. Therefore, you should be able to articulate in an affidavit the informant's involvement in previous cases, as well as the property he has been responsible for recovering. Prong two is based on the informant's personal knowledge -- does he really know what he is talking about.

The Alaska Supreme Court has stated that it will not accept information based on an anonymous tip, although the U.S. Supreme Court (See Illinois v. Gates, 463 US 213) has recently accepted that type of information.

If the information is based on witnesses named in the affidavit, it will not be necessary to establish the reliability of those individuals since they will be subject to cross examination at trial.

WARRANTS, AFFIDAVITS AND INFORMANTS
SELECTED CASES

ANDERSON v State (Expectation of Privacy) bulletin no. 9. In the process of executing a search warrant for drugs, the police discovered a 35mm slide transparency. The slide, upon being held to a light, depicted the defendant engaged in unlawful sexual acts with minors. The Court ruled that the defendant had an expectation of privacy in the slide. The discovery of the slide could not be inadvertent because it was unlikely that any drugs would be concealed on the slide.

KELLER v State (Search Warrant Based on Reliable Informant) bulletin no. 11. The Court upheld the issuance of a search warrant that was obtained on information received from a proven, reliable informant who had personal knowledge that the items sought were in the suspect's possession.

MOORE v State (Seizure of Luggage after Judge Refuses Search Warrant unlawful) bulletin no. 379. Based on tips from 3 informants Dillingham Police contacted MOORE at airport and asked his consent to search his luggage for drugs. He refused. The police seized the luggage and prepared a search warrant. Upon review the judge did not feel the informants passed the “two-prong test” and said the luggage should be returned to the owner. Instead the police kept the luggage and sent it to Anchorage the following day where troopers subjected it to a dog-sniff test. The dog alerted, and a warrant was issued. Court of Appeals suppressed all evidence ruling the seizure (over 90 minutes) was too long.

CARMAN v State (Search of Visitor's Purse on Premises) bulletin no. 30. While in the process of executing a search warrant which authorized the seizure of weapons and money that had been taken in an armed robbery, the police searched a purse found in the bedroom. The purse contained a weapon. The owner of the purse, who was in the living room at the time of the search, testified that she was merely a visitor, therefore, her purse was not subject to the search. Based on the facts of the case, the Court upheld the seizure.

JOHNSON v State (Anticipatory Search Warrant) bulletin no. 40. The Court authorized the use of anticipatory search warrants.

U.S. v GRUBBS (Anticipatory Warrants do Not Violate the Fourth Amendment) bulletin no. 307. GRUBBS purchased a videotape containing child pornography from a Web site operated by undercover postal inspectors. The postal inspectors applied for a warrant to search GRUBBS’ residence. Because they did not execute the warrant until they knew that the package containing the videotape had been delivered, the Fourth Amendment was not violated.

STEAGALD v U.S. (Search of Third Party Residence with Arrest Warrant) bulletin no. 47. Police, in possession of an arrest warrant, had probable cause to believe that the subject was at a friend's residence and, on the strength of the arrest warrant, entered the residence only to find that the subject was not present. While in the residence, evidence of drug possession and usage were seized and used against the owner. The Court suppressed the evidence, as it was not an inadvertent discovery. Although the officers were in possession of an arrest warrant, a search warrant was needed to conduct a search of a third-party residence.

SIEDENTOP v State. (Search of Third Party Residence Requires Search Warrant) bulletin no. 373. Fairbanks police and probation officers had an arrest warrant for Antonio Mendez who had absconded from electronic monitoring. Mendez wife informed police that her husband was staying with a woman at a residence in Fairbanks. Police went to the residence and the door was answered by Siedentop. A police officer put his foot between the threshold and door to prevent Siedentop from closing the door. In less than a minute police asked Siedentop if he had any weapons. He pointed to his waist and said he had a gun. Police removed him from the residence to a patrol car. Siedentop had a gun, a knife, extra magazine for the gun, and $2,000.00 cash. The second search at the police car resulted in the seizure of cocaine and A SCALE. Court ruled the seizure of all items was illegal because Siedentop had been illegally seized when the officer struck his foot in the doorway to prevent him from closing it.

Michigan v SUMMERS (Pre-arrest Seizure of Person While Executing a Search Warrant) bulletin no. 49. Upon their arrival at a residence to serve a search warrant, the police encountered the subject departing. The police made a "temporary seizure" of the individual requiring him to reenter the residence while the search was conducted. Search yielded evidence that lead to subject's arrest and subsequent search of his person produced more evidence which was admissible as incident to arrest.

WAY v State (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person known by officer to have previously had a weapon), bulletin no 290. Police have responded to an apartment where they have been informed that a fugitive is located. All of the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon this special handling was permissible.

RESEK v State (Double Hearsay Used to Obtain Search Warrant) bulletin no. 56. The Court upheld the use of "double hearsay" to obtain a warrant to search a private residence for drugs.

TELEPHONIC SEARCH WARRANTS bulletin no. 60. See bulletin regarding Alaska Statute 12.35.015.

NAMEN v State (Must Describe Things to be Seized) bulletin no. 71. The police officers, in their affidavit in support of a warrant, failed to provide a detailed description of items to be seized, therefore, all evidence obtained was inadmissible.

ILLINOIS v Gates (Affidavit for Search Warrant - Anonymous Tip) bulletin no. 73. The police received an anonymous letter, which suggested several subjects were involved in drug trafficking. The information was confirmed, and a warrant was obtained. Although this warrant was upheld by the U. S. Supreme Court, the Alaska Supreme Court has stated that it will not uphold a warrant based on an anonymous tip. They require the two-prong test as depicted in the Keller case.

U.S. v LEON and Massachusetts v SHEPARD (Good Faith Exception to Exclusionary Rule) bulletin no. 86. Although the magistrate in the Leon case issued the warrant based on ample probable cause as detailed in the affidavit of support of the warrant, the reviewing court did not agree. The Shepard case involved a warrant that contained several technical defects. In both cases, the requesting officers had sought assistance from their respective district attorney offices. The issuing magistrate in the Shepard case was aware of the technical defects. In both cases, the U.S. Supreme Court allowed the evidence to be admitted, while recognizing the Exclusionary Rule (See Mapp v Ohio, 367 US 643) as a principal mode of discouraging lawless police conduct but maintained that its major impact was a deterrent to police misconduct. In both cases, the police officers followed procedure as required. The errors, if any, were attributed to the issuing magistrates not the police officers. In cases of this nature, it may be advisable for the magistrate to receive additional training rather than have society suffer the consequences. A warning was issued with this ruling that essentially stated in a case of deception, i.e. the police misleading the issuing judge, the Court will not hesitate to suppress the evidence.

HERRING v U.S. (Good Faith Exception Based on Poor Record Keeping When an Arrest Warrant Had Not Been Recalled) bulletin no. 333. Police checked with records and were informed that an outstanding warrant to arrest HERRING for failure to appear on a felony charge was in existence. Police arrested HERRING and during search incident to the arrest, drugs were found. HERRING was arrested for the possession of the drugs and also for being a convicted felon in possession of a weapon. About ten minutes after the arrest, the records division learned that the warrant had been recalled several months prior. The court upheld the seizure based on good faith on the part of the police. The court said in this case "poor record keeping" should not warrant the exclusion of the evidence seized as an incident to arrest.

FLEENER v State (Service of Nighttime Search Warrant) bulletin no. 88. Police were reasonably certain that drugs were present inside a residence. Upon satisfying the "knock and announce" requirement, the officers waited approximately one minute before making a forced entry.

JONES v State (no bulletin). The police had insufficient information in the affidavit regarding the reliability of an informant, so evidence obtained through search was suppressed. The AK Supreme Court affirmed this case. The Court stated that the AK Constitution will not allow the GATES totality of the circumstances approach for issuance of search warrants and that the AGUILAR-SPINELLI type analysis must be used (personal knowledge and veracity of informants).

SNYDER v State (no bulletin). Police requested a warrant based on information that the suspect had been seen in the burglary. This information was outlined in their affidavit. Although they requested the warrant two weeks after the burglary, the Court ruled that this information was not "too stale" to support issuance of the warrant.

GOULDEN v State (no bulletin). Although the search warrant was issued 30 days after the sexual assault, the Court concluded that the evidence sought might still be in the residence.

YBARRA v Illinois (no bulletin). Although the police had a warrant entitling them to search the bar and the bartender, they could not search all occupants of the bar unless their articulated circumstances justified such action (probable cause). Since this bar was open to the public, not all occupants were subject to the search warrant, only those specifically named.

Maryland v GARRISON (Description of Premises to be Searched as well as Persons or Things to be Seized) bulletin no. 109. Police had a warrant to search a third-floor apartment. Police believed there was only one apartment on the floor and, in the process of searching what they believed to be the apartment in question, they discovered they were in fact searching a second apartment and, upon discovery, discontinued the search. Evidence seized from the second apartment not named in the warrant was allowed. The warrant was valid when issued, the officers were not aware of the second apartment and the court allowed latitude for the honest mistake.

ALLEN v State (Investigatory Seizure Based on Anonymous Tip) bulletin no. 137. An anonymous caller reported to Police that someone in a vehicle was selling drugs. The vehicle was stopped, and the driver was arrested for DWLS. The stop was not valid because there was no immediate danger to the public, unlike DWI information from an anonymous caller. Since imminent public danger did not exist, there was no information whether the Aguilar v. Texas two prong test was satisfied to make the stop valid, i.e. informant had personal knowledge and was reliable.

Alabama v WHITE (Investigatory Seizure of Vehicle Based on Anonymous Tip) bulletin no. 146. Under the "totality of the circumstances" the anonymous tip, as corroborated, exhibited sufficient information of reliability (reasonable suspicion) that a crime occurred or is soon to occur to justify an investigatory stop of a vehicle. Alaska has not adopted the anonymous tip principle except where imminent danger exists (i.e. stopping a suspected DWI).

FANNIN v State (Affidavit for Search Warrant Based on Informant) bulletin no. 151. This case reinforces the Alaska Supreme Court decision to follow the Aguilar/Spinelli two-prong test (see text for this section) to establish probable cause for issuance of a warrant.

CRUSE v State (no bulletin). The Court does not recognize inventory exception to warrant requirement, even though inventory process is based on police policy. Police performed an inventory search of a vehicle based on police policy and applied for a search warrant to recover what they discovered. The police did not inform the magistrate about the inventory search. The Alaska Supreme Court upheld the warrant but stated that police should not withhold information from a judge when obtaining a warrant.

LANDERS v State (no bulletin). Acting on a "marijuana growing operation" tip, two police officers went to a residence and knocked on the door. When no answer was received, they went to the side door where they observed two electric meters, one of which was spinning rapidly. One officer "boosted" another to look in a window. The officers then contacted an assistant DA and asked for assistance in obtaining a search warrant. The DA informed them that their actions were improper and refused to help them apply for a warrant. The ADA did accompany the officers to the residence and upon their arrival saw an individual going inside. They were invited inside the house and while inside noticed a strong smell of marijuana. The individual told them LANDERS had a growing operation downstairs. The magistrate issued a search warrant and was informed about the initial observations. The magistrate issued the warrant based on the strength of the information learned from the individual who let them inside the residence and disregarded the initial actions and observations. See CRUSE v State above.

MOORE v State (Warrantless Search of Person Present in Residence During Execution of Warrant to Avoid Destruction of Evidence) bulletin no. 163. Police executed a search warrant at a "crack house." A female in the house was subjected to a pat down search and nothing was found, although a bag of cocaine was on the floor near her feet. She was then subjected to a full search based on circumstances developed at the scene. The search was proper because probable cause was developed to justify the search: the officer knew it was common practice for females to hide drugs on their person at "crack houses," numerous individuals tried to flee the scene or avoid contact with police when the warrant was served, destruction of evidence was a distinct possibility, and the residence was not a public facility where innocent people were more likely to be present.

WILLIE v State (Investigative Seizure of Carton Containing Alcohol Prior to Issuance of a Search Warrant) bulletin no. 168. Probable cause was developed by a VPSO to seize a carton thought to contain alcohol (reliable informant and observations of the suspect being intoxicated in a dry village). The box was seized so they could apply for a search warrant. Handling the box prior to opening it gave new information to the VPSO that the box contained alcohol, and additional ample probable cause for issuance of a search warrant.

GOODLATAW v State (Investigatory Stop of DWI Suspect Vehicle Based on Anonymous Tip) bulletin no. 175. An investigatory stop need not be supported by probable cause - reasonable suspicion is sufficient. In this case, an anonymous tip reported a suspected DWI. The suspect was stopped without any observations indicating the driver was possibly intoxicated. Further investigation during field sobriety testing led to an arrest.

HAYS v State (Investigatory Stop of Vehicle - No probable Cause) bulletin no. 177. A misdemeanor theft had just occurred and a “locate” was issued for the vehicle. A vehicle was stopped that generally matched the description, but it had the wrong number of occupants and the wrong license plate. The vehicle was not involved in the theft, but the driver had a revoked license. Although a well-founded suspicion that a crime had just occurred can justify a stop even though it is a minor crime, there was no practical necessity to immediately stop the vehicle without further information to justify the stop of this vehicle, i.e. there was not enough probable cause to stop the vehicle.

ATKINSON v State (Search Warrant Based on Information Supplied by Juvenile Who Burglarized Defendant's Residence) bulletin no. 184. A juvenile who burglarized a residence admitted to a trooper that the marijuana he had in his possession came from the residence. The trooper obtained a search warrant based on the statements of the juvenile, many of which were corroborated. The statements by the juvenile met the Aguiler/Spinelli two-prong test in that the statements were corroborated (personal knowledge) and the self-incriminating nature of the statement, i.e. admitting the burglary (veracity).

WILSON v Arkansas ("Knock and Announce" Required by Fourth Amendment) bulletin no. 192. Police officers, with a warrant, arrived at the residence and found the main door open. While opening the unlocked screen door and entering the residence, they identified themselves as police officers with a warrant. Knock and Announce is required, but there are exceptions and an unannounced entry may be justified when officers have reason to believe that evidence would likely be destroyed with notice or the officers would be in danger with advanced notice. Each situation is unique and must be considered in answering the reasonableness of

the search. This case was remanded to consider its circumstances. In Alaska, Knock and Announce is required by State Statute

BERUMEN v State (Violation of "Knock and Announce" Requires Suppression of Evidence) bulletin no. 330. Police went to a hotel room where they believed BERUMEN was staying. They had a warrant for his arrest. They knocked, waited about 20 seconds, and when no one answered the door they used a hotel pass key. There were four persons in the room, including BERUMEN who was asleep. When police entered, they announced they were "police" but made no announcement for entering. Drugs were found in the room and because several of the occupants in the room were minors, BERUMEN was charged with two counts of second degree contributing to the delinquency of a minor. BERUMEN argued that because the police did not "knock and announce" all the evidence should be suppressed. The court of appeals agreed. Since prior to statehood, under the Territory of Alaska Statutes, police are required to "announce" their presence and their authority. Entering officer should announce: "**POLICE WITH A WARRANT."**

Utah v STUART et al. (Belief that an Occupant is Injured Justifies Warrantless Entry into Home) bulletin no. 308. At about 3:00 am, four police officers respond to a loud party call. When they arrived, they could hear some sort of altercation occurring within the house that sounded like a fight. The noise seemed to be coming from the back of the house. The officers looked in the front window but were unable to see anything. The officers then went to the rear of the house where they observed several juveniles in the back-yard drinking beer. They could also see that a fight was taking place in the kitchen. They observed a juvenile hit an adult. A police officer opened the screen door and announced his presence. No one responded to the announcement. The police then entered the kitchen and cried out "police" again. The fight stopped. Several adults were arrested and charged with contributing to the delinquency of minors and other charges. They argued that the police had no right to make a warrantless entry and that they had also violated the "knock-and-announce" provision of the Fourth Amendment. The court ruled that the warrantless entry was justified because the role of a peace officer includes preventing violence and restoring order. The manner of the entry was also reasonable because the officer had announced his presence prior to the entry.

