

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT DILLINGHAM

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DAVID G. GLADDEN, )  
 )  
 Defendant. ) Case No. 3DI-03-57 CR  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

VOLUME 1 OF 1

Arraignment Proceedings Pages 1 through 17  
of 02/19/03  
Excerpt of Jury Trial Proceedings Pages 18 through 83  
of 08/11/03

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ARRAIGNMENT PROCEEDINGS  
BEFORE THE HONORABLE MONTE BRICE,  
MAGISTRATE

Wednesday, February 19, 2003  
Dillingham, Alaska  
1:36:44 p.m.

A P P E A R A N C E S

For Plaintiff: DISTRICT ATTORNEY'S OFFICE  
BY: JOHN W. WOLFE  
ASSISTANT DISTRICT ATTORNEY  
Box 470  
Dillingham, Alaska 99576

For Defendant: DAVID G. GLADDEN, *pro se*

Transcribed by: **brief encounters**  
P. O. Box 870084  
Wasilla, Alaska 99687



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Dillingham, Alaska, Wednesday, February 19, 2003

P R O C E E D I N G S

3DIB 03-30  
1:36:44

THE COURT: We're on record in *State of Alaska versus David G. Gladden*, case number 3DI-03-57 CR. Mr. Gladden is present in the courtroom, and the state is represented by Mr. Wolfe. You are Mr. Gladden, correct?

MR. GLADDEN: I'm here by way of special appearance. Do I have permission to enter the bar and associate?

THE COURT: To enter the bar association, is that what you're asking me?

MR. GLADDEN: Do I have permission to enter the bar and to associate?

THE COURT: It may be easier to explain what you're asking me.

MR. GLADDEN: I'm -- I'm asking if I have permission to enter the bar and to associate.

THE COURT: Associate with?

MR. GLADDEN: The court.

THE COURT: Well, you have permission to appear on your own, if that's what you're asking.

MR. GLADDEN: No. Do I have permission.....

THE COURT: Do we have -- do you have the right to represent yourself, if that's what you're asking me?



1 MR. GLADDEN: No. I'm asking if I have permission to  
2 associate with the court.

3 THE COURT: I don't know what that -- what you mean by  
4 that.

5 MR. GLADDEN: Well.....

6 THE COURT: You have permission to represent yourself at  
7 this hearing, if that's what you're asking.

8 MR. GLADDEN: No, that's not what I'm asking.

9 THE COURT: Well, then, I don't understand what you're  
10 asking.

11 MR. GLADDEN: Okay.

12 THE COURT: So I can't answer the question.

13 MR. GLADDEN: All right. Are we on record?

14 THE COURT: We're on record, yes.

15 MR. GLADDEN: Okay. I'm here by way of special  
16 appearance. May I have your name, please?

17 THE COURT: I'm Magistrate Brice.

18 MR. GLADDEN: May I have your name, please?

19 THE COURT: I said I'm Magistrate Brice.

20 MR. GLADDEN: May I have your name, please?

21 THE COURT: Mr. Gladden, I'm not going to play a game  
22 with you. I identified myself, I identified you, I identified  
23 the district attorney. And I'm not going to play name games  
24 here. The purpose of this hearing is to ensure that you are  
25 aware of the charges against you and to determine whether you



1 wish to enter a plea, or what plea you wish to enter. So,  
2 first of all, I want to, turning to you, da -- is your date of  
3 birth September 22nd, 1951?

4 MR. GLADDEN: May I have your name, please?

5 THE COURT: Mr. Gladden, you're getting very close to  
6 contempt of court. I think you need to be advised that it is  
7 the court that sets the agenda for a hearing, it is not the  
8 parties.

9 MR. GLADDEN: Is a response to my request for full  
10 disclosure under penalty of perjury forthcoming?

11 THE COURT: I will be -- I will address that as soon I've  
12 pre -- as soon as we've done the preliminary things that need  
13 to be done at an arraignment.

14 MR. GLADDEN: Well, I don't know how to proceed.

15 THE COURT: Well, I will tell you how to proceed. First  
16 of all, you can tell me if your date of birth is September  
17 22nd, 1951. I'm assuming you know your birth date, sir?

