

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN NO. 5

November 2, 1977

### RIGHT TO COUNSEL

### HANDWRITING EXEMPLARS

Reference: Gordon H. ROBERTS  
v.  
State of Alaska

ROBERTS v STATE  
458 P2 340

Alaska 1969

### FACTS:

On November 8, 1967, ROBERTS was indicted for forgery and passing a forged check. At his arraignment on November 13, he was appointed legal counsel. While still in confinement on December 14, 1967, ROBERTS was contacted by a Fairbanks detective and a member of the U.S. Secret Service. The purpose of the visit was to obtain handwriting samples. ROBERTS told the officers that he thought his attorney should be contacted first. ROBERTS was then told that he did not have to give a handwriting sample; but if he refused, a court order would be obtained requiring him to furnish the samples. If he still refused, he might be held in contempt of court. ROBERTS furnished the samples. At trial, his attorney moved to suppress which was denied by the Superior Court judge. ROBERTS was convicted and appealed to the State Supreme Court.

### ISSUE:

Since ROBERTS was in custody and represented by counsel, should the officers have contacted his attorney before obtaining the handwriting samples?

HELD: Yes

### REASONING:

1. His attorney might have noticed improprieties.
2. If the attorney was present, he could better cross-examine the officers regarding the circumstances by which the exemplars were taken.
3. If the attorney was present, he could have advised him not to yield at that stage and instead ask for a hearing.

4. ROBERTS did not waive his right to counsel: in fact, he requested that his lawyer be contacted.

5. Defendant has no right to refuse to submit handwriting exemplars and can be ordered by the court to do so, but he does have the right to have his attorney present when he furnishes them.

NOTES:

The court emphasizes in this opinion that the attorney should be contacted instead of dealing directly with the accused. Once a party has retained counsel, it would be unethical for opposing counsel to deal directly with the client without going through the attorney. Inasmuch as the officers were obtaining evidence which would be used at trial by the prosecutor, the prosecutor cannot do through intermediaries (the police) what he may not do directly.