HUGO v State (Affidavit for Search Warrant Based on Informants) bulletin no. 194. An officer received information from two informants about transportation of alcohol into a village. Although the officer had no history with the first informant, the second informant had given reliable information in the past and the officer had personal knowledge of the suspect being intoxicated following his return from a previous trip. The first informant was not paid and received no concessions. Alaska law requires the Aguilar/Spinelli two-prong test, reliability and personal knowledge. The information received was specific about travel plans and type of contraband and both informants corroborated each other. A corroborating statement from another informant may establish the veracity of a statement given by informants whose reliability is unknown.

CARTER v State (Affidavit for Search Warrant Lacking Reliability and Personal Knowledge of Informants), bulletin no. 199. Troopers obtained a search warrant for a marijuana growing operation based on four anonymous tips over a period of years. Although information in the tips was verified such as location of the house, number of people in the house, the tips did not support the Aguilar/Spinelli rule in that nothing in the tips established the informants spoke truthfully or from personal knowledge. The court also noted that utility records showing unusual activity have no inherent incriminatory value and an allegation of drug related activity does not elevate evidence of unusual electrical activity to probable cause.

BETTS v State (Search of Person in Residence during Execution of Warrant) bulletin no. 203. A warrant was served for a residence and any persons on the premises. Although a warrant authorizing a search of "any persons therein" is *pro se* impermissible, so long as there is good reason to suspect or believe that anyone present at the anticipated scene will probably be a participant, presence becomes the descriptive fact that satisfies the Fourth Amendment.

WATERS v State (Search of a Visitor's Purse on Premises During Service of Warrant) bulletin no. 210. A search warrant was executed in a private residence. During the search, a small purse was found in the residence, whose ownership was claimed by a visitor. The purse was in the same room, but not in the possession of the visitor. The purse contained drugs and the visitor was arrested. 1) The warrant

authorized officers to open and search all containers that might contain drugs; and 2) Since in this case, there was no "clear notice" that the purse belonged to the visitor other than her statement that it might have, and the purse was a plausible hiding place for drugs, the purse was searched, and the visitor was subsequently arrested. (See Carman V. State and Ybarra v Illinois.)

STAM v State (Affidavit for Search Warrant Lacking Reliability of Information) bulletin no. 211. An informant, with no previous history, gave detailed information about a marijuana growing operation. The informant further identified the grower as a fisherman who, because of the income from his grow operation, had not been fishing. Although police determined that the informant has no criminal history and that the grower indeed did not fish that season, the search did not meet the Aguilar/Spinelli test since the warrant was based on the uncorroborated assertions of the informant.

McCLELLAND v State (Part of Probable Cause for Search Warrant Based on Sense of Smell) bulletin no. 212. Two troopers smelled marijuana and used that information to obtain a search warrant. Corroborating information was: a) marijuana found during a consent search of a vehicle belonging to a resident of the suspect residence and b) high utility bills from that residence.

WALLACE v State (Probable Cause for Search Warrants Based on Anonymous Tip, Sense of Smell, Electrical Usage Records and National Guard Assistance) bulletin no. 215. Police received an anonymous tip about a marijuana growing operation, namely you could smell the operation outside the residence and hear the fans running. They then went on to verify the information, one officer approaching the house using a normal public approach, obtaining electrical usage records, contacting the owner using a ruse to not alert their intent and finally using the National Guard to assist with warrant execution. The smell of marijuana was verified. There were four issues: 1) the suspect had no expectation of privacy with respect to his utility records, therefore, a warrant was not necessary; 2) the approach to the house was proper; 3) the ruse was reasonable to conceal the investigation; and 4) use of the National Guard was properly documented to avoid violating the Posse Comitatus Act.

State v CROCKER (Must establish crime is being committed to substantiate probable cause) bulletin no. 286. Confidential informant informed troopers about marijuana grow operations. Officers went to location and could smell marijuana. They also contacted the power company and one of the officers later testified that the amount of electricity being used was above average for that house. A search warrant was issued and executed. Officers seized marijuana, plants and marijuana-growing equipment. Defendant was charged with fourth degree-controlled substance misconduct. The court suppressed the evidence because the State could not establish that a crime was being committed. Alaska constitution provides that citizens are allowed up to 4 ounces of marijuana for their personal use. To justify the issuance of the warrant the State needed to establish that the defendant had more than 4 ounces or that he was involved in a commercial operation. "Plain smell" or excessive usage of electricity, will no longer, standing alone, constitute probable cause to search a residence.

DAVIS et al v State (Search of Persons who Arrive After Execution of Warrant) bulletin no. 218. A warrant to search "any persons on the premises at the time of service" was executed. Two people who arrived during execution of the warrant were searched, found in possession of controlled substances and were arrested. Searching of visitors was upheld, as was the "all persons present" clause as long as the warrant was supportable of that scope by probable cause.

RYNEARSON v State (Seizure of Luggage at Airport Based on Anonymous Tip) bulletin no. 221. An anonymous tip was received stating the defendant was transporting drugs in her luggage. The court determined that Aguilar/Spinelli was satisfied since the information furnished satisfied personal knowledge and further information provided demonstrated reliability. The court also determined that the stop prior to obtaining the search warrant where the officers learned that the defendant was carrying a prescription for Valium was not wholly innocuous.

MACKELWICH v State (Anonymous Tip Leads to Consent to Search) bulletin no. 222. Troopers received an anonymous tip that moose poaching had occurred and that the suspect was possibly involved with drugs. They visited the site and received consent to search reference the illegal moose kill. During the search, a

locked shed was noticed and, standing outside the shed, you could smell an odor of marijuana. A search warrant was later applied for and executed. The issue is, if a State statute allowing a warrantless search for fish and game violations is allowed with a properly prepared signed statement, is this statement necessary if the occupants consent to a search. NO.

U.S. v RAMIREZ ("No Knock" Search Warrant Upheld) bulletin no. 223. A "no knock" warrant was executed due to the potential violent nature of the suspect. During this warrant, another person was found inside the house with a weapon. He was a felon and, therefore, charged with this offense. The principle of announcement with respect to the Fourth Amendment is not an inflexible rule. Although the suspect was not present, an exigent circumstance still justified the "no knock" warrant.

U. S. v BANKS (15 to 20 Second Wait Before Forced Entry Satisfies Knock and Announce Requirement) bulletin no. 274. Police and FBI executed a search warrant to look for cocaine at BANK'S apartment. After knocking and waiting 15 to 20 seconds with no answer, they used a battering ram and made a forced entry. BANKS, who was in the shower at the time, testified he did not hear them knocking and met the police dripping from the shower. The court ruled that 15-20 seconds before the forced entry was not unreasonable.

HUDSON v Michigan (Violation of "Knock–and-Announce" and Entry After 3-5 Seconds Does Not Require Suppression of Evidence) bulletin no. 309. Police executed a search warrant at the defendant's residence. They identified themselves as police and within 3 to 5 seconds opened the unlocked door and entered the residence. HUDSON argued this violated the "knock-and-announce" rule and that all evidence seized should be excluded. The court said that the exclusionary rule does not apply in this case.

State v EUTENEIER (Issuance of Warrant to Seize Evidence of "Violation" or "Infraction" is Permissible) bulletin no. 252. Police obtained a warrant to search a residence for evidence of "minors consuming" alcohol, which is listed by statute as a violation. Because these violations are prosecuted criminally, the issuance of the warrant was justified.

N. PROBATION OFFICER AND PRIVATE PERSON SEARCHES

As a condition of parole or probation, the Court may order that the defendant subject his person, residence or vehicle to searches that will be conducted by his/her probation officers. Parolees have a diminished expectation of privacy and are afforded the opportunity to either except or reject this "search" as a condition of release. The search is not extended to the police, unless the police officer is under the direction of the probation officer at the time of the search, or is covered by Alaska State Statute

The Fourth Amendment is directed toward government agencies (local police, etc.) and, in limited capacity, government workers such as schoolteachers. Consequently, any warrantless seizure of evidence by a private citizen, not acting as an agent of the government, may be used at trial even if the citizen trespassed or did not have probable cause to seize a person or item.

WARRANTLESS SEARCHES CONDUCTED BY PROBATION OFFICERS OR PRIVATE PERSONS
SELECTED CASES

ROMAN V. State (Search of Parolee Without Warrant) bulletin no. 7. Conditions of a search must be specific and not left to the discretion of the parole officer. The judge will specify the conditions at the time of sentencing. There must be a direct relationship between the searches and the nature of the crime for which the parolee was convicted. The right to conduct such searches is limited to parole officers.

THOMAS, Gavis v. State (Search of Wallet by Police Officer as Condition of Probation) bulletin no. 303. THOMAS was on felony probation for first-degree vehicle theft and driving while intoxicated after consuming alcoholic beverages (not drugs). One of the conditions of probation required him to submit to searches for controlled substances. During one such search, a police officer found crack cocaine in his wallet. THOMAS argued that the sentencing judge was in error when he made the search for controlled substances a condition of probation because he had not been convicted of drug related offenses. The court of appeals said the condition was not unreasonable because THOMAS had a prior history of drug abuse and allowing such searches is part of the rehabilitation process and aids in the protection of the public.

REICHEL v. State (Seizure of Parolee by Police Who Suspect He is in Violation of Conditions of His Release) bulletin no. 289. Homer police observe REICHEL in a bar. One of the officers suspected that he was violating his conditions of release on parole by being in the bar. Police followed him outside, seized him and called his probation officer, who directed the police to arrest him. This took about twenty minutes. The court ruled, affirming ROMAN above, that the police did not have the authority to make the investigative stop.

NOTE: As a result of this case legislature passed a law that allows police to make searches of persons on parole, probation, or bail who have agreed to being searched as a condition of their release.

SNYDER v. State (Warrantless Search by a Private Citizen) bulletin no. 17. An airline employee, through the course of his duties, searched an airfreight shipment and discovered marijuana. Prior to calling the police, the employee put the evidence on a table so that it would be in the officer's plain view. The Court upheld the evidence because the employee was not acting as an agent of the police and the evidence was subject to seizure.

McCONNELL v State (Warrantless Search by Airline Employee) bulletin no. 24. Search of freight and seizure of drugs upheld. A subsequent search the next day of one package that had been shipped by the police was upheld because it was in their control from the time it was shipped until seizure.

PAYTON v New York (Warrantless Entry into Private Residence to Effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time; however, in plain view was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted which enables police to violate the constitution. Twenty-five states (including Alaska) had enacted statutes that allowed police to make warrantless entry into a private residence based on probable cause. The U.S. Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that, absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

D.R.C. v State (Search of Juvenile Student by Teachers) bulletin no. 58. The teacher conducted a search of a student before calling his parents or the police. After discovering evidence, the police were called, and the evidence was in their plain view.

NELSON v State (Involuntary Seizure of Blood -- DWI) bulletin no. 61. Subject involved in an automobile accident refused to provide police with consent to have a blood test performed. The treating physician, without any prompting from police, seized the blood for diagnostic purposes, therefore, the results are subject to subpoena and properly admissible.

METIGORUK v Anchorage (Statement to Private Security Guard) bulletin no. 62. Private security guards are not required to give Miranda warnings to individuals they arrest unless the guards are working as government agents.

CULLOM v State (Seizure and Search of Person by Security Guard) bulletin no. 78. A private security guard arrested the subject for shoplifting. Prior to arrival of police, the guard searched the subject and discovered drugs. The drugs were in the police officer's "plain view" once he arrived and were properly admitted at trial.

JACKSON v State (Search by a Private Security Guard) no bulletin. The Fourth Amendment does not apply to private citizens and private security guards who are not acting as agents for the State.

LOWERY v State (Private Security Guard Acting as Agent of the State) (no bulletin). A private guard was hired by the state coroner to secure a private residence in which a murder had occurred. The victim was discovered when the fire department made a forced entry. The discovery led to the arrest of the suspect, the spouse. While during his duties, the guard found evidence that implicated the spouse's role in the murder. Because the guard was acting as a government agent (the court) the evidence was ruled inadmissible. The police should have obtained a warrant prior to seizing the evidence from the guard.

New Jersey v T.L.O. (Search of Student by School Officials) bulletin no. 90. If school teachers are government employees, they do not need to obtain a warrant before searching a student. If evidence is seized, it must be in the plain view of the police upon their arrival. This applies only if the teacher is not acting as an agent for the police.

SAFFORD SCHOOL DISTRICT v Redding (Strip Search by School Officials) bulletin no. 341. When school officials required a 13-year-old female to pull her bra out and to the side and shake it, and to pull the elastic on her underpants, thus exposing her breasts and pelvic area to some degree, the court ruled that lacking sufficient suspicion to extending the search to this degree violates the Fourth Amendment.

STAATS v State (Warrantless Entry into Hotel Room by Private Citizens Who Invited Police) bulletin no. 103. The hotel had double booked a room and a second party assigned to the room discovered drugs in a suitcase already in the room. The police were called, and their subsequent warrantless entry was authorized by consent of the second party.

WEBB v State (Warrantless Search by a Private Citizen) bulletin no. 106. The search of a package by an air freight employee led to the arrest of a recipient, although the recipient had not opened the package prior to arrest. The police had probable cause to arrest and could infer that the subject was aware of the contents based on the "totality of circumstances." THIS CASE WAS REVERSED - SEE BULLETIN NO. 120.

O'CONNOR, et. al. v ORTEGA (Search of Government Employee's Desk by Supervisor) bulletin no. 111. Government employees do not forfeit their Fourth Amendment rights because the government rather than a private employer employs them. On the other hand, there is no requirement that an employer must obtain a warrant to enter an employee's office, desk or file cabinet when there is a work-related need.

GRIFFIN v Wisconsin (Warrantless Search of Probationer's Residence by Probation Officer) bulletin no. 114. A parolee can be searched by a probation officer with information less than probable cause when it is suspected that a parolee is in possession of contraband material, and such searches are clearly spelled out as a condition of parole "pursuant to a regulation."

WEBB v State (Involuntary *Miranda* Waiver) bulletin no. 120. A *Miranda* waiver cannot be coerced by seizure and retention of a person's property. In this case, a driver's license was held and would be

returned only when the suspect went to the police department and gave a statement. The suspect's right to remain silent was balanced by his loss of personal property (driver's license) and the knowledge that he would have to drive illegally if he did not comply. THIS CASE REVERSES BULLETIN NO. 106.

SHAMBERG v State (Search of Student by School Officials) bulletin no. 126. School officials do not require warrants or probable cause to conduct searches on school property, but such searches must be based on reasonable suspicions that contraband will be found.

JONES v State (Search by Private Security Guard) bulletin no. 131. A store security guard searched the purse of a suspected shoplifter of jewelry and found drugs. The drugs were given to police who charged misconduct involving a controlled substance. The search is upheld since the guard was not acting as an agent of the government and the search was reasonable, based on the circumstances.

MILTON v State (Warrantless Search of Third-Party Custodian's Bedroom) bulletin no. 187. Milton was a third-party custodian for Gutierrez. A probation officer conducted a search of Milton's residence based on information that Gutierrez was either using or distributing drugs. The officers entered Milton's bedroom and discovered letters and bills on a nightstand, some of which were addressed to Gutierrez. White powder was also noted on the nightstand. A suitcase inside a closet in Milton's bedroom was searched and drugs were found. Drugs were also found in Gutierrez's bedroom. The case was remanded back to the Superior Court. The court ruled that when a probationer is sharing living quarters with another person, the probation officer may search all areas where the probationer has common authority to use or control even if it is not exclusive. The searching officer must have reasonable suspicion that the item to be searched is owned, shared or controlled (even if not exclusive) by the probationer. The third-party custodian has a limited expectation of privacy.