18 MR. GLADDEN: Are we on record?

19 THE COURT: As I've said twice before, yes, we are on  
20 record.

21 MR. GLADDEN: Okay. Well, may I have your name, please?

22 THE COURT: Mr. Gladden, you are charged with driving  
23 with license canceled, suspended or revoked in violation of AS  
24 28.15.291(a)(1), and you're also charged with unlawful use of  
25 a license, permitting an unauthorized person to drive in



1 violation of AS 28.15.281, subsection (a)(3). And the first  
2 charge, driving while license canceled, suspended and revoked,  
3 is based on a complaint prepared by Dillingham police officer  
4 Joshua C. Mize, which states that on or about the 4th day of  
5 February, 2003, at approx -- at or near Dillingham, at  
6 approximately 2:30 p.m., while on routine patrol, Officer Mize  
7 observed you driving south on Knakknik Road. Officer Mize had  
8 personal knowledge that the -- that your driver's license was  
9 in a suspended status. Officer Mize radioed dispatch to check  
10 on the status of your license. Dispatch informed the officer  
11 that your license was suspended. Officer Mize pulled you over  
12 at the Aladdin Apartments. He asked you to show him your  
13 license; that you went into your apartment and showed the  
14 officer an international driver's permit issued on the nation  
15 of Costa Rica. Further, the defendant's -- that you stated  
16 that you did not have an Alaska driver's license. Further  
17 review of APSIN driver's history showed Officer Mize that your  
18 driver's license, Alaska license 0811937, was listed as  
19 suspended. I find that that constitutes probable cause to  
20 believe that you did, in fact, operate a motor vehicle while  
21 suspended, and this case may go forward.

22 The charge of unlawful use of a license is based on  
23 Josh -- Officer Joshua Mize's report. I'm a little unsure of  
24 this, Mr. Wolfe. Is this based on Mr. Gladden's displaying  
25 the international driver's permit?



1 MR. WOLFE: Let me check that, Your Honor. Your Honor, I  
2 move to dismiss Count II.

3 THE COURT: Granted.

4 MR. WOLFE: I think it's duplicitous.

5 THE COURT: Okay. Count II, the charge of unlawful use  
6 of a license has been dismissed. That leaves us with Count I,  
7 which is a class A misdemeanor. It has a maximum penalty of a  
8 year in jail and a \$5,000.00 fine. And there is no minimum  
9 penalty other than a \$50.00 surcharge should you be convicted.  
10 So do you understand the remaining charge against you, driving  
11 while license suspended, and the possible penalty if you  
12 should be convicted of that charge, sir?

13 MR. GLADDEN: Is there a response to my request for full  
14 disclosure under penalty of perjury forthcoming?

15 THE COURT: I respon -- there will -- yes, it is  
16 forthcoming, but it's not going to be.....

17 MR. GLADDEN: Okay.

18 THE COURT: .....it's not going to be forthcoming until  
19 we've completed these preliminary matters.

20 MR. GLADDEN: All right. Well, how can I proceed without  
21 a response to my additional acceptance predicated upon full  
22 disclosure under penalty of perjury?

23 THE COURT: I'm simply asking you the question, do you  
24 understand the charge against you.

25 MR. WOLFE: I'm asking you if there is -- if it's.....



1 THE COURT: Okay. Let me put it this way, unless you  
2 tell me you do not understand the charge against you and  
3 unless you tell me you do not understand the possible penalty,  
4 I will assume you understand it.

5 MR. GLADDEN: Well, no, I guess I don't understand,  
6 because I don't know how to proceed.

7 THE COURT: What do you not understand about the charge?

8 MR. GLADDEN: Well, I -- I don't understand anything  
9 about it because I haven't received any response to my request  
10 for full disclosure under penalty.....

11 THE COURT: Your request has nothing to do with the  
12 charge, and I've read it.

13 MR. GLADDEN: Oh, it has everything to do with it. It's  
14 just discovery.

15 THE COURT: I'm going to assume you understand it.

16 MR. GLADDEN: Objection.

17 THE COURT: Overruled. In order to convict you of  
18 driving while license suspended, the state has to prove ,at  
19 trial to a jury of six persons, beyond a reasonable doubt  
20 that, first of all, this happened on the 4th day of February;  
21 secondly, that it happened at or near Dillingham. Thirdly,  
22 they would have to prove beyond a reasonable doubt that you  
23 did, in fact, operate a motor vehicle. Fourthly, that they  
24 would have to prove beyond a reasonable doubt that your  
25 license was suspended. And, fifthly, that you either knew or



1 should have known that your license was suspended. All of  
2 these would have to be proved beyond a reasonable doubt before  
3 you can be convicted. All six jurors have to unanimously  
4 agree that all of these things have been proved beyond a  
5 reasonable doubt. Do you have any questions about what the  
6 state has to prove in order to convict you?

7 MR. GLADDEN: My questions are all right here. I serve  
8 the court.....

9 THE COURT: Is that -- is.....

10 MR. GLADDEN: .....on record, and the bar.

11 THE COURT: .....is that a question about what I just  
12 ask -- or what I just -- about what the state has to do?

13 MR. GLADDEN: That's in here, yes.

14 THE COURT: Okay. Have I sufficiently answered that  
15 question?

16 MR. GLADDEN: No.

17 THE COURT: Okay. What do you not understand about my  
18 answer to -- my res -- what I just stated about what the state  
19 has to prove?

20 MR. GLADDEN: Well, I -- I don't -- you know, first of  
21 all, I need oaths of office, on and on, of all these.....

22 THE COURT: No, you do not need to know that in order to  
23 understand what the state has to prove.

24 MR. GLADDEN: Well, absolutely, I do.

25 THE COURT: I'm going to assume that you understand it.



1 MR. GLADDEN: Objection.

2 THE COURT: Overruled. You have a number of rights, and  
3 among those rights is to be presumed innocent until proved  
4 guilty. And it's at trial, or unless you plead guilty or no  
5 contest. You have the right to remain silent, which means you  
6 do not have to discuss this case with anybody, including me or  
7 the district attorney or the police. Anything you do say can  
8 be used against you, however. You have the right to an  
9 attorney. If you cannot afford an attorney, I can appoint one  
10 to represent you. If I do appoint an attorney to represent  
11 you and you are convicted, you will be required to compensate  
12 the state for part, if not all, of the costs of hiring an  
13 attorney for you. If -- and you'll have the right to a trial  
14 before a jury of six persons. At that trial, you have the  
15 right to participate in the selection of the jury. You have  
16 the right to ask questions of the witnesses against you. You  
17 have the right to bring in witnesses to testify for you. If  
18 you have witnesses whom you want to bring in, but you're not  
19 sure that they'll appear on their own, you can ask the court  
20 to issue a subpoena, which is an order requiring them to  
21 appear, so that they can testify for you. You have the right  
22 to testify at trial or to remain silent. It's entirely up to  
23 you. And if you choose to remain silent, the jury will be  
24 instructed that they cannot hold your silence against you.  
25 You have the right to make arguments at the close of evidence,



1 to argue to the jury as to why the state has failed to prove  
2 you guilty beyond a reasonable doubt. And if you are  
3 convicted, you have the right to make arguments to the court  
4 as to why you should receive a lesser penalty than the state  
5 thinks you ought to receive. If you are convicted and you  
6 believe that you're conviction is the result of a mistake of  
7 law made by a judge or a magistrate, you have the right to  
8 appeal that conviction. And if you believe that the sentence  
9 is too harsh, you have the right to appeal that sentence. You  
10 have the right to have this case tried by a judge, rather than  
11 a magistrate, which is what I am, and for that reason, this  
12 case will be assigned to Judge Torrisi for trial purposes, and  
13 it will be assigned to me for all other purposes, including  
14 this arraignment. You have the right to disqualify a judge or  
15 a magistrate without giving any cause whatsoever if you do so  
16 in writing within five days of today. After five days, you  
17 can still disqualify a judge or a magistrate, but only if you  
18 give good cause as to why that person should be disqualified.  
19 The main difference between a judge and a magistrate is that a  
20 judge is appointed by the governor and is up for retention  
21 election every few years, while a magistrate is hired as an  
22 employee of the court system. Do you have any questions about  
23 your rights?