SKINNER, Secretary of Transportation v Railway Labor Executives Union; NATIONAL TREASURY EMPLOYEES UNION v Von Raab, US Customs Service; LUDTKE v Nabors Drilling bulletin no. 129. Government regulations pertaining to railroad employees that require warrantless mandatory drug/alcohol screening does not violate Fourth Amendment rights, if the compelling government interests outweigh privacy concerns, such as safety sensitive tasks. In the case of the US Custom Service, results of drug testing are not available for law enforcement prosecution but are used to detect drug use prior to assignment of personnel to sensitive positions. In both cases the public interest is balanced against the individual's privacy; warrants were not required.

In LUDKE v Nabors Drilling, the Alaska Constitution does not extend the right of privacy to the actions of private parties. In this case, drug testing is conducted during working hours and is related to safety work issues rather than overall controlling of illegal drug use. In addition, the policy was clearly stated to all employees prior to implementation. The drug testing policy was upheld.

LAU v State (Exclusion of Evidence Because of Corrections Officer's Improper Conduct) bulletin no. 190. While undergoing DWI processing, an on-duty corrections officer who was a friend of the defendant and was guarding the defendant, actively dissuaded the defendant from seeking an independent blood test. The corrections officer dissuaded the defendant from exercising his rights and the earlier breath test was suppressed (Exclusionary Rule).

Vernonia School District v ACTON (Mandatory Drug Testing of Students Participating in School Athletic Programs) bulletin no. 191. Athletes were required to submit to a drug testing program in order to participate in sports programs. This test was unsupported by probable cause. A search, unsupported by probable cause can be constitutional when special needs (which existed in this drug infested school district) beyond the normal need for law enforcement make the warrant and probable cause requirement impracticable.

Board of Education v EARLS (Mandatory Drug Testing of Students Participating in Extracurricular Activities) bulletin no. 258. The mandatory drug testing of students who participate in after school activities such as cheerleading, choirs, Future Farmers of America, etc., does not violate the Fourth Amendment.

JOUBERT v State (Lack of Consent to Probation/Parole Officer Negates Search of Parolee's Premises) bulletin no. 208. A search of a probationer's residence can take place under the terms of the Probationers Release Agreement upon request of the probation officer, but the parolee must communicate in some way with the probationer before conducting a search.

State v LANDON (Search of Convicted Person by Corrections Officer Incident to Incarceration in Prison) bulletin no. 217. Drugs were found during a search of a person's personal belongings prior to long-term incarceration in a correctional facility. Since this was a long-term incarceration vs. a person being detained in jail who may shortly post bail, the detailed search was upheld. See Reeves v. State.

State v JAMES (Warrantless Search of Probationer's Residence as Condition of Probation) bulletin no. 229. A probation officer searched the defendant, who was on probation and subject to warrantless searches of his person, personal property, residence, or any vehicle in which he might be found. The defendant refused the search, but the search was conducted without his consent. Under this provision of his probation, the probation officer was authorized to conduct the search even without the consent of the defendant. Further, when another person is involved in such as a shared living situation, the officer may search all parts of the premises that the probationer has common authority to use.

U.S. v KNIGHTS (Investigatory Search as Condition of Probation) bulletin no. 253. As a condition of probation, KNIGHTS agreed to "submit his person, property, place of residence, vehicle, and personal effects, to search at any time, with or without a warrant or probable cause by any probation officer or law enforcement officer." Police suspected he was involved in arson; they made a warrantless search of his residence and collected evidence of that crime. The Fourth Amendment does not limit this condition to "probationary conditions" only. Investigative searches are also permitted.

SAMSON v California (Fourth Amendment Does Not Prohibit Police from Conducting Suspicionless Search of a Parolee) bulletin no. 310. A police officer was aware that a condition of SAMSON's release on parole authorized a search of his person by law enforcement officers "with or without a search warrant and with or without cause." The police officer conducted a search of SAMSON's person and found drugs. The court said this was a good search because SAMSON had already agreed to these conditions of release. After all, he could have remained incarcerated if he did not want to allow theses searches.

PAUL v State (Warrantless Police Viewing of Videotape Seized from A Private Residence By A Citizen/Sexual-Assault Victim) bulletin no. 262. Assault victim broke into his uncle's locked bedroom and seized videotape that contained his uncle and his 15-year-old cousin engaging in sexual acts. He brought the tape to the police, who, without obtaining a search warrant, viewed the tape. Based on their observations, the police obtained a search warrant for PAUL's residence where additional videotape and other evidence was seized. Court said the police did not need a search warrant prior to viewing the tape because it came into their possession lawfully.

O. RIGHT TO COUNSEL - LINEUP AND HANDWRITING

Absent exigent circumstances, a criminal defendant has the right to have his attorney present during any proceeding where "non-testimonial" evidence such as line-ups, hand writing exemplars, or voice comparisons is sought. Of course, the defendant is entitled to abandon or waive this right. The State has the burden to prove that the defendant voluntarily waived his Sixth Amendment right to counsel. In these instances, a written waiver should be obtained. The reason the defendant is entitled to have his/her attorney present is to observe the fairness of the proceedings. The attorney is not permitted to control the proceedings; he/she is there to merely observe. You should consider any suggestions offered by the attorney and, if practicable, implement them.

In the case of "show ups," it may be necessary to proceed without out an attorney and it may be done "one-on-one." "Show Ups" usually occur during late evening or early morning hours when an individual, fitting the description of a suspect involved in a violent crime, is located. The court reasons that it is law enforcement's duty to eliminate suspects as quickly as possible because an armed and dangerous person may still be at large.

The attorney is not entitled to be present at the time the victims or witnesses are viewing photographic lineups, however, all photographs used in the lineup must be preserved as evidence for later court review. A good procedure to follow is to have the witnesses initial all the photographs for identification purposes.

It is possible to obtain "trace evidence" from suspects as incident to arrest. This trace evidence may consist of pubic hair combings, fingernail scrapings, hand swabs for gunshot residue or other possible destructible evidence. If the collection takes place after the arrest, days or even weeks, a court order should be obtained, especially if the evidence sought is blood type, known pubic or head hairs or handwriting samples. This type of evidence does not change.

RIGHT TO COUNSEL
LINEUP AND HANDWRITING
SELECTED CASES

BLUE v State (Right to Counsel/Lineup) bulletin no. 2. Several hours after a late-night robbery, a lineup was conducted in an area where one of the suspects was apprehended. Due to the exigency of the circumstance, the officers could conduct the lineup without first obtaining an attorney for the defendant.

ROBERTS v State (Right to Counsel/Handwriting Exemplars) bulletin no. 5. The defendant, who was in jail, requested and was denied his right to have his attorney present while submitting handwriting samples. The Court ruled that the defendant was entitled to have his attorney present absent a waiver.

VESSELL v State (Post Arrest Show Up) bulletin no. 46. A few minutes after an armed robbery, the police seized a suspect and returned him to the scene. Upon return, he was positively identified by the victim/witness. The identification was upheld.

THIEL v State (Right to Counsel Prior to Commencement of Adversarial Proceeding) bulletin no. 125. A suspect who is not under arrest, formally charged, or seized cannot bar police-initiated contact between an informant and the defendant by invoking his right to counsel during an investigative stop. In this case, a "GLASS" warrant was obtained to record conversations between the defendant and the informant. During this event, there was no actual interference with the defendant's efforts to consult an attorney nor impairment of the attorney/client relationship.

WHITE v State (Voice Identification Lineup) bulletin no. 133. Although this case was upheld, it was noted that placing witnesses together during a lineup was not recommended, and that care should be taken to ensure the procedure was not unnecessarily suggestive. Although it was noted that the two witnesses seemed to independently identify the same suspect, consultation between the two witnesses could have resulted in an entirely different outcome.

DUNBAR v State (Investigative Vehicle Stop/Search of Glove Compartment) bulletin no. 134. During a legitimate "Terry stop" and a subsequent frisk for weapons of a suspect in a vehicle, it is permissible to look inside an unlocked glove compartment for weapons since this compartment was in easy reach of the suspects and will be again when the suspects get back in their car. A search of an unlocked glove compartment incident to arrest is also permissible. This only applies to unlocked glove compartments. This case also involved a photographic lineup. This issue is not explained in the brief (134) and you should review the court's opinion for those details.

HAAG v State (Investigatory Seizure of Armed Robbery Suspect Leads to Show-Up) bulletin no. 298. Police respond to report of two black males wearing dark clothing and ski masks and are in process of committing home invasion/armed robbery. Police arrive within minutes and see HAAG running from the direction of the victim's residence. Police seize HAAG at gun point and handcuff him. Although he is a white male, he is dressed in black and has on dark gloves. Police transport him back to the scene where a witness identifies him by his size and clothing. Later police find a Rx bottle in the name of the victim in the rear seat of the patrol car where HAAG had been confined. They also find a gun in the area HAAG was running. Court ruled this was a proper investigative seizure and that the subsequent show-up was proper.

ANDERSON, Jonathan v State (Show-up) bulletin no. 302. ANDERSON and a female companion committed a home invasion/armed robbery. There was both a male and female victim. When the male did not get out his money fast enough ANDERSON shot him (the male victim) in the neck. After getting money, the suspect couple departed the area in a brown sedan. The police were notified and located the suspect vehicle. A chase ensued, during which time various articles, including the handgun used in the shooting, were tossed out of the vehicle. After stopping the vehicle, ANDERSON and his female companion, Angela ENGSTROM, were taken into custody. N.B., the female victim of the home invasion, was transported to the scene of the stop and viewed both ANDERSON, who was in handcuffs, and ENGSTROM. N.B. identified ANDERSON as the person who shot the male victim; she was unable to identify ENGSTROM. Court ruled that this was a proper show-up and that the police had an immediate need to either identify ANDERSON as the person responsible or clear him so that they could search for the suspect.

P. RIGHT TO COUNSEL AND WAIVERS DURING CUSTODIAL INTERVIEWS

The cases reviewed on the attached pages address the *Miranda* issue. The Court, in determining the admissibility of a statement obtained from a defendant, must first ascertain if the statement was lawfully obtained. The arresting officer should assure the court that the defendant's Fourth Amendment Right of unlawful seizure was not violated (i.e., there was probable cause to arrest or the suspect's consent was obtained). Secondly, the Court will determine if the defendant received a proper warning (the reading of his rights), and if a proper waiver followed that warning. Thus, the State must establish the fact that the defendant's Fourth (seizure of an individual), Fifth (compelled self incrimination) and Sixth (right to counsel) Amendment rights were not violated and, if these rights were waived, they were waived knowingly and intelligently.

Alaska has adopted (HUNTER v State) the **objective, reasonable standard** approach and not the focus of attention approach to determine when a person is in custody. Three facts are used to determine when a reasonable person would feel free to leave and/or break off police questioning: (1) the manner and scope of the actual interrogation; (2) events which took place before the interrogation, including those which explain how and why the defendant came to the place of questioning; and (3) what happened after the interrogation. If a person is not in custody according to the above guidelines, *Miranda* warnings need not be given.

Alaska has recently added an additional requirement (see Harris below) of tape recording the entire statement. The criteria are if a person is (1) in custody; and (2) at a place of detention, then the entire statement must be recorded. Places of detention could include police cars, jails or police stations. It is still an "open question" whether the defendant has the right to waive having his statement recorded. The Court interpreted the Harris case based on the Alaska Constitution not the United States Constitution. The Alaska Constitution affords more individual rights than the United States Constitution.

When a suspect invokes his right to speak with an attorney, all interrogation must cease until the suspect has an opportunity to speak with his attorney. In addition, no interrogation can resume until the attorney is PRESENT, even if the suspect is readvised of his *Miranda* rights. If the suspect initiates communication with law enforcement officials on his own, then the above rule does not apply.

RIGHT TO COUNSEL AND WAIVERS DURING CUSTODIAL INTERVIEWS
SELECTED CASES

Selected Juvenile Cases are Listed Separately Below

KAUPP v Texas (confession obtained by exploitation of an illegal arrest) bulletin no. 294. At 3:00 a.m. police are allowed entry into a residence by the father of the 17-year old suspect in a murder case. They go to the suspect's bedroom, awaken him by saying "we need to go and talk." He replies OK. The police put him in handcuffs and take him from his residence to a patrol car. The suspect is dressed only in his boxer shorts, and a T-shirt; he is shoeless. This is in the month of January. Suspect is brought to the police station, placed in an interview room and advised of his *Miranda* rights. He at first denies and them admits to a "part of the crime." It is established that the police did not have enough probable cause to arrest the suspect. The question here is did the police violate the suspect's Fourth Amendment right against unreasonable seizure. The answer is "yes" and the confession must be suppressed.

HUNTER v State (Adoption of the Objective Reasonable Standard for Determining Custody) (no bulletin). Alaska established the **objective, reasonable person standard** for determining whether a person is in custody. Courts examine three groups of facts to determine whether a reasonable person would feel free to leave and break off police questioning: (1) the manner and scope of the actual interrogation; (2) events which took place before the interrogation, including those which explain how and why the defendant came to the place of questioning; and (3) what happened after the interrogation.

WARDEN v ALVARADO (Non-Custodial Interview of Juvenile at Police Station Does Not Require Miranda Warning) bulletin no. 281. Victim was killed during attempted car jacking. Several months' later police developed Alvarado (who was 17 YOA at the time), as a suspect. Detectives contacted both him and his parents and asked him to come to the police station. Upon arrival the detectives informed the parents that the interview would not "take very long." The parents waited in the lobby and Alvarado was taken to an interview room. The entire interview, which was tape-recorded, lasted about two hours. During the interview Alvarado was asked on several occasions if he wanted to take a break; he declined. Alvarado admitted his involvement in the homicide and that he had assisted the "shooter accomplish" hide the gun. He was never advised of his Miranda rights. After the interview he left the police station with his parents. Several months later he was arrested and charged with the murder. For purposes of Miranda, Alvarado was not in custody. The test is (1) circumstances surrounding the interview and (2) would a "reasonable person" feel free to terminate the interview and leave. The court also said that their prior decisions regarding Miranda have not mentioned a suspect's age, much less mandated its consideration.

Missouri v SEIBERT (Question first, give the warnings, and repeat questions violate Miranda) bulletin no. 284. Police said based on their training they question the defendant. Then, when they get a confession they give MIRANDA warnings and question again until they get the same answers. Court ruled that when the defendant is in custody the defendant must be given MIRANDA warnings before questioning.

CRAWFORD v State (Question first, give the warnings, and repeat questions violate Miranda) bulletin no. 287. Crawford was stopped for expired registration. He denied he had been drinking and gave consent to search his vehicle for weapons, drugs or alcohol. Police verified he was driving with a revoked license and arrested him for DWLS. During pat-down officer felt what appeared to be a smoking pipe. Crawford gave officer consent to remove the pipe. When asked he said that he had a small tin of marijuana on his person. When asked again about drugs in his car he said that he had both marijuana and cocaine under the front seat. He was then given his Miranda warning and repeated what he had said about drugs in the car. Our court ruled like Seibert that when suspect is in custody you give the warnings prior to questioning.

State v BATTS (In certain circumstances, statements taken in violation of MIRANDA can be used for impeachment purposes) bulletin no. 332. After he was arrested for homicide, the police interviewed BATTS. During the interview, he asserted his Fifth Amendment right to silence a total of eighteen times. The police continued the questioning and BATTS made some incriminating statements. The trial court suppressed the statements because of MIRANDA violations. BATTS took the stand at his trial which resulted in a "hung" jury; the second trial also ended with a hung jury. The State appealed the trial court's decision to suppress arguing

that, because BATTS had taken the stand, his statements should be allowed to impeach his testimony. The court of appeals ruled that it permits this impeachment in cases were the (MIRANDA) violation was neither intentional or egregious – by which we mean a violation that would have been obvious to any reasonable police officer.

KALMAKOFF v State (Violation of Miranda in first two statements does not require suppression of statements taken in 3rd and 4th interviews) bulletin no. 334. **REVERSED BY SUPREME COURT SEE BULLETIN 356.** Police violates defendant's Miranda Rights when they interviewed him twice on the same day. He was allowed to go back to school and ultimately home. Police contacted him at his home, and in the presence of his grandparents, he admitted to the murder. Police also interviewed him on the following day, when they arrested him. He argued that because of the Miranda violation on the first two interviews, any information obtained thereafter, even if he was advised of Miranda, must be suppressed because of the poison tree doctrine. Court said statements were allowable because the defendant did not make any admissions about the murder during the first two interviews. He did admit to other violations (minor consuming alcohol and taking a gun from a residence) during the first two interviews but made no admissions about the murder.

KLEMZ v State (Custodial-interrogation statements elicited without Miranda warnings will negate any post-interrogation Miranda statements) bulletin no. 324. KLEMZ, on probation for felony driving while under the influence, arrived at his probation officer's office smelling of alcohol. One of his conditions of release on probation was to refrain from using alcohol. KLEMZ consented to taking a breath test; he was .221. The probation officer arrested KLEMZ for violating conditions of his probation, searched and handcuffed him. The probation officer then asked KLEMZ how he had gotten to the probation office. KLEMZ stated he had driven his truck and that he had parked in the parking lot. Kenai police were then called to the office. The officer gave KLEMZ the Miranda warning and once again KLEMZ admitted that he had driven his truck to the probation office. The officer arrested KLEMZ for felony driving while under the influence. He argued that both the statement given to the probation officer and the later statement given to the police officer violated his Miranda rights. The court agreed: The probation officer's initial question (without Miranda) was reasonably likely to elicit an incriminating response and the police officer's follow-up question was almost certain to do so. Thus, the post-warning statements (made to the police officer) were no more admissible then his pre-warning statements made to the probation officer.

ROCKWELL v State (Miranda warnings are required when traffic, or investigatory stop ripens into full-blown custody) bulletin no. 325. Police respond to a two-vehicle accident. There are 4 interviews involved in this case: (1) on the street questioning; (2) ROCKWELL patted-down and put in the back of the patrol car that he could not get out of; (3) interview in the patrol car and en route to a police sub-station and (4) at another police station where he is placed under arrest and for the first time advised of his Miranda rights, at which time he asked for a lawyer but then declined to call one. The officer asked if he would still talk to him and he agreed. As to 1 – the street interview – that is admissible. As to 2 - he was probably in custody for purposes of Miranda because he was patted-down and put in a locked car (this issue was sent back to the lower court for an additional hearing); (3) he was in custody because the officer informed him that he was being transported to a sub-station for further testing. The officer did not ask him, just told him he was taking him to a sub-station. He was in custody at this time. And (4) once he asked for a lawyer all questioning must stop unless initiated by the defendant.

EDWARDS v Arizona (Right to Counsel - Custodial Interrogation) bulletin no. 48. Before the defendant talked with police officers, he requested the jailer obtain counsel for him. The police, unaware of the defendant's request to the jailer, gave proper warning and, in doing so, obtained a waiver from the defendant. The defendant's confession was ruled inadmissible since he was denied right to counsel.

MARYLAND v Shatzer (Miranda "Continuous Custody" 14- day rule) bulletin no. 362. Suspect was a sentenced prisoner for committing sexual act against children. Police contacted him at the institution to interview him about another allegation. This one involved the sexual abuse of his then three-year-old son. Suspect invoked his right to counsel and the interview was terminated. Two and a half years later another detective contacted the suspect, who was still serving his sentence for the crime he was convicted of. He waived his Miranda rights and made incriminating admissions about the sexual assault of his son. His lawyer

argued, successfully, that because he was in continuous custody Miranda still applied. U.S. Supreme Court ruled that because he had returned to "normal" life, albeit prison, it was proper for the police to interview him again and that the waiver was valid. The court arbitrarily adopted the 14-day rule. That means that the suspect should not be contacted until after he has got to the normal prison routine, and the court felt 14 days would suffice.

UNGER and CAROTHERS v State (Involuntary Seizure of Person) bulletin no. 53. Police made unlawful entry into private residence to arrest defendant. Although the defendant waived his *Miranda* rights and voluntarily provided a statement to the police, the statement was suppressed because of the illegal seizure of the defendant.

SHEAKLEY v State (Right to Counsel - Voluntary Waiver) bulletin no. 55. The defendant (while in custody at the time) requested an attorney. The police were unsuccessful in their attempts to obtain one. When informed of this fact, the defendant requested to speak with the arresting officer, so he could "tell his side of the story." The arresting officer again provided the appropriate warning and obtained a statement. The statement was admissible because the defendant-initiated contact after requesting an attorney.

MUNSON v State (Right to Remain Silent During Custodial Interrogation) bulletin no. 301. Anchorage police go to Portland, OR, to take custody of MUNSON who has been charged with an Alaska homicide. MUNSON is one of four defendants in the case that involves the murder of Morgan GORCHE who had been killed in retaliation for allegedly, molesting a three-year-old girl. A few minutes into the interview, MUNSON asked if "Sam" (one of the co-defendants) would know that he (MUNSON) was talking to the police. When he was informed that at some point everyone would know, MUNSON said: "Well I'm done talking then." The officer proceeded with the interview, which also included playing part of a taped interview with "Sam." MUNSON eventually confessed to his participation in the murder. MUNSON's statement must be suppressed because once he attempted to cut off questioning the police must "scrupulously" honor his request to remain silent. The only time this would change is if MUNSON himself initiated contact with the police later.

METIGORUK v Anchorage (Statement to Private Security Guard) bulletin no. 62. Private security guards are not required to give *Miranda* warnings to individuals they arrest unless the guards are working as government agents.

COPELIN v State and MILLER v Anchorage (Right to Counsel Prior to Breathalyzer) bulletin 64. Defendant had the right to consult an attorney immediately after arrest and prior to Breathalyzer. The officer should have allowed the defendant at least fifteen minutes to make contact with an attorney before requiring him to submit to Breathalyzer.

Oregon v BRADSHAW (Confession Given by Defendant) bulletin no. 74. The defendant in this case originally requested an attorney then withdrew that request by initiating contact with the police. The police had honored the defendant's request until he initiated contact.

ALILI v State (Knowing and Intelligent Waiver of Rights) bulletin no. 77. Although the officer gave warning to the defendant (a foreigner), he failed to ask the defendant if he understood (knowing) his rights. The statement was ruled inadmissible.

Minnesota v MURPHY (Statement to Probation Officer Without *Miranda* Warning) bulletin no. 80. As a condition of parole, the defendant was compelled to visit his parole/probation officer and to participate in a treatment program for sexual offenders. He was ordered to report to his probation officer as directed and be truthful with the officer in all matters. During a session with the treatment counselor, he admitted that he was responsible for a rape-murder that had occurred several years prior to this particular paroled offense. The counselor told Murphy's parole/probation officer who ordered him to her office and confronted him with his admissions. Murphy said he "felt like calling a lawyer," however, the parole/probation officer continued the interview, which resulted in Murphy admitting his involvement in the prior case. The statement was admissible because the court felt this was a "non-custodial" interview and that Murphy had not been compelled to make the statement.

JAMES v State (Probation Officer Cannot Force Defendant to Give Up 5th Amendment) bulletin no. 270. The defendant was convicted of sexual assault in the second degree and sentenced to ten years with four suspended on the condition he participate in a sex offender program while incarcerated. He told the therapist "I'm not going to talk about this because basically I didn't do it and I'm under appeal." He was charged with violation of his probation and the four-year probation was revoked. The court said he could not be compelled to give evidence against himself. Not only that, he might have put himself in a position where the State could have charged him with perjury.

FARRELL v Anchorage (Right to Counsel Prior to Breathalyzer) bulletin no. 84. The defendant, in this case, had the right to contact an attorney before submitting to Breathalyzer.

DEPP v State (Right to Counsel - Voluntary Waiver) bulletin no. 87. Although the defendant was advised by his attorney not to talk to the police, he elected to do so and provide a statement. The interview was conducted at the defendant's office. He was not in custody at the time of the interview.

SMITH v Illinois (Knowing and Intelligent Waiver of Rights) bulletin no. 89. Although the defendant replied, "Yeah, I like to do that" when advised of his right to counsel during the warning, the officer continued to read the remaining warning and elicited a waiver. The Court ruled that the officer should have stopped all questioning until the defendant obtained counsel.

HAMPEL v State (Right to Counsel During Custodial Interrogation) bulletin no. 97. When defendant inquired about obtaining a lawyer, the officer informed him it would be somewhat difficult, so the defendant proceeded to provide a statement. The Court ruled the statement inadmissible since the officer should have ceased all questioning until the defendant obtained counsel.

STEPHAN and HARRIS v State (Mandatory Recording of Statements from Persons in Custody) bulletin no. 99. Recording of the entire interview, not part, was required since the interview was conducted at a place of detention. This ruling was based on the Alaska Constitution that provides for more individual rights than the United States Constitution.

STATE v AMEND (Recording of Statement Not Required if Person is Not at A Place of Detention) bulletin no. 353). Kenai police responded to a shoplifting call at a convenience store. The clerk had furnished a description and the arriving officer saw the suspect outside. Suspect AMEND admitted the theft and gave the officer consent to search his person. Stolen food was discovered as well as drugs. AMEND admitted that it was his intention to sell the drugs. AMEND argued: (1) When the drugs were found the officer should have given him fresh Miranda warnings and (2) his statements should be suppressed because the officer did not record them. Court ruled that no "fresh" Miranda warning was required and that AMEND was not at a place of detention so mandatory recording was not required.

Rhode Island v BURBINE (Knowing and Intelligent *Miranda* Waiver) bulletin no. 104. After arresting the defendant for burglary, the police developed information that he may have been involved in a homicide that occurred in another city. The defendant's sister contacted an attorney who was representing the defendant in other criminal cases, and the attorney responded by contacting the police. The police officer informed the attorney that they would not be interviewing the defendant, when, in fact, a statement had been provided by the defendant regarding his involvement in the homicide. The statement was ruled admissible because the police had given the defendant the *Miranda* warning and the defendant acknowledged his understanding and waived his right to counsel.

Michigan v JACKSON and BLADEL (The Right to Counsel During Custodial Interrogation) bulletin no. 105. At the arraignment, the defendant requested counsel. Subsequent statement taken after *Miranda* warning was suppressed.

PLANT v State (Right to Counsel - Voluntary Waiver) bulletin no. 107. On the day of his arrest and arraignment, the defendant exercised his right to remain silent which police scrupulously honored. The following day, the defendant-initiated contact with police and was given the *Miranda* warning. The police

obtained a waiver and the defendant provided a statement. The statement was admissible because the defendant gave a knowing and intelligent waiver.

MCLAUGHLIN v State (Entrapment - Right to Counsel and to Remain Silent) bulletin no. 113. When an officer receives calls from a defendant awaiting trial, Sixth Amendment rights do not protect the defendant when the defendant, now suspect, embarks on new criminal ventures, especially when the defendant initiated the contacts.

LeMENSE v State (Investigative Seizure of Person and Luggage at Airport) bulletin no. 117. Investigative stop of a suspected drug courier upheld because the suspicion for the stop was reasonable (unlike State v Garcia), and a reasonable person would have concluded that the suspect was free to terminate the encounter and walk away. Conversations with the suspect developed further suspicion that justified subjecting luggage to a drug detecting dog search that alerted on the bag and application for a warrant for the luggage.

WEBB v State (Involuntary *Miranda* Waiver) bulletin no. 120. A *Miranda* waiver cannot be coerced by seizure and retention of a person's property. In this case, a driver's license was held and would be returned only when the suspect went to the police department and gave a statement. The suspect's right to remain silent was balanced by his loss of personal property (driver's license) and the knowledge that he would have to drive illegally if he did not comply. THIS CASES REVERSES BULLETIN NO. 106.

Arizona v ROBERSON (Right to Counsel During Custodial Interrogation) bulletin no. 124. Once an individual states that he wants an attorney, all interrogation must cease until an attorney is present or the defendant initiates contact with the police. Advisement of new *Miranda* rights for a suspect who has not seen counsel, does not allow new interrogation without the presence of the individual's attorney. Even though the second interrogation was initiated to discuss an unrelated crime, a defendant still cannot be interrogated, even with fresh *Miranda* warnings, if he invoked his right to have an attorney present during the initial interrogation.

THIEL v State (Right to Counsel Prior to Commencement of Adversarial Proceeding) bulletin no. 125. A suspect who is not under arrest, formally charged, or seized cannot bar police-initiated contact between an informant and the defendant by invoking his right to counsel during an investigative stop. In this case, a "GLASS" warrant was obtained to record conversations between the defendant and the informant. During this event, there was no actual interference with the defendant's efforts to consult an attorney nor impairment of the attorney/client relationship.

THOMPSON v State (Non-Custodial Interrogation) bulletin no. 128. Police are not required to give *Miranda* warnings for non-custodial interrogation, if the suspect knows he or she is free to break off the interrogation and leave at any time.

ZSUPNIK v State (Right to Contact Relative Prior to Administration of Breath Test) bulletin no. 142. During the 20-minute observation period prior to administration of the breath test, the suspect has the right to contact an attorney or any relative or friend. This right is absolute.

***NOTE**: This case reverses a previous appeal's decision that was made in error.*

State v MURRAY (Non-Custodial Interrogation) bulletin no. 148. This case has reaffirmed the "objective, reasonable person standard" for determining whether a person is in custody. In this case, the suspect agreed to be interviewed several days in advance, selected the place to be interviewed, was advised he could terminate the interview at any time and was also told he would not be arrested at this time. *Miranda* warnings were not given.

REEKIE v Anchorage (Right to Consult Privately with Attorney Prior to Breathalyzer Test) bulletin no. 150. A DWI arrestee is not entitled to complete privacy in communicating with counsel (to maintain the 20-minute mandatory observation period prior to taking the breath test), but police have a duty to take affirmative steps to ensure a reasonable opportunity to converse privately. These steps could include turning off the tape recorder and assuring the arrestee that any statements overheard could not be used against him.

MINNICK v Mississippi (The Right to Counsel During Custodial Interrogation) bulletin no. 152. The defendant, who was in custody and being interviewed, invoked his right to consult with an attorney and did so several times. Later, at another interview initiated by officers, he was advised of his *Miranda* rights again and during this subsequent interview, he incriminated himself. This subsequent confession was suppressed because officials may not reinitiate interrogation without counsel present whether the accused has consulted with his attorney. This case takes EDWARDS v Arizona one step further. Not only must the defendant have the opportunity to consult with his attorney, but also subsequent interviews initiated by officials must not be conducted unless counsel is present.

MONTEJO v Louisiana (The Right to Counsel During Custodial Interrogation) bulletin no. 340. The defendant was arrested for Homicide/Robbery. Police advised him of his Miranda rights and he confessed. Several days later he appeared before a judge for his "72-hour hearing" – a preliminary hearing required by state (Louisiana) law. At the hearing, the judge appointed a lawyer to represent the defendant. The defendant remained mute during this hearing. After attending the hearing, the police contacted MONTEJO, gave him a MIRANDA warning, and asked him to accompany them so they could retrieve the gun that was used in the homicide; he agreed to do so. During this trip, MONTEJO wrote a letter of apology to the victim's wife. The letter was used at his trial. He was convicted and sentenced to death. He argued that the letter should not have been used at his trial because the court had appointed counsel for him and that precluded the police from contacting him without counsel being present. The court ruled that because he had remained mute during the "72-hour hearing" he did not request counsel and the police were entitled to contact him. Louisiana, like about one-half of the states, appoints counsel for indigent defendants during this hearing. In Alaska, on the other hand, it is mandated (Criminal Rule 39(2)); requires the court to inform the defendant of his right to counsel, and the fact that the court will appoint one if he is indigent and will not proceed without counsel unless the defendant himself knowingly waives the right to counsel. So, it would appear that this U.S. Supreme Court case will have little effect on Alaska.