24 MR. GLADDEN: No, I didn't hear them. I serve these on  
25 the court and the bar.



1 THE COURT: Have you served a copy on the district  
2 attorney?

3 MR. GLADDEN: I can.

4 THE COURT: Okay. I cannot accept these unless a copy is  
5 served on the district attorney.

6 MR. GLADDEN: They will be, yeah.

7 THE COURT: Okay. Well, I cannot accept them until a  
8 copy is served on the district attorney. Do you have any  
9 questions that you -- about your rights that you wish to ask  
10 orally at this time?

11 MR. GLADDEN: No.

12 THE COURT: Okay.

13 MR. GLADDEN: I think they're all right here.

14 THE COURT: Okay. One of your rights is to a lawyer. Do  
15 you want a lawyer?

16 MR. GLADDEN: Well, I need assistance of counsel.

17 THE COURT: Okay. Can you afford a lawyer?

18 MR. GLADDEN: No.

19 THE COURT: Do you want to see if you qualify for a  
20 court-appointed lawyer?

21 MR. GLADDEN: No.

22 THE COURT: Okay. So does that mean you're going to hire  
23 an attorney on your own, or what?

24 MR. GLADDEN: Well, I will try to contract with one.

25 THE COURT: Okay. How long you think it'll take you to



1 retain an attorney?

2 MR. GLADDEN: I don't know. I -- I haven't tried yet.

3 THE COURT: Okay. Couple of weeks?

4 MR. GLADDEN: Maybe.

5 THE COURT: I'm going to set a representation hearing,  
6 and I need to call up and calendar it. It'll take a minute or  
7 two.

8 Mr. Wolfe, do you anticipate being in trial in the week  
9 of March 3rd?

10 MR. WOLFE: There's a possibility I could, Your Honor.

11 THE COURT: Okay. Representation hearing the following  
12 week better for you?

13 MR. WOLFE: Yes, sir.

14 THE COURT: Okay.

15 MR. GLADDEN: Excuse me, sir. You've been served, okay?

16 MR. WOLFE: And I feel that this is an (indiscernible -  
17 away from microphone).

18 THE COURT: Okay, I'm going to schedule a representation  
19 hearing for March 10th at 1:30 p.m., and that's to determine  
20 whether you have an attorney at that time. If you do have an  
21 attorney and he files an appearance before that date, then you  
22 won't have to be here.

23 MR. GLADDEN: Okay.

24 THE COURT: I'm going to enter a not guilty plea for you.

25 MR. GLADDEN: Objection. I never appointed anyone to



1 represent me.

2 THE COURT: No one is representing you, but unless you're  
3 prepared to plead guilty or no contest, I will automatically  
4 enter a not guilty plea for you. Do you wish to plead guilty  
5 or no contest?

6 MR. GLADDEN: I'm not entering any plea at this time.

7 THE COURT: Then the court will enter a plea of not  
8 guilty. Trial will be at 9:00 a.m. on April 21st. And the  
9 calendar call at 1:30 p.m. April 15th. Mr. Wolfe, comments  
10 about bail and conditions of release?