Rhode Island v INNIS (The Right to Counsel - Voluntary Waiver) bulletin no. 153. Two officers who were discussing the case amongst themselves and not including the defendant in the conversation, were transporting the defendant, who was under arrest. The defendant interrupted the conversation and volunteered information. He continued to volunteer information even though he was again advised of his *Miranda* rights. The defendant was not being questioned and there was no "fundamental equivalent" of questioning since the officers did not know there was a reasonably likely chance the conversation would elicit a response from the defendant.

BREWER v Williams (The Right to Counsel - Involuntary Waiver) bulletin no. 154. An officer was transporting the defendant, who was under arrest. The defendant never "knowingly and intelligently" relinquished his *Miranda* rights when he gave information, and it was clear his intention was to refuse to be interrogated until his attorney was present. In this case, the officer deliberately set out to elicit information from the defendant by engaging in a conversation without directly asking questions. It is possible to have the "fundamental equivalent" of questioning while involving the defendant in a conversation without asking any questions.

TAGALA v State (Non-Custodial Interrogation) bulletin no. 158. A non-custodial interview was properly conducted with a shooting suspect without advisement of *Miranda* rights. A second interview was held, but this time *Miranda* warnings were given. During this second interview, the suspect invoked a limited assertion of his right to remain silent by refusing to discuss his involvement in drug sales, but at the same time indicating he was still willing to discuss the shooting. This limited assertion was found to be proper and discussions about the shooting after the limited assertion were admissible.

KOCHUTIN v State (The Right to Counsel During Custodial Interrogation) bulletin no. 161/186. A custodial interview was held with a suspect (who was in continuous custody for another crime) one year after his attorney advised authorities that the suspect was not to be interviewed without the attorney present. Police were required to notify the suspect's attorney prior to the police-initiated interview as required in EDWARDS v Arizona and MINNICK v Mississippi and the subsequent confession was suppressed. This case was REVERSED.

It was later learned that KOCHUTIN was not in continuous custody, and as such the 1986 police interviews did not violate the EDWARDS rule. Given the break in custody, the Court concluded that the circumstances support the conclusion that KOCHUTIN voluntarily waived his *Miranda* rights.

MOSS v State (Custodial Interrogation of Person Not Under Arrest) bulletin no. 166. A search warrant was served on a residence with weapons drawn. The occupants were told they would be allowed to leave, but not until the search was completed. A guard was posted at the door and the occupants' movement was restricted while inside the residence. In this situation, a reasonable person would feel that he or she is in police custody and *Miranda* warnings must be given before any questioning.

GEORGE v State (Volunteered Statement - Failure to Tape Record Statement) bulletin no. 172. The suspect, already in custody for a different offense, told the jailer he pushed someone into the water causing his death. An officer interviewed the suspect after *Miranda,* but without a functioning tape recorder. The next day, another officer interviewed the suspect, who gave a different account of the facts, but this time with a functioning tape recorder. Testimony was not suppressed because 1) the statement made to the jailer was voluntary and not the product of custodial interrogation; and 2) the first interview lack of taping was excused due to the remote location of the arrest and the lack of spare tape recorder equipment. The HARRIS rule does not prohibit admission of a defendant's statement if "no testimony is presented that the statement is inaccurate or was obtained improperly," even though it was not taped. The tape recording requirement is justified because this provides an objective means for evaluating what occurred during interrogation.

CARR v State (Miranda/Right to Counsel) bulletin no. 174. Two people who had been living together were both imprisoned for unrelated crimes. A child previously living with the couple reported that the male adult had sexually abused her. A GLASS warrant was obtained, and the female called the male and incriminating statements were recorded. Both were still imprisoned and later the male made additional incriminating statements in a face-to-face interview with troopers with proper *Miranda* warnings. The initial conversation did not amount to *Miranda* custody because the circumstances were such that 1) there were no inherently compelling pressures at work to undermine the individual's will to resist and compel him to speak where he would not otherwise do so freely; 2) the circumstances were not present where a reasonable person would not feel free to leave or break off the conversation; 3) incarceration alone does not automatically trigger *Miranda;* and 4) the male was not under any degree of compulsion to take the call and not inhibited from terminating the call. The interaction of custody and official interrogation was not coercive in this situation. The second issue related to whether the male's right to counsel was violated since an attorney for the related child custody issues represented him. In this case 1) the right to counsel is not triggered by purely investigative efforts since the suspect had not been accused at this point; and 2) the right to counsel is case specific and the child custody issue was not sufficiently related to the assault case.

State v Barry ANDERSON (Miranda Does Not Apply to Statements Elicited by a False Friend) bulletin no. 299. ANDERSON was arrested for robbery. He invoked his MIRANDA rights and asked for legal counsel. ANDERSON was unable to make bail and was incarcerated. Police suspected that he was also involved in a separate robbery/homicide. Police enlisted the aid of a friend who agreed to wear a wire (GLASS warrant) and visit ANDERSON at the jail to attempt to elicit incriminating statements from him. ANDERSON was subsequently charged with the robbery/homicide in part due to the statements he made to his “false friend” Court ruled that using the “reasonable objective person test” (HUNTER v State) that ANDERSON was not in custody for purposes of MIRANDA. The court said that ANDERSON could have either refused to visit with the friend or simply hung up the phone used during the visit.

HIGGINS v State (Custodial Interrogation of Person Not under Arrest) bulletin no. 188. A search warrant was served under high risk conditions (i.e. weapons drawn, etc.). After the situation was secure, HIGGINS was told she was not under arrest and was free to leave, but her movements during this time were somewhat restricted in that she was told where to stand and not to move. Although she understood what she was told about being free to leave and not being under arrest, the judge who listened to a tape recording from the scene ruled that the situation was charged with the tone of control and found that under the totality of the circumstances, a reasonable person in HIGGINS' position would have felt restrained regardless of what she was told.

MOTTA v State (Non-Custodial Interrogation Becomes Custodial Interrogation) bulletin no. 197. Officers asked MOTTA if he would be willing to visit the station for an interview. He was not advised of his *Miranda* rights, but was assured he was not under arrest and would be allowed to leave. About three hours into the interview, several events happened which turned the interview into a custodial interview: 1) the tone became confrontational when evidence obtained by a search warrant did not match his statements; 2) Officers left the interview room and told MOTTA to "just sit tight - relax"; and 3) when MOTTA asked to go to his vehicle to get a pack of cigarettes, the Officers refused and got the cigarettes for him. An interview becomes custodial when a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

COLE v State (Involuntary Confession) bulletin no. 206. During an interview, the defendant eventually confessed after the officer threatened the defendant with a court ordered polygraph, stated falsely that incriminating evidence was available, and other reassurances that he would get help. The confession was involuntary in that although ordinarily promises and inducements are not improper, the threat of a polygraph and other psychological coercion was, considering the totality of the circumstances improper.

WEST v State (Barricaded Subject, *Miranda* Not Required) bulletin no. 207. A barricaded suspect, while being sought for one crime, made incriminating statements about a separate crime in which he was subsequently charged while still in the barricaded situation. It was determined that *Miranda* was not required in this case since the conversation was not a custodial interrogation.

ANINGAYOU v State (Interview Becomes Custodial When Threat to Arrest for Another Crime is Made) bulletin no. 219. During a non-custodial interview, the following threat was made "… if you don't cooperate, I'm telling you right now that you can go to jail." After that threat, an incriminating statement was made. This statement was suppressed because the interview then became custodial for purposes of *Miranda*. A reasonable person in the suspect's position would have felt he was not free to leave or break off questioning.

MILLER v State (Involuntary Confession When You Promise Not to Prosecute) bulletin no. 244. Police assure if the fire was caused by an accident that they would not arrest and charge him. He confessed to setting the fire by accident and, despite the police promise, the DA elected to prosecute on negligence theory. Court threw out confession.

Texas v COBB (Right to Counsel is Offense Specific) bulletin no. 246. COBB is in jail, represented by counsel, when police interviewed him about a double homicide. The police do not notify Cobb's lawyer about the interview. His right to counsel did not bar the police from interviewing him about the murders.

State v Garrison (Right to Counsel Attaches When Custodial Interrogation Occurs or When Adversary Proceedings Commences) bulletin no. 304. Victim was found shot to death on 11-1-00. Police learned that GARRISON was the last person to see the victim alive. GARRISON was contacted on 11-2-00, given his Miranda warning and interviewed. He denied all knowledge of the homicide. Police contacted him again on 11-4-00; he still denied all knowledge. On 11-4-00, GARRISON (unbeknown by the police) contacted attorney Chad Holt. On 12-12-00 police again contacted GARRISON. He said on advice of counsel he was not going to talk to them. Police also contacted attorney Holt who informed the police that GARRISON would not be talking to them. In January of 2001 police learned that GARRISON's sister had pawned a gun of the same caliber used in the homicide. Police seized the gun and subjected it to testing. The test was inconclusive. Police contacted GARRISON on 1-18-01 and told him that the gun had been retrieved from the pawn shop and tested by experts. GARRISON was not given a Miranda warning. Police did not tell GARRISON that the tests were inconclusive. GARRISON then said that he had sold the gun to the victim the day before he was murdered. He also said that he had discovered the victim's body and saw the gun on the floor. Thinking he may be considered a suspect, and because he was on parole, he decided to remove the gun from the scene. Police asked him if he would be willing to take a polygraph test. He said he would and drove himself to the police station. Prior to the polygraph test he was given his Miranda warning and he signed the waiver. GARRISON was subsequently charged with the murder and with evidence tampering. He moved to suppress claiming he was in custody during the 1-18-01 interview and that his right to counsel had already attached. The court ruled that the statement was good because the police did not subject GARRISON to custodial interrogation and no adversary proceedings had commenced, so the police did not have to notify his lawyer.

State v SMITH (Non-Custodial Interrogation in Police Car) bulletin no. 255. SMITH was asked to get into police car for an interview. He was a suspect in a forcible rape. The trooper said "… well tell me the truth and ... I'm not going to arrest you." SMITH did not confess but made some admissions. He asked for a lawyer and the interview was terminated. For purposes of *Miranda,* he was not in custody.

BEAUDOIN v State (Failure to Give MIRANDA Warning Did Not Negate Subsequent Confession), bulletin no 261. Defendant called 911 to report that he had fatally stabbed his mother. He stayed on the line and furnished details of the event. He also told first responders including EMT, a private security guard and AST "rookie" trooper. The rookie trooper ultimately put defendant in back seat of locked patrol car and continued the questioning. The rookie failed to give subject the MIRANDA warning. Shortly thereafter, an AST Sgt. arrived who did give MIRANDA warning and later transported subject to investigators who also gave MIRANDA and obtained yet another statement. Subject argued that by rookie's failure to give MIRANDA, all subsequent confessions were fruit of poison tree. Court ruled admissible because of "stream of legally obtained (EMT, 911, private security guard) confessions.

JONES v State (Promise to "Go Off the Record" During Custodial Interview Renders Confession Involuntary), bulletin no. 265. Detective assured defendant that his statement was not being recorded and that they were talking off the record. In this case, the defendant did not give incriminating statements until he was assured by the police that they were talking off the record. The promise that a statement will remain confidential is like promises of leniency or immunity from prosecution.

VENT v State (Voluntary Confession of a Juvenile) bulletin no. 266. Although the 1st of 3 statements was suppressed, it did not taint the remaining two; juvenile made proper MIRANDA waiver and gave volunteered statement; police lied about strength of case and **psychology of police interviews.** Juvenile was 17 years and 11 months at the time of his arrest for the robbery, sexual assault and murder of a fifteen-year-old boy. He was interviewed on 3 occasions. The judge suppressed the first statement but allowed the remaining two to be admitted. The juvenile had slept and conferred with his mother between 1 & 2 and slept again between 2 & 3. He made a voluntary confession although the police lied to him about evidence they said they had. The defense expert who was called to testify about the risk of false confessions was not allowed to testify.

CHAVEZ v MARTINEZ (Failure to Give MIRANDA Warning Is Not Grounds For A Federal 1983 Suit), bulletin no. 267. MARTINEZ was shot by police. He was transported to the hospital where a police Sergeant, who failed to give him the MIRANDA warning interviewed him. No criminal charges were filed, but MARTINEZ filed a 1983 (civil) suit against the officer. The court said that the officer is entitled to "qualified immunity" because the statements given were not used at a criminal trial so there was no Fifth Amendment violation.

U.S. v PATANE (Failure to give MIRANDA warnings does not require suppression of physical fruits of voluntary statement) bulletin no. 285. During arrest for harassment at his residence defendant "cut off" the officer when he began the MIRANDA warnings by stating he knew his rights. The officer did not attempt to complete the warning. The officer was aware that defendant was in possession of an automatic pistol and asked him where it was located. The defendant initially said, "I'm not sure I should tell you anything about the Glock because I don't want you to take it from me." The officer persisted, and the defendant subsequently told the officer where the pistol was located and gave the officer permission to seize it. Defendant was subsequently charged with being a felon in possession of a firearm. He argued that the failure by the officer to give a MIRANDA warning required the court to suppress the (gun) evidence. Court ruled that this is non-testimonial evidence and that the fruits (the gun) of the unwarned statement do not require suppression.

SELECTED JUVENILE CASES

QUICK v State (Juvenile Waiver of *Miranda* rights) (no bulletin). In determining if the juvenile made a "reasoned (intelligent) *Miranda* waiver," the court will consider such factors as his age, intelligence, length of questioning, education, prior experience with law enforcement officers, mental state at the time of the waiver and whether there had been a prior opportunity to consult with parent, guardian or attorney.

WARDEN v ALVARADO (Non-Custodial Interview of Juvenile at Police Station Does Not Require Miranda Warning) bulletin no. 281. Victim was killed during attempted car jacking. Several months' later police developed Alvarado, who was 17 YOA at the time, as a suspect. Detectives contacted both him and his parents and asked him to come to the police station. Upon arrival the detectives informed the parents that the interview would not "take very long." The parents waited in the lobby and Alvarado was taken to an interview room. The entire interview, which was tape-recorded, lasted about two hours. During the interview Alvarado was asked on several occasions if he wanted to take a break; he declined. Alvarado admitted his involvement in the homicide and also that he had assisted the "shooter accomplish" hide the gun. He was never advised of his Miranda rights. After the interview he left the police station with his parents. Several months later he was arrested and charged with the murder. For purposes of Miranda, Alvarado was not in custody. The test is (1) circumstances surrounding the interview and (2) would a "reasonable person" feel free to terminate the interview and leave. The court also said that their prior decisions regarding Miranda have not mentioned a suspect's age, much less mandated its consideration.

KALMAKOFF v State (Violation of Miranda in first two statements does not require suppression of statements taken in 3rd and 4th interviews) bulletin no. 334. **REVERSED BY SUPREME COURT SEE BULLETIN 356.** Police violates defendant's Miranda Rights when they interviewed him twice on the same day. He was allowed to go back to school and ultimately home. Police contacted him at his home, and in the presence of his grandparents, he admitted to the murder. Police also interviewed him on the following day, when they arrested him. He argued that because of the Miranda violation on the first two interviews, any information obtained thereafter, even if he was advised of Miranda, must be suppressed because of the poison tree doctrine. Court said statements were allowable because the defendant did not make any admissions about the murder during the first two interviews. He did admit to other violations (minor consuming alcohol and taking a gun from a residence) during the first two interviews but made no admissions about the murder.

New Jersey v T.L.O. (Search of Student By School Officials) bulletin no. 90. The Fourth Amendment does apply to teachers who are employed by public (state) operated schools. However, warrantless searches can be conducted based on reasonable suspicion. There is a different standard for the teacher as compared to the police officer.

SAFFORD SCHOOL DISTRICT v Redding (Strip Search by School Officials) bulletin no. 341. When school officials required a 13-year-old female to pull her bra out and to the side and shake it, and to pull the elastic on her underpants, thus exposing her breasts and pelvic area to some degree, the court ruled that lacking sufficient suspicion to extending the search to this degree violates the Fourth Amendment.

RIDGLEY, PLUMLEY and BOSCH v State (Knowing & Intelligent Waiver of *Miranda* by Juvenile) bulletin no. 95. Since the State could not establish that the juvenile "knowingly and intelligently" waived his rights in confessing to murder, the confession was suppressed. (See bulletin no. 108 - Decision REVERSED.)

State v RIDGLEY (Knowing and Intelligent Waiver of *Miranda* by Juvenile) bulletin no. 108. See bulletin no. 95. The Alaska Supreme Court reversed the Court of Appeals and found a knowing and intelligent waiver was made, thereby making the confession voluntary.

J.R.N. v State (Notification of Parents Before Subjecting In Custody/Juvenile to Interrogation) bulletin no. 162. A custodial interview was held with a juvenile and he was given *Miranda* warnings. The juvenile was asked if he wanted his parents notified or present and the juvenile declined. Alaska Delinquency Rule 7(b) requires

notification of the parents, the court system and DFYS regardless of the wishes of the child. This assumes that juveniles may find it difficult to make informed, intelligent choices. This case was REVERSED on appeal (see bulletin 182).

State v J.R.N. (Juvenile's Right to Waive Presence of Parents During Custodial Interrogation) bulletin no. 182. A juvenile can waive his right to have his parents notified. Since a juvenile can waive constitutional rights against self incrimination and presence of counsel during interrogation, it follows that they can also waive their statutory right to have their parents immediately notified since the former rights are of a higher order than the statutory right.

Vernonia School District v Wayne ACTON (Mandatory Drug Testing for Students) bulletin no. 191. Mandatory drug testing for students who participate in school sports is not unreasonable under the Fourth Amendment.

BEAVERS v State (Involuntary Confession From 16-Year-Old) bulletin no. 238. Troopers contacted BEAVERS at his place of employment and asked him to step outside so they could interview him. The interview took place in the police car. The officers said they needed to talk to him about robberies and that "if you try to hide it you are going to get hammered." He was assured he was not under arrest, but the court said, based on the comments of the officers, the confession was involuntary.

Florida v J. L. (Seizure of Juvenile Based on Anonymous Tip Lacked Probable Cause) bulletin no. 239. Anonymous caller reported that a young black male was at a intersection and was carrying a gun. Anonymous tip, in and of itself, is not sufficient to conduct pat down.

FITTS v State (Mother had Authority to Consent to Search of Bedroom Where Guest Resided with Her Son) bulletin no. 249. Two persons robbed a cab. Police learned that suspect FITTS was staying with 16-year-old boy, who turned out to be the second suspect. Juvenile's mother gave police her consent to search the bedroom where the two boys were staying. She had authority to consent to the search.

DOYLE v State, (Third Party Consent to Enter) bulletin no. 52. Son (estimated age between 11 and 14) of defendant gave officers consent to enter residence, whereupon defendant (father) was arrested. Court ruled that the son had the authority to permit officers to enter residence.

VENT v State (Voluntary Confession of a Juvenile) bulletin no. 266. Although the 1st of 3 statements was suppressed, it did not taint the remaining two; juvenile made proper MIRANDA waiver and gave volunteered statement; police lied about strength of case and **psychology of police interviews**, juvenile was 17 years and 11 months at the time of his arrest for the robbery, sexual assault and murder of a fifteen-year-old boy. He was interviewed on 3 occasions. The judge suppressed the first statement but allowed the remaining two to be admitted. The juvenile had slept and conferred with his mother between 1 & 2 and slept again between 2 & 3. He made a voluntary confession although the police lied to him about evidence they said they had. The defense expert who was called to testify about the risk of false confessions was not allowed to testify.

Q. MISCELLANEOUS CASES OF INTEREST

U.S. v HARRIS (Retention of Field Notes) bulletin no. 4. The federal courts in a 9th Circuit case, require officers to retain their field notes because the notes are evidence to which the defendant is entitled.

MORRELL v State (Duty of Defense Attorney to Disclose Evidence to District Attorney) bulletin no. 14. The defense attorney has a responsibility to furnish physical evidence to the prosecutor.

YOUNGBLOOD v West Virginia (Duty of Police to Collect and Provide Exculpatory Evidence) bulletin no. 312. Defendant, who raised consent as a defense, was convicted of sexual assault and other charges. He received a sentence of 26 to 60 years imprisonment. Several months after the conviction, the investigator who worked the case, was contacted by an individual who had a note from two of the victims that stated (the victims) "had played him (the defendant) for a fool and thanked him for performing oral sex on one of the victims." The investigator told the informant he did not need the note and instructed the person to destroy it. The Brady v Maryland rule requires the government, including the police, to disclose evidence favorable to the defense.

LISTON v State (Seizure of Palm Prints of Defendant While in Custody) bulletin no. 65. The defendant, while in custody, had his palm prints seized without a court order. The prints are compared and subsequently identified with latent prints that were lifted from another crime scene.

Anchorage v LLOYD (Carrying Concealed Weapon) bulletin no. 81. The Court upheld the Municipality of Anchorage ordinance regarding the carrying of a concealed weapon. This ordinance is more stringent than the Alaska State statute regarding same offense.

WARDEN v Williams (Inevitable Discovery) bulletin no. 85. While the police were searching for a body, the defendant confessed to the crime and led police to the exact location of body. The confession was ruled inadmissible, however, the body or photographs of it were not suppressed as "fruits of the poison tree" because the police were searching in the area and would have discovered the body without the defendant's assistance.

U.S. v LEON and Massachusetts v SHEPARD ("Good Faith" Exception to Exclusionary Rule) bulletin no. 86. Although the magistrate in the Leon case issued the warrant based on ample probable cause as detailed in the affidavit of support of the warrant, the reviewing court did not agree. The Shepard case involved a warrant that contained several technical defects. In both cases, the requesting officers had sought assistance from their respective district attorney offices. The issuing magistrate in the Shepard case was aware of the technical defects. In both cases, the U.S. Supreme Court allowed the evidence to be admitted while recognizing the Exclusionary Rule (See Mapp v Ohio, 367 US 643) as a principal mode of discouraging lawless police conduct but maintained that its major impact was a deterrent to police misconduct. In both cases, the police officers followed procedure as required. The errors, if any, were attributed to the issuing magistrates not the police officers.

Malley and Rhode Island v BRIGGS (Possible Civil Liability for Officers Who Obtain A Warrant Lacking Probable Cause) bulletin no. 101. The Court ruled that monetary damages against the police could possibly be awarded under 42 1983 (Federal) suit. It should be noted that police officers seeking warrants that they know lack probable cause could be the subjects of civil suits.

Maryland v GARRISON (Description of Premises to be Searched as Well as Persons or Things to be Seized) bulletin no. 109. Police had a warrant to search a third-floor apartment. Police believed there was only one apartment on the floor and in the process of searching what they believed to be that apartment they discovered they were, in fact, searching a second apartment and upon discovery discontinued the search. Evidence seized from the second apartment not named in the warrant was allowed. The warrant was valid when issued, the officers were not aware of the second apartment and the court allowed latitude for the HONEST MISTAKE.

McLAUGHLIN v State (Entrapment/Right to Counsel and to Remain Silent) bulletin no. 113. When an officer receives calls from a defendant awaiting trial, Sixth Amendment rights do not protect the defendant when the defendant, now suspect, embarks on new criminal ventures, especially when the defendant initiated the contacts.

BUSBY v Anchorage (Duty to Take Persons Incapacitated by Alcohol into Protective Custody) bulletin no. 115. Police officers have a duty to take persons into protective custody who are incapacitated by alcohol when a statute enunciates the appropriate action to be taken when a person meets the criteria described in the statute.

WARD v State (Failure to Obtain Independent Blood Test as Requested by OMVI Defendant) bulletin no. 122. A person arrested has the right to an independent blood test by a person (facility) of his or her own choosing, not necessarily the facility contracted by the police department to conduct such tests.

SKINNER, Secretary of Transportation v Railway Labor Executives Union; **NATIONAL TREASURY EMPLOYEES UNION v Von Raab, US Customs Service**; **LUDTKE v Nabors Drilling** bulletin no. 129. Government regulations pertaining to railroad employees that require warrantless mandatory drug/alcohol screening does not violate Fourth Amendment rights if the compelling government interests outweigh privacy concerns, such as safety sensitive tasks. In the case of the US Custom Service, results of drug testing are not available for law enforcement prosecution but are used to detect drug use prior to assignment of personnel to sensitive positions. In both cases the public interest is balanced against the individual's privacy and, in both cases, warrants were not required.

In LUDKE v Nabors Drilling, the Alaska Constitution does not extend the right of privacy to the actions of private parties. In this case, drug testing is conducted during working hours and is related to safety work issues rather than overall controlling of illegal drug use. In addition, the policy was clearly stated to all employees prior to implementation. The drug testing policy was upheld.

GUNDERSEN v Anchorage (OMVI Defendant's Right to Independent Blood Test) bulletin no. 143. A defendant must be given an opportunity to challenge the reliability of the breath test via an independent test. The defendant declined to take an independent test, even though an opportunity was given to the defendant to obtain an independent test and assistance in obtaining the test was offered. As a result, the Intoximeter results could be used as evidence even though the initial breath sample was not preserved.

Michigan State Police v SITZ, et al (Sobriety Checkpoint) bulletin no. 144. All vehicles passing through a checkpoint were briefly stopped and drivers examined for signs of intoxication. These stops did not violate the Fourth Amendment because 1) checkpoints were selected pursuant to guidelines and all vehicles were stopped; 2) data indicated the stops would promote roadway safety; and 3) the State's interest in preventing drunk driving outweighed the degree of intrusion upon individual motorists. This stop was classified as an "investigatory" stop. The Alaska Court of Appeals might not reach the same conclusion since "investigatory" stops are not allowed without probable cause (as opposed to reasonable suspicion) unless imminent public danger exists.

DeNARDO v State (State Statute Prohibiting Carrying a Concealed Weapon) bulletin no. 164. The State statute, which prohibits carrying a deadly weapon “concealed on the person,” includes a deadly weapon carried in a briefcase, purse or other hand-carried container.

JACOBSON v U.S. (Entrapment) bulletin no. 169. In 1984, the defendant ordered two magazines containing nude photos of young boys at a time when this was a legal purchase. Over a 2-year period, postal inspectors made repeated efforts to explore the defendant's willingness to break the law by ordering sexually explicit magazines and he finally ordered a magazine. Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act and then induce the commission of a crime. The prosecution must prove that the defendant was disposed to commit the crime before providing the opportunity for a suspect to commit a crime.

D. W. v State ("Catch All" Exception to Hearsay Rule) (no bulletin). The Department of Health and Human Services brought a suit against D. W. when it was learned that he had sexually assaulted his two daughters A.S.W. and E.W. The Superior Court ruled that the two daughters were "children in need of aid" and awarded custody to their mother. D.W. appealed the ruling claiming a videotaped statement given to the police by A.S.W. (lasting about one hour) was played for the judge. Because A.S.W. did not testify at a hearing, he argued that he was denied his right to confront and cross-examine witnesses. The Supreme Court ruled that the videotaped statement was properly admitted under the "catch all" exception to the hearsay rule (AK Evidence Rule 804 (b) (5)).

DEZARN v State (Exception to Hearsay Rule) bulletin no. 170. Soon after being sexually abused by her mother's live-in boyfriend, a two-year-old girl told her mother what happened but, during trial, the two-year-old could not meaningfully relate the circumstances of the abuse. The mother could testify on behalf of her daughter under one of the Hearsay Exceptions, Excited Utterance. To be admissible, an excited utterance must be made under a condition "which temporarily stilled the capacity for reflection and produced utterances free of conscious fabrication." Excited utterances are usually not the product of questioning, but in this case a neutral and non-suggestive "What's wrong" was used to prompt a response.

HAZELWOOD v State (Immunity - Inevitable Discovery/Independent Source) bulletin no. 171. The Exxon Valdez ran aground and HAZELWOOD, the captain, reported the spill to the Coast Guard. Under Federal law, this reporting granted HAZELWOOD immunity as a matter of law. Under the independent source rule, "once immunity is shown, the State must prove that evidence was developed or obtained from sources or by means entirely independent of and unrelated to the earlier compelled testimony" to show that HAZELWOOD was not entitled to immunity. This burden of proof was not satisfied. This case was REVERSED. See bulletin no. 183.

JEFFERY ANDERSON v State (ZEHRUNG affirmed – right to post bail prior to booking; inevitable discovery doctrine applies because defendant would have been booked anyway) bulletin no. 282. Subject arrested on outstanding F/A warrant; bail $1,000. Officer failed to inform defendant that he would be given a reasonable opportunity to post bail prior to booking. Corrections officer found a Tupper-ware container containing white powder. The container was given to the arresting officer. Laboratory test later confirmed presence of methamphetamine. Officer then informed defendant of his right to bail. As it turned out defendant was unable to post bail and remained in jail for 4 days. Court ruled that ZEHRUNG still applies and that the officer should have informed ANDERSON of his right to post bail prior to booking but also said the evidence could be admitted under “inevitable discovery doctrine” because the evidence would have been found during the booking process.

JOHNSON v Fairbanks (Improper State/Federal Seizure of Suspected Drug Money for Administrative Forfeiture) bulletin no. 176. Johnson was arrested for a DV assault charge outside his residence and drugs seized in the residence with a search warrant were suppressed due to an illegal entry on the part of the police. The seized money was turned over to the DEA prior to dismissal of the charges. The State may only transfer seized property to the DEA after it has completed forfeiture proceedings, and since the State court was the first to have jurisdiction over the property and the transfer violated State law, the DEA's forfeiture had no effect. The money was returned to the defendant.

AUSTIN v U.S. (Federal Seizure of Real Property for Administrative Forfeiture) bulletin no. 179. The excessive fines clause of the Eighth Amendment applies to federal forfeiture of property used to facilitate the distribution of drugs. In effect, you must demonstrate that the property seized was purchased from drug sales profits or demonstrate the profits from drug sales are the defendant's sole source of income to avoid excessive punishment that the excessive fines clause was designed to prevent.

HAZELWOOD v State (Immunity - Inevitable Discovery/Independent Source) bulletin no. 183. See bulletin no. 171. The Supreme Court ruled in two parts: 1) affirmed the court's decision (granting immunity by Federal Statute) pertaining to the "independent source" because he reported the spill over the radio; and 2) overruled the decision that the "inevitable discovery doctrine" did apply. This issue is: would the evidence of the spill been inevitably discovered without reference to immunized statements? The answer was yes, since

Congress did not rely solely upon the grant of immunity to encourage the reporting of spills since failure to report is a criminal act.

LIBRETTI v U.S. (Forfeiture of Property and Money Pursuant to Negotiated Plea of Guilty) bulletin no. 195. Libretti pled guilty and agreed to forfeit property. Although he was advised of the consequences of waiver of a jury trial, he was not advised of his right to a jury determination of forfeitability under Federal law. In this case, the plea agreement was clear in that the plea agreement would lead directly to sentencing and would end all proceedings.

WASKEY v Anchorage (Civil Allegations of Constitutional Violations, False Arrest and Imprisonment) bulletin no. 196. WASKEY was arrested and he used his brother's name. WASKEY failed to appear and his brother was later arrested and jailed for 10 days. The charges were later dropped after proper identification was made. The arresting officer does not owe a duty of care in tort to ensure that people arrested are who they say they are and, therefore, the arresting officer was not negligent. There was no claim of false arrest since the Municipality obtained an arrest warrant.

BENNIS v Michigan (Forfeiture - Innocent Owner Defense) bulletin no. 200. Michigan's abatement law does not violate the 14th (due process) or 5th (taking her interest for public use without compensation) Amendments to the U.S. Constitution. In general, innocent owners of property are exempt from federal forfeiture laws as long as they can prove they did not know their property was being used for illegal purposes.