11 MR. WOLFE: No objection to OR release, Your Honor.

12 THE COURT: Okay.

13 MR. GLADDEN: And for the record, sir, I served Mr. Wolfe  
14 with my.....

15 THE COURT: The documents that you sought to file with  
16 me?

17 MR. GLADDEN: Correct. And the -- and the court clerk  
18 also has a copy.

19 THE COURT: Okay, then I will review those when the clerk  
20 gets them to me. Then they are accepted.

21 MR. GLADDEN: All right. She accepted them yesterday.

22 THE COURT: Yes.

23 MR. GLADDEN: Yeah.

24 THE COURT: Yes, and if she didn't, I will at this point,  
25 so.....



1 MR. GLADDEN: Okay. Excuse me?  
2 THE COURT: Uh-huh (affirmative).  
3 MR. GLADDEN: Could you move that March 10 deadline up to  
4 March 17? That be possible?  
5 THE COURT: March 10 dea -- yeah, oh, March 17? Oh, you  
6 mean.....  
7 MR. GLADDEN: Yeah.  
8 THE COURT: .....the representation hearing? Any  
9 objection, Mr. Wolfe?  
10 MR. WOLFE: No, Your Honor.  
11 THE COURT: Let me make sure I have -- my calendar's  
12 clear and we can do that. (Pause) Okay, it looks like we'll  
13 have to do it at a different time.  
14 MR. GLADDEN: Well, I might be able to do it sooner than  
15 that. March 3 or March 5?  
16 THE COURT: Well, the week of -- that week is trial week,  
17 and Mr. -- in front of Judge Torrisi. I know Mr. Wolfe's  
18 going to be -- or likely to be in trial that week.  
19 MR. GLADDEN: Okay.  
20 THE COURT: But we can do this -- would -- do you prefer  
21 morning or afternoon?  
22 MR. GLADDEN: Afternoon.  
23 THE COURT: Okay. We do this at -- I think we've got an  
24 adjudication, Mr. Wolfe, on Phillip Larson. Is that last --  
25 likely to last more than an hour?



1 MR. WOLFE: I wouldn't think so, Your Honor.

2 THE COURT: Okay. So we'll make this at March 17th at  
3 2:30 p.m. (Pause) Okay. Mr. Wolfe, have you received the  
4 document entitled Conditional Acceptance Predicated Upon Full  
5 Disclosure Under Penalty of Perjury?

6 MR. WOLFE: Yes, Your Honor.

7 THE COURT: Okay. I am going -- I am treating that as a  
8 formal motion for discovery. And when did you receive your  
9 copy, Mr. Wolfe?

10 MR. WOLFE: I don't know. It's dated the 17th, Your  
11 Honor.

12 THE COURT: Okay.

13 MR. WOLFE: Oh, no I don't, it's.....

14 THE COURT: Okay. I'm going to give the state until  
15 February 28th in which to file any response, and to serve a  
16 copy of your response on Mr. Gladden. And, Mr. Gladden, once  
17 you've received that response, if you wish to reply, submit a  
18 written reply, you will have three business days in which to  
19 do that unless you formally request an extension of time,  
20 which you are certainly entitled to do. Anything else we need  
21 to deal with today, Mr. Wolfe?

22 MR. WOLFE: No, Your Honor.

23 THE COURT: Okay. Mr. Gladden, I am accepting the  
24 state's recommendation that you remain on your -- released on  
25 your own recognizance. And I'd better write down a little bit



1 more information here for you. Conditions are that if you  
2 obtain -- if you retain an attorney, you're to maintain  
3 regular contact with that attorney; you're to attend all court  
4 hearings; obey all laws; you're not to leave Alaska without  
5 court permission; and you're not to operate any motor vehicle  
6 unless you're properly licensed and insured, and that license  
7 must be issued by the State of Alaska. And we will now go off  
8 record. I will take a copy of this temporary to the clerk of  
9 court. She will make a copy of it for you.

10 MR. GLADDEN: Thank you.

11 THE COURT: Okay. And as I indicated, the state will  
12 respond to your conditional acceptance document within 10  
13 days, and you will have three business in which to file a  
14 reply. I will review the documents that you filed earlier  
15 with the court and take whatever action I think is appropriate  
16 on it. But not having read them, I don't know what that might  
17 be. So we are off record.

18 (Off record)

19 2:04:17

20 END OF ARRAIGNMENT PROCEEDING

21

22

23

24

25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JURY TRIAL PROCEEDINGS (EXCERPT)  
BEFORE THE HONORABLE FRED TORRISI,  
SUPERIOR COURT JUDGE

Monday, August 11, 2003  
Dillingham, Alaska  
8:45:17 a.m.

A P P E A R A N C E S

For Plaintiff: DISTRICT ATTORNEY'S OFFICE  
BY: JOHN W. WOLFE  
ASSISTANT DISTRICT ATTORNEY  
Box 470  
Dillingham, Alaska 99576

For Defendant: DAVID G. GLADDEN, *pro se*

Transcribed by: **brief encounters**  
P. O. Box 870084  
Wasilla, Alaska 99687

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Dillingham, Alaska, Monday, August 11, 2003

EXCERPTS OF JURY TRIAL PROCEEDINGS

3DIA03-147

8:45:18

(Jury panel not present)

THE CLERK: On record.

THE COURT: Okay. Mr. Gladden, we have your actual notice here, but I think I've made it plain, I'm not continuing this trial, so what do you want to do?

MR. GLADDEN: I've got -- I have some more information to enter into the court record this morning. I'm here by special appearance in re *State v. Gladden*, count number 3DI-03-57 CR. And with -- without assistance of counsel under the Sixth Amendment. And I'll be serving the court and bar on record, and Mr. Wolfe here, in whatever capacity he is functioning today.

THE COURT: Is that the actual notice?

MR. GLADDEN: It is.

THE COURT: Oh, okay. We already have that and we gave.....

THE CLERK: We have the original.

THE COURT: .....I got the original.

MR. GLADDEN: Okay. And then I have -- there seemed to be confusion last time as to the difference between an attorney at law and counselor at law, and so I've -- I've put



1 together this list here that helps to maybe differentiate  
2 that. An attorney represents only, stands in your place or  
3 stead in business or legal issues; whereas a counselor at law  
4 assists only, and is to protect and defend his client, but he  
5 cannot represent.

6 And, then, in your memorandum and order dated August 4,  
7 2003, you made mention to some of the case law that I had  
8 entered into the court record previous to that. And I just  
9 wanted to give you some -- some highlighted portions of  
10 *Zerbst* -- or *Johnston v. Zerbst* here that maybe would help to  
11 clarify the assistance of counsel issue. And since the --  
12 I'll -- I'll be reading from it here just briefly. Since the  
13 Sixth Amendment constitutiona -- constitutionally entitles one  
14 charged with crime to the assistance of counsel, compliance  
15 with the constitutional mandate is an essential jurisdictional  
16 prerequisite to a court authority to deprive an accused of his  
17 life or liberty. When this right is properly waived, the  
18 assistance of counsel is no longer a necessary element of  
19 the -- of the court jurisdiction to proceed to convict and  
20 sentence. If the accused, however, is not represented by  
21 counsel and has not completely and intelligently waived his  
22 constitutional right, the Sixth Amendment stands as a  
23 jurisdictional bar to a valid conviction and sentence  
24 depriving him of his life or his liberty. A court's  
25 jurisdiction at the hearing of [sic] trial may be lost in the



1 course of the proceedings due to the failure to complete the  
2 court, as the Sixth Amendment requires, by providing counsel  
3 for an accused who is unable to obtain counsel who has not  
4 intelligently waived his constitutional guarantee, and whose  
5 life or liberty is at stake. If the requirement of the Sixth  
6 Amendment is not complied with, the court no longer has  
7 jurisdiction to proceed. The judgment of conviction  
8 pronounced by a court without jurisdiction is void, and one  
9 imprisoned thereunder may obtain release by *habeas corpus*.  
10 This is -- this is.....

11 And, then, also another one cited was *Avery v. State of*  
12 *Alabama*, and the guarantee of assistance of counsel under  
13 the -- I'm sorry. When -- where denial of constitution right  
14 to assistance of counsel is asserted, its particular  
15 sacredness demands that the United States Supreme Court  
16 scrupulously review the record. And so that's a little bit  
17 different cite there than you had mentioned on August 4th.  
18 And, once again, I'll enter that into the record.

19 THE COURT: Aren't these cases we've already got in the  
20 record?

21 MR. GLADDEN: That's -- that's correct, sir, but, and  
22 once again, in reference back to your August 4 memorandum and  
23 order, you had stated that -- you had cited a different  
24 part.....

25 THE COURT: True.

1 MR. GLADDEN: .....of the.....

2 THE COURT: But I didn't throw them away, they're still  
3 in here.

4 MR. GLADDEN: Yeah, okay. Well, I -- I'm just -- that  
5 was my original intent when I entered these into the court  
6 record a week and a half ago, and so I just want to clarify  
7 this little bit of information since it didn't show up in your  
8 memorandum and order on August 4.

9 THE COURT: Anything else?

10 MR. GLADDEN: Okay. And then, in *Frasier*, it was the  
11 right to counsel guaranteed by federal Constitution means more  
12 than just opportunity to be physically accompanied by a person  
13 privileged to practice law, but rather assistance to which  
14 defendant is entitled must be effective and uni -- unhindered  
15 either by state or by counsel's constitutionally defin --  
16 deficiency -- performance, constitutionally deficient  
17 performance. Okay. So here's *Frasier v. U.S.* And, then, of  
18 course, the Constitution of the United States of America, Bill  
19 of Rights, I would -- special emphasis on the Sixth Amendment.  
20 And then I did a word search, and like under complete the  
21 court, and came up with like 30 different cases here, all  
22 involving assistance of counsel and the Sixth Amendment,  
23 where -- where that's absolutely necessary in order to -- for  
24 the court to attain jurisdiction of the -- of the issue. And  
25 I did another word search under jurisdictional prerequisite,



1 and likewise came up with about another 30-some case cites,  
2 you know, as well, citing *Johnston v. Zerbst* and others here.  
3 And, then, it looks like the last one is all cases, no longer  
4 has jurisdiction was my word search, and likewise came up with  
5 about 20-some case cites here in *Johnston v. Zerbst*, and once  
6 again, others. No jurisdiction, or no longer has jurisdiction  
7 to proceed in reference to the Sixth Amendment, assistance of  
8 counsel. Oop, got another, one more here, looks like. Trial  
9 absolutely void. I did a word search on that one as well.

10 So, anyway, I'm here without assistance of counsel,  
11 and.....

12 THE COURT: And what is your request?

13 MR. GLADDEN: Well, I object to going forward with trial  
14 until I -- since I am without the assistance of counsel, the  
15 court has a jurisdictional problem in the matter. And, so,  
16 until I can get assistance of counsel, if you -- you know, if  
17 you have personal knowledge of anybody that can provide that  
18 for me, you know, please.....

19 THE COURT: Mr. Wolfe, any response to the defense  
20 argument?

21 MR. WOLFE: No, Your Honor.

22 THE COURT: You ready to go to trial?

23 MR. WOLFE: Yes, sir.

24 THE COURT: All right. The application is denied. If I  
25 don't have jurisdiction and if I have erred, I'm sure that the



1 Court of Appeals can straighten me out. In the meantime, what  
2 I find is that six months ago I told you I wasn't going to  
3 delay while you sent contracts to -- that contract you have to  
4 lawyers in this state because it is not designed to get you  
5 counsel, it's designed to do just what you did, which is to  
6 put us right here with the jury coming in an hour, and you  
7 don't have a lawyer. Now, if I don't have jurisdiction and my  
8 judgment is void, that's true. If you appeal my case if you  
9 are convicted, I will stay it. You're not going to go to jail  
10 while this gets appealed. But I am not going to hold up trial  
11 any more. So we're going to have a trial at 10:00 o'clock.  
12 And you -- I'm not going to let you tell them a whole bunch of  
13 things that I don't feel are relevant to the case, which, if  
14 you'll remember, has to do with driving and without a license.  
15 And I will tell them, look, he's without counsel, he's asked  
16 me for counsel -- he's asked me for time to get counsel, I've  
17 denied it, and you shouldn't consider that one way or the  
18 other. You should try to decide the case on whether or not  
19 the state has proved beyond a reasonable doubt that his  
20 license was revoked, canceled or suspended, and he was  
21 driving. And I don't -- you know, the way this works is, I do  
22 my job, you guys make your pitch, and if I'm wrong, the Court  
23 of Appeals straightens me out. So I'm not going to delay  
24 counsel -- delay trial because I don't have any belief, even a  
25 remote belief, that ever we will be in a situation where you



1 don't have a lawyer. And I don't have any suggestions on how  
2 I -- you could find a lawyer that'll sign that contract.

3 MR. GLADDEN: Well.....

4 THE COURT: So is there any further questions that you  
5 want to ask about how a trial goes or what we should do now?

6 MR. GLADDEN: Well, my very first paper that I just  
7 served you here moments ago gave the difference between and  
8 counselor at law.

9 THE COURT: Uh-huh (affirmative).

10 MR. GLADDEN: And, so, if you'd bother to read down that  
11 list, that pretty well explains, you know.....

12 THE COURT: This file's like two inches thick. If it was  
13 two feet thick, you and me are never going to agree on this.  
14 So, what I'm telling you is, the way the system works is you  
15 make your pitch. If you convince me, good. You have failed  
16 to convince me. We're here at the day of trial, and the  
17 motion's denied. So what means is we go to trial. Now, I  
18 know you don't want to waive anything, so it may be that  
19 that's what you got to do to get this to the next level. And  
20 I got a jury coming in. I can explain to you how a jury trial  
21 works or not. If you want me to, I'll do my best.

22 MR. GLADDEN: Okay.

23 THE COURT: The jury will be picked, I'll -- we'll number  
24 them, I'll instruct them on the basic areas of the law. We'll  
25 number them. We'll -- the jury will be composed of six



1 people. We'll put them in the box. You'll get a chance to  
2 ask them questions designed to determine if they're fair. The  
3 state will, too. I'll put some limitations on what questions  
4 you can ask them. Basically, do you know me, do you know the  
5 D.A., do you have any biases in this area. And then we will  
6 -- I'll explain to you at the time, you can disqualify jurors  
7 if you think they're biased. You can ask me outside their  
8 presence. Or you can disqualify three based on any reason.  
9 We then have a trial where the state has an opening statement.  
10 The state has the burden of proving this case beyond a  
11 reasonable doubt. You have the right to questions of any  
12 witness against you. You can put on evidence of your own or  
13 not. You have the right to remain silent. Silence will not  
14 be used against you, the jury would be told that. These --  
15 after the state presents its evidence, if you do, they have a  
16 right to present rebuttal evidence. If they -- at the end of  
17 the trial, you both have a right to argue to them why the  
18 evidence should result in conviction on their part or  
19 acquittal on your part.

20 After that, if you're acquitted, the case is done. If  
21 you're convicted, I'd sentence you, and you'd have 30 days --  
22 15 days, I guess, in a misdemeanor, to appeal to the Court of  
23 Appeals, 30 days to appeal to another superior court.

24 Questions? Do you ha -- I mean, I know you don't know  
25 how to do a jury trial, and I know this is going to be a



1 cumbersome and messy procedure, but I don't see any other way  
2 to preserve, because you want to preserve your rights, and I'm  
3 not continuing this case any more. So that's where we are.

4 All right, we'll.....

5 MR. GLADDEN: Without the assist.....

6 THE COURT: .....see you at 10:00 o'clock.

7 MR. GLADDEN: Without the assistance of counsel, I don't  
8 know how to answer, you know, your questions, so.....

9 THE COURT: Okay. We're in recess.

10 (Off record)

11 [9:01:58]

12 (On record)

13 [10:28:27]

14 (Jury panel present)

15 THE CLERK: On record.

16 THE COURT: Okay, we're on record here in 3DI-03-57.

17 Thank you all for coming in. My name is Judge Torrisi, for  
18 those who don't know me. And the state in this case -- and  
19 the case -- name of this case is *State versus David Gary*  
20 *Gladden*. The state is represented by John Wolfe, who's  
21 sitting there. You want to introduce your officer?

22 MR. WOLFE: Yes. Officer Joshua Mize.

23 THE COURT