U.S. v URSERY and $405.089.23 (Civil Forfeitures Do Not Constitute Double Jeopardy) bulletin no. 201. Civil Forfeiture does not constitute punishment for purposes of the double jeopardy clause.

KNIX v State (Perjury by False Sworn Statement) bulletin no. 204. The defendant made a statement to a State DPA employee (not a peace officer) and signed the statement declaring, “Under penalty of perjury, this is a true and accurate statement.” The employee was a notary and he affixed his notary seal. The statement was later found to be false and even though the State employee did not administer an oath or affirmation, it was determined that the statement qualified as a “sworn statement.”

HARRISON v State (Perjury by Unsworn and Not Notarized Statement) bulletin no. 205. The defendant made a sworn statement under AS 9.63.020 stating “under penalty of perjury” that the statement was true and correct. He later (being arrested and convicted) claimed the statements were not true, that they were not sworn statements because he did not swear to them before a notary or other official. The statement was found to be a sworn statement as a matter of law.

SNYDER v State (DWI Defendant’s Right to Independent Blood Test) bulletin no. 213. Police must now allow a defendant the opportunity to obtain an independent test of his blood alcohol content regardless of the fact that a breath test was not obtained for whatever reason.

ERICKSON v State (Multiple Convictions for Sexual Assault Involving the Same Victim During Single Episode) bulletin no. 220. A defendant was convicted of four counts of sexual abuse during one incident since each incident alleged a different form of penetration. Since each form of penetration was different, it supported four distinct convictions.

BALLARD v State (Court Upholds Use of Horizontal Gaze Nystagmus Test – With Qualifications) bulletin no. 224. The validity of the HGN test was upheld if the test is not used to quantify the level of intoxication and is given the same weight as other field sobriety tests.

Sacramento County v LEWIS (High Speed Police Chases) bulletin no. 227. A police chase of a motorcyclist resulted in the death of the passenger after having been run over by the police vehicle after the motorcyclist crashed. High speed chases, with no intent to harm, do not give rise to liability under the 14th amendment, even if department policy was violated.

Plumhoff v Rickard (High Speed Chase Involving Deadly Force Does Not Violate Fourth Amendment) bulletin no. 371. Arkansas Police stopped a vehicle because it was driving with one headlight. Rickard was

the driver and he had a passenger, Kelly Allen with him. During the stop the officer asked Rickard if he had been drinking and he said he had not. The officer asked Rickard to step out of the vehicle at which time Rickard sped away. A police pursuit, involving five police cars ensued. Rickard reached speeds more than 100 miles-per-hour causing other vehicles to take evasive action to avoid an accident. At one-point Rickard drove into a parking lot and the police thought they had him hemmed in. Rickard was able to back towards an officer almost hitting one. A police officer fired three shots into the vehicle, but it managed to drive away. Other officers fired an additional 12 rounds into the vehicle causing the car to crash into a building. Both driver and passenger were killed. U.S. Supreme Court ruled the use of Deadly Force to terminate a dangerous car chase does not violate the Fourth Amendment.

State v COON (Admissibility of Voice Spectrographic Analysis Evidence) bulletin no. 231. Voice analysis was introduced in this case which was determined to be generally accepted within the scientific community based on: 1) judicial opinions; 2) scientific literature; and 3) expert testimony presented at an evidentiary hearing.

FLORIDA v T. White (Forfeiture of Vehicle Pursuant to Statute) bulletin no. 233. Police had probable cause to believe vehicle contained contraband and, based on Florida (forfeiture) statute, seized it without benefit of a warrant from "public place."

WILSON v U. S. Marshall et. al (Media Ride-Along Programs Violate Fourth Amendment) bulletin no. 234. Media was on a ride-along and accompanied officers into residence during the execution of arrest warrant. WILSON and his wife brought civil (1983) suit alleging violation of their (privacy) Fourth Amendment Rights. Court agreed, it did violate their rights.

MacDONALD v State (Domestic Violence Protective Order) bulletin no. 237. Police attempted to serve court order but were unable to locate MacDONALD. MacDONALD was aware of the existing order. He was subsequently charged with violation of the order and argued that because he was never formerly served he should not be prosecuted for the violations. Court disagreed, so long as he was aware of the existing order, he can be successfully prosecuted even though he was never formerly served.

SAMANIEGO v Kodiak (Excessive Force) bulletin no. 242. Kodiak police used excessive force when they arrested SAMANIEGO. The police were assisting INS in the immigration status of other subjects when she drove by and asked what was going on. She was ordered out of her car and subsequently arrested. She received injuries because of the arrest.

CRAWFORD, Keane-Alexander v Kemp and State (Police Officers are Not Entitled to Civil Immunity on Cases Involving False Arrest, etc.) bulletin no. 314. CRAWFORD refused to identify himself to a trooper who was looking for a person (in the court clerk's office) for violation of a domestic violence violation. CRAWFORD was in the clerk's office preparing a court paper for his divorce. When he refused to identify himself, the trooper looked over his shoulder to read the paperwork that CRAWFORD was preparing. CRAWFORD responded by, in a loud voice, saying "you should be proud of yourself that you can read over people's shoulders." The situation escalated when CRAWFORD asked the trooper for his name. CRAWFORD left the clerk's office, went to the Judicial Services office and obtained the name of the trooper's (KEMP) supervisor. CRAWFORD returned to the clerk's office and informed KEMP that he had obtained the name of his supervisor and indicated that he was going to file a complaint. KEMP then approached CRAWFORD, who was once again seated, got close to him and said that if he didn't be quiet he would arrest him for disorderly conduct. KEMP was so close to CRAWFORD that spittle from KEMP's mouth landed on CRAWFORD. CRAWFORD told KEMP to stop spitting on him; KEMP said if he talked again he would be arrested. CRAWFORD once again told KEMP to stop spitting on him and KEMP arrested him. The district attorney dismissed the case. CRAWFORD filed a civil suit against both KEMP and the State. The case against the State was dismissed. The Supreme Court of Alaska ruled that KEMP did not have immunity from the civil suit and a jury should hear the case.

WINTERROWD v Nelson et al (Police Officers are Not Entitled to Qualified Immunity if Excessive Force is Used During Routine Traffic Stop) bulletin no 318. Subject was stopped by three police officers who suspected that his license plates were invalid. No other traffic violations occurred. Subject believed the State could not force him to have license plates. The police decided to question him in one of the police cars and

asked him to put his arms behind his back so that they could pat him down. He complained that he had a sore shoulder. They then forced him onto the hood of the car and forced his arm behind his back. He called them "cowards," "jack-booted thugs," and "armed mercenaries." He brought a civil (1983) suit against the officers alleging excessive force. The officers argued that they were entitled to" qualified immunity." The court disagreed and sent the case back for a jury trial.

SCOTT v Harris (Police High Speed Pursuit Does Not Violate Fourth Amendment) bulletin no. 319. Police forced Harris's vehicle off the road during a high-speed chase. Harris was injured to the extent he became a quadriplegic. The police requested qualified immunity and the lower courts denied this request. The U.S. Supreme Court reversed the lower courts stating the actions of the police were reasonable and that excessive force was not used. They based their decision, in part, on the fact that other innocent drivers and pedestrians were at risk because of HARRIS.

ATWATER v City of Lago Vista (Warrantless Arrest for Minor Violations is Permissible) bulletin no. 247. Police arrested ATWATER for failure to keep her children restrained by seatbelts as prescribed by Texas law. She had been warned on a prior occasion, so the officer elected to arrest her rather then issue her a citation. Although the arrest may have been "humiliating," it did not violate the Fourth Amendment.

APDEA, et al v Anchorage (Government Mandated Random Drug Testing Violates Alaska Constitution) bulletin no. 251. City of Anchorage required police officers and firefighters to submit to random drug testing. The State Supreme Court ruled this mandate "unreasonable" under Alaska's Constitution. The policy violates Article I, Section 14 of the Constitution.

State v EUTENEIER (Issuance of Warrant to Seize Evidence of "Violation" or "Infraction" is Permissible) bulletin no. 252. Police obtained a warrant to search a residence for evidence of "minors consuming" alcohol, which is listed by statute as a violation. Because these violations are prosecuted criminally, the issuance of the warrant was justified.

WASSILLIE v State (Hearsay Admitted as Prior Inconsistent Statement) bulletin no. 260. 90-year-old assault victim (father of defendant) did not remember event. The investigating officer could testify as to what the victim told him on the night of the event.

VASKA v. State (Hearsay Admitted as Prior Inconsistent Statement) bulletin no. 271. Defendant was convicted of sexually assaulting a three-year-old girl. His first trial was reversed. At the second trial, he was once again convicted primarily on the hearsay testimony of two witnesses whom the victim had told shortly after the event. At the second trial, the victim could not remember what she had said and was not forced to testify. The hearsay evidence was admitted as a prior and inconsistent statement and doing so did not violate the confrontation clause of the U.S. or Alaska constitutions.

DAVIS v Washington (911 Conversation Admitted as Hearsay as Non-Testimonial) bulletin no. 311. McCottry called 911 to report she had been assaulted by her former boyfriend, Adrian DAVIS. Police responded, saw evidence of injury and arrested DAVIS on a felony charge. McCottry was unavailable at trial to testify. The State admitted the 911 call into evidence. The court said that because the 911 call reported an ongoing emergency, it (the tape) could be played at trial because it was "non-testimonial."

ANDERSON, Joseph v State (Statements Made by Assault Victim at Scene Admitted as Hearsay) bulletin no. 322. Police responded to a report of an assault. On arrival they found the victim, Carroll Nelson, in an apartment. When asked what happened, he told the officers that "Joe hit me with a pipe." The victim was transported to the hospital where he underwent surgery for life threatening injuries. Anderson, who was at the scene, was arrested for felony assault. The victim did not appear at trial to testify. The police officer could testify to the hearsay statement that "Joe hit me with the pipe" because the primary purpose of the question was to enable the officer to respond to an ongoing emergency. (Like DAVIS above)

HAMMON v Indiana. bulletin no. 311. Police responded to a domestic dispute. When they arrived, they found Amy HAMMON on the porch of the residence. She seemed somewhat frightened but told the police that nothing was the matter. Police asked and received permission to enter the residence. Hershel Hammon,

Amy's husband, was in the residence. The police observed broken glass and other items which led them to believe an assault had taken place. They, over the objection of Hershal, separated the two. Amy finally related that Hershal had assaulted her. Hershal was arrested. Amy was subpoenaed to appear at trial but failed to appear. The officer could testify as to what Amy told him about the assault. The court ruled that because there was no emergency in progress when they (the police) arrived, the hearsay statements were not allowed. This was because the defendant (Hershal) did not have the opportunity to cross-examine Amy.

JAMES v State (Probation Officer Cannot Force Defendant to Give Up 5th Amendment) bulletin no. 270. The defendant was convicted of sexual assault in the second degree and sentenced to ten years with four suspended on the condition he participate in a sex offender program while incarcerated. He told the therapist "I'm not going to talk about this because basically I didn't do it and I'm under appeal." He was charged with violation of his probation and the four-year probation was revoked. The court said he could not be compelled to give evidence against himself. Not only that, he might have put himself in a position where the State could have charged him with perjury.

SMITH v DOE No. 1 (U.S. Supreme Court Upholds Alaska's Sex Offender Registration Act) bulletin no. 264. The Act is not designed to be punitive nor does its retroactive application violate the ex post facto clause of the United States Constitution.

VENT v State (Voluntary Confession of a Juvenile) bulletin no. 266. Although the 1st of 3 statements was suppressed, it did not taint the remaining two; juvenile made proper MIRANDA waiver and gave volunteered statement; police lied about strength of case and **psychology of police interviews**, juvenile was 17 years and 11 months at the time of his arrest for the robbery, sexual assault and murder of a fifteen-year-old boy. He was interviewed on 3 occasions. The judge suppressed the first statement but allowed the remaining two to be admitted. The juvenile had slept and conferred with his mother between 1 & 2 and slept again between 2 & 3. He made a voluntary confession although the police lied to him about evidence they said they had. The defense expert who was called to testify about the risk of false confessions was not allowed to testify.

HAAG v State (Investigatory Seizure of Armed Robbery Suspect Leads to Show-Up) bulletin no. 298. Police respond to report of two black males wearing dark clothing and ski masks who are in the process of committing home invasion/armed robbery. Police arrive within minutes and see HAAG running from the direction of the victim's residence. Police seize HAAG at gun point and handcuff him. Although he is a white male, he is dressed in black and has on dark gloves. Police transport him back to the scene where a witness identifies him by his size and clothing. Later police find a Rx bottle in the name of the victim in the rear seat of the patrol car where HAAG had been confined. They also find a gun in the area HAAG was running. Court ruled this was a proper investigative seizure and that the subsequent show-up was proper.

R. LEGAL BULLETINS

S. CASE LAW CITATION INDEX

A

B

C

CALIFORNIA v Acavedo, bulletin no. 185	59 LW 4779 / 114 L Ed 619
CALIFORNIA v Carney, bulletin no. 94	53 LW 4521
CALIFORNIA v Greenwood and Van Houten, bulletin no. 119	56 LW 4409
CALIFORNIA v Hodari, bulletin no. 157	59 LW 4335
CARMAN v State, bulletin no. 30	658 P.2d 131
CAROTHERS & UNGER v State, bulletin no. 53	640 P.2d 151
CARR v State, bulletin no. 174	840 P.2d 1000
CARROLL v U.S., no bulletin, see Section J text	267 U.S. 132
CARTER v State, bulletin no. 199	910 P.2d 619
CARTER, S v State, bulletin no. 269	72 P.3d 1256
CASTLE v State, bulletin no. 241	999 P.2d 169
CHILTON v State, bulletin no. 35	611 P.2d 53
CHAMBERS v Maroney, no bulletin	399 U.S. 43
CHAVEZ v MARTINEZ, bulletin no. 267	538 U.S. 760
CHIMEL v California, no bulletin, see Section E text	395 U.S. 752
CHRISTIANSON v State, bulletin no. 112	734 P.2d 1027
CLARK, Marteshia v State, bulletin no. 350	231 P.3d 366 (Alaska 2010)
CLARK, Richard v State, bulletin no. 12	574 P.2d 1261
CLARK, Scott v State, bulletin no. 297	112 P.3d 676
COFEY v State, bulletin no. 344	216 P.3d 564 (Alaska 2009)
COLE v State, bulletin no. 206	923 P.2d 820
COLEMAN v State, bulletin no. 3	533 P.2d 40
COLLIDGE v New Hampshire, no bulletin, see Section B text	403 U.S. 443
COLLINS, Ryan A. v Virginia, bulletin no.382	USSC N0. 16-1027
COOPER v California, no bulletin, see Section J text	386 U.S. 58
COPELIN v State, bulletin no. 64	659 P.2d 1206
COWLES v State, bulletin no. 256	23 P.3d 1168
CRAWFORD, Kirk v State, bulletin no. 279 (court of appeals 2003)	87 P.3d 824
CRAWFORD, Keane-Alexander v Kemp and State, bulletin no. 314	139 P.3d 1249
CRAWFORD, Kirk v State, (state Supreme Court affirming #6020)	138 P.3d 254
CRAWFORD, Phillip v State, bulletin no. 287	100 P.3d 440
CRUSE v State, no bulletin (see bulletin no. 19) Section J and M text	584 P.2d 1141
CULLOM v State, bulletin no. 78	673 P.2d 904

D

DAVIS v State, no bulletin, see Section K text	706 P.2d 1198
DAVIS, Flora et al v State, bulletin no. 218	938 P.2d 1076
DAVIS, Adrian v Washington, bulletin no. 311	111 P.3d 844
DAYGEE v State, bulletin no. 10	514 P.2d 1159
DEAL v State, no bulletin, see Section E and K text	626 P.2d 1073
DEEMER v State, bulletin no. 351	244 P.3d 69 (Alaska 2010)
DeNARDO v State, bulletin no. 164	819 P.2d 903
DEPP v State, bulletin no. 87	686 P.2d 712
DEZARN v State, bulletin no. 170	832 P.2d 589
DOYLE v State, bulletin no. 52	633 P.2d 306
D.R.C. v State, bulletin no. 58	646 P.2d 252
DUNAWAY v New York, bulletin no. 33	442 U.S. 200
DUNBAR v State, bulletin no. 134	677 P.2d 1275
DUNCAN, Russell v State, bulletin no. 327	178 P.3d 467
DUNN v State, bulletin no. 63	653 P.2d 1071

E

EARLEY v State, bulletin no. 140	789 P.2d 374
EDWARDS v Arizona, bulletin no. 48	451 U.S. 477
ELSON v State, bulletin no. 51	633 P.2d 292
ERICKSON v State, no bulletin, see Section A text	507 P.2d 508
ERICKSON, Brian v State, bulletin no. 220	950 P.2d 580
ERICKSON, Joseph v State, bulletin no. 313	141 P.3d 356

F

FANNIN v State, bulletin no. 151	804 P.2d 1302
FARRELL v Anchorage, bulletin no. 84	682 P.2d 1128
Fernandez, Walter v California, bulletin no. 369	571 U.S. ___
FINCH v State, bulletin no. 22	592 P.2d 1196
FITTS v State, bulletin no. 249	25 P.3d 1130
FLEENER v State, bulletin no. 88	686 P.2d 730
FLORIDA v Harris, Clayton, bulletin no.	363 U.S. 586
FLORIDA v Jardines, Joelis, bulletin no. 364	569 U.S. ___
FLORIDA v J. L., bulletin no. 239	529 U.S. 266
FLORIDA v Jimeno, bulletin no. 159	59 LW 4471
FLORIDA v Riley, bulletin no. 127	57 USLW 4126
FLORIDA v T. White, bulletin no. 233	526 U.S. 559
FOX v State, bulletin no. 167	825 P.2d 938
FREE v State, bulletin no. 39	614 P.2d 1374

G

GALLMEYER v State, bulletin no. 54	640 P.2d 837
GEORGE v State, bulletin no. 172	836 P.2d 960
GEORGIA v Randolph, bulletin no. 306	126 S. Ct. 1515
GIBSON, Robert v. State, bulletin no. 337	205 P.3d 352 (Alaska 2009)
GIBSON, Thomas v State, bulletin no. 98	708 P.2d 708
GIBSON, William v State, bulletin no. 141	789 P.2d 383
GOULDEN v State, no bulletin, see Section M text	656 P.2d 1218
GOODLATAW v State, bulletin no. 175	847 P.2d 589
GRAY, Terry v State, bulletin no. 25	596 P.2d 1154
GRAY, Terry v State, bulletin no. 149	798 P.2d 346
GRIFFIN v. Wisconsin, bulletin no. 114	55 USLW 5156
GUIDRY v State, no bulletin, see Section B text	671 P.2d 1277
GUNDERSEN v Municipality of Anchorage, bulletin no. 143	792 P.2d 673

H

HAAG v State, bulletin no. 298	117 P.3d 775
HAMILTON v State, bulletin no. 263	59 P.3d 760
HAMMON v Indiana, bulletin no. 311	853 NE2d 477
HAMPEL v State, bulletin no. 97	706 P.2d 1173
HARRIS & STEPHAN v State, bulletin no. 99	711 P.2d 1156
HARRISON, Michael v State, bulletin no. 181	860 P.2d 1280
HARRISON, Danny v State, bulletin no. 205	923 P.3d 107
HASKINS v Municipality of Anchorage, bulletin no 248	22 P.3d 31
HAYS v State, bulletin no. 177	850 P.2d 651
HAZELWOOD v State, bulletin no. 171	836 P.2d 943
HENRY v State, bulletin no. 45	621 P.2d 1
HERRING, Bennie D. v U.S., bulletin no. 333	492 F.3d 1212
HIIBEL v Sixth District Court of Nevada. Bulletin no 283	72 U.S. LW 4509 / 73 USLW 3121
HIGGINS v State, bulletin no. 188	887 P.2d 966
HILBISH, v State, bulletin no. 189	891 P.2d 841
HINKEL v Anchorage, bulletin no. 41	618 P.2d 1069
HORTON v California, bulletin no. 145	58 LW 4694
HOTRUM v State, bulletin no. 305	130 P.3d 965

HUDSON v Michigan, bulletin no. 309	126 S. Ct. 2159
HUGO v State, bulletin no. 194	900 P.2d 1199
HUNTER v State, no bulletin, see Section P test	590 P.2d 888

I

ILLINOIS v Caballes, bulletin no. 292	543 U.S. 405
ILLINOIS v Gates, bulletin no. 73	462 U.S. 213
ILLINOIS v Lidster, bulletin no. 276	72 USLW 4120
ILLINOIS v McArthur, bulletin no. 245	531 U.S. 326
ILLINOIS v Wardlow, bulletin no. 236	528 U.S. 119
INGRAM v State, no bulletin, see Section B text	703 P.2d 415 / 719 P2d 265

J

JACKSON v State, no bulletin, see Section N text	657 P.2d 405
JACKSON, Sterling v State, bulletin no. 160	791 P.2d 1023
JACOBSON v US, bulletin no. 169	60 LW 4307
JAMES, Daryle v State, bulletin no. 270	75 P.3d 1065
JOHNSON, Perry v Fairbanks, bulletin no. 176	849 P.2d 1361
JOHNSON, Pia v State, bulletin no. 40	617 P.2d 1117
JOHNSON, Henry v State, bulletin no. 66	662 P.2d 981
JONES, v Anchorage, bulletin no. 118	754 P.2d 275
JONES, Edward v State, bulletin no. 57	646 P.2d 243
JONES, Tracey v State, bulletin no. 131	773 P.2d 960
JONES v State, no bulletin, see Section M text	681 P.2d 364
JONES v State, no bulletin	706 P.2d 317
JONES, Everett v State, bulletin no. 243	11 P.3d 998
JONES, Reginald v State, bulletin no. 265	65 P.3d 903
JOSEPH, Claude v State, bulletin no. 316	Alaska Ct. App. A-8961, No. 5126
JOUBERT v State, bulletin no. 208	977 P.2d 753
J.R.N. v State, bulletin no. 162	809 P.2d 416 / 861 P2d 578
JUNEAU v Quinto, bulletin no. 83	684 P.2d 127

K

KALMAKOFF, Byron v State, bulletin no. 334	2009 USWL 103716 / Alaska Ct. App. No. A-9700
KALMAKOFF, Bryan v State, bulletin 356 Supreme Court Reversing 334 above.	257 P.3d 108 (Alaska 2011)
KAUPP v Texas, bulletin no 294	538 U.S. 626
KELLER v State, bulletin no. 11	543 P.2d 1211
KELLEY, Margaret v State, bulletin no. 374	AK CRT Apls A-10882
KENTUCKY v King, Hollis, bulletin no. 354	131 S. Ct. 1849 (2011)
KLENKE v State, bulletin no. 15	581 P.2d 1119
KLEMZ v State, bulletin no. 324	171 P.3d 1169
KNIX v State, bulletin no. 204	922 P.2d 913
KNOWLES V Iowa, bulletin no. 230	525 U.S. 113
KOCHUTIN v State, bulletin no. 161/186	813 P.2d 298
KOCHUTIN v State	875 P.2d 778
KOLENDER v Lawson, bulletin no. 70	461 U.S. 352
KYLLO v U. S. bulletin no. 250	533 U.S. 27

L

LACY v State, bulletin no. 32	608 P.2d 19
LANDERS v State, no bulletin, see Section M text	809 P.2d 424
LAU v State, bulletin no. 190	896 P.2d 825
LeMENSE v Alaska, bulletin no. 117	754 P.2d 268
LIBERTTI v United States, bulletin no. 195	64 USLW 4005
LINDSAY v State, bulletin no. 92	698 P.2d 659
LISTON v State, bulletin no. 65	658 P.2d 1346
LOWERY v State, no bulletin, see Section N text	707 P.2d 280

M

N

NAMEN v State, bulletin no. 71	665 P.2d 557
NATIONAL TREASURY EMPL Union v Von Raab, bulletin no 129	57 USLW 4338
Navarette, Lorenzo & Jose v California. Bulletin no. 370	572 U.S. _____(2014)
NEASE v State. Bulletin no. 293	105 P.3d 1145
NELSON v State, bulletin no. 61	650 P.2d 426
NEW JERSEY v T.L.O., bulletin no 90	36 CrL 3091
NEW YORK v Belton, bulletin no. 50	453 U.S. 454
NEW YORK v Class, bulletin no. 102	38 CrL 3128

O

O'CONNOR et al v Ortega, bulletin no. 111	55 USLW 4405
OHIO v Robinette, bulletin no. 209	519 U.S. 33
O'NEILL v State, bulletin no. 79	675 P.2d 1288
OLIVER v U.S., bulletin no. 82	34 CrL 3011
OREGON v Bradshaw, bulletin no. 74	33 CrL 3211
OZENNA v State, bulletin no. 42	619 P.2d 477
OZHUWAN v State, bulletin no. 138	786 P.2d 918

P

PALMER v State, no bulletin, see Section L text	604 P.2d 1106
PAUL v State, bulletin no. 262	57 P.3d 698
PAYTON v New York, bulletin no. 34	445 US 573
PHILLIPS, Charles v State, bulletin no. 43	625 P.2d 816
PHILLIPS, Michael v State, bulletin no. 360	271 P.3d 457 (Alaska 2012)
PISTRO v State, bulletin no. 20	590 P.2d 884
PITKA v State, bulletin no. 380	Opinion no. 2502 (AK Court of Appeals)
PLANT v State, bulletin no. 107	724 P.2d 536
PLUMHOFF v Rickard, bulletin no. 371	572 U.S. ____ (2014)
POOLEY v State, bulletin no. 96	705 P.2d 1293

Q

QUICK v State, no bulletin, see Section P text	599 P.2d 712
QUINTO v State, bulletin no. 83	664 P.2d 630 / 684 P2d 127

R

RAYBURN, Darian v George Huff, bulletin no. 359	132 S. Ct. 987 (2012)
REEKIE v Anchorage, bulletin no. 150	803 P.2d 412
REEVES v State, bulletin no. 27	599 P.2d 727
RESEK v State, bulletin no. 56	644 P.2d 877
REICHEL v State, bulletin no. 289	101 P.3d 197
RHODE ISLAND & MALLEY v Briggs, bulletin no. 101	38 CrL 3169
RHODE ISLAND v Burbine, bulletin no. 104	36 CrL 3182
RHODE ISLAND v Innis, bulletin no. 153	446 U.S. 291
RICKS v State, bulletin no. 132	771 P.2d 1364 / 816 P2d 125
RIDGELY et al v State, bulletin no. 95	924 P.2d 705
Riley, David v California, bulletin no. 372	573 U.S. _____ (2014)
ROBERTS v State, bulletin no. 5	458 P.2d 340
ROBINSON & WARING v State, bulletin no. 76	670 P.2d 357
ROCKWELL v State, bulletin no. 326	176 P.3d 14
RODRIGUEZ, Dennys v US, bulletin no. 375	No 13-9972
ROGERS-DWIGHT v State, bulletin no. 193	899 P.2d 1389
ROMAN v State, bulletin no. 7	570 P.2d 1235
RYNEARSON v State, bulletin no. 221	950 P.2d 147

S

SACRAMENTO County vs. Lewis, bulletin no. 227	523 U.S. 833
SAFFORD v Redding, bulletin no. 341	557 U.S. 364 (2009)
SAMANIEGO v City of Kodiak, bulletin no. 242	2 P.3d 78
SAMSON v California, bulletin no. 310	126 S. Ct. 2193
SATHER v State, bulletin no. 135	776 P.2d 1055
SCHMERBER v California, no bulletin, see Section E text	384 U.S. 757
SCHULTZ v State, bulletin no. 23	593 P.2d 640
Scott, Timothy v Harris, bulletin no 319	127 S. Ct. 1769
SEAMAN & McGAHAN v State, bulletin no. 155	807 P.2d 506
SHAMBERG v State, bulletin no. 126	762 P.2d 488
SHEAKLEY v State, bulletin no. 55	664 P.2d 864
SIBRON v New York, no bulletin, see Section I text	392 U.S. 40
SIEDENTOP, Isaac v State, bulletin no. 373	No 2424
SKINNER, Sec of Trans v Railway Labor Exec Assn, no. 129	57 USLW 4324
SMITH & BOTELHO v DOE I et al bulletin no. 264	71 USLW 4125
SMITH, Byron v State), bulletin no. 277	83 P.3d 12
SMITH, Charles v State, no bulletin, see Section A text	510 P.2d 793
SMITH, Michelle v State, bulletin no. 121	756 P.2d 913
SMITH, Steven v Illinois, bulletin no. 89	36 CrL 4126
SNIDER v State, bulletin no. 225	958 P.2d 1114
SNYDER, Burr v State, bulletin no. 17	585 P.2d 229
SNYDER v State, no bulletin, see Section M text	661 P.2d 638
SNYDER, Dennis v State, bulletin no. 213	930 P.2d 1274
SOUTH DAKOTA v Opperman, bulletin no. 8 (Also see no. 19)	49 L.Ed 2d 1000
SPEZIALY v State, bulletin no. 67	661 P.2d 1095
SPINELLI v US, no bulletin, see Section M text	393 U.S. 410
STAATS v State, bulletin no. 103	717 P.2d 413
STAM v Alaska, bulletin no. 211	925 P.2d 668
STATE v AMEND, bulletin no. 353	250 P.3d 541 (Alaska 2011)
STATE v Avery, bulletin no.343	211 P.3d 1154 (Alaska 2009)
STATE v Batts, Jeron, bulletin no. 332	195 P.3d 144
STATE v Bletz, bulletin no. 320	160 P.3d 154
STATE v Boceski, bulletin no. 258	53 P.3d 622
STATE v Anderson, Barry, bulletin no. 299	117 P.3d 762
STATE v Blank, bulletin no. 278	3 P.3d 359
STATE v Coon, bulletin no. 231	974 P.2d 386
STATE v Crocker, bulletin no 286	97 P.3d 93
STATE v Daniel, bulletin no. 19	589 P.2d 408
STATE v Davenport, no bulletin, see Section K text	510 P.2d 78
STATE v Euteneier, bulletin no. 252	31 P.3d 111
STATE v Garcia, bulletin no. 116	752 P.2d 478
STATE v Garrison, Antonio bulletin no. 304	128 P.3d 741
STATE v Gibson, Robert bulletin no. 357	267 P.3d 645 (Alaska 2012)
STATE v Glass, bulletin no. 16	583 P.2d 872 / 596 P2d 210
STATE v Hazelwood, bulletin no. 171/183	836 P.2d 943
STATE v James, Ann & Gregory bulletin no. 229	963 P2d 1080
STATE v Jones, no bulletin, see Section M text	681 P.2d 364 / 706 P2d 317
STATE v Landon, bulletin no. 217	936 P.2d 177
STATE v Murray, bulletin no. 148	796 P.2d 849
STATE v Murtaugh, bulletin no. 323	169 P.3d 602
STATE v Myers, et al., bulletin no. 28	601 P.2d 239
STATE v JRN, bulletin no. 182	861 P.2d 578
STATE v Page, bulletin no. 198	911 P.2d 513
STATE v Prater, bulletin no. 226	958 P.2d 1110
STATE v Ridgely, bulletin no. 108	732 P.2d 550 / 739 P2d 1299
STATE v Salit, bulletin no. 36	613 P.2d 245
STATE v Siftsoff, bulletin no. 349	229 P.3d 214 (Alaska 2010)
STATE v Smith, bulletin no. 255	887 P.2d 979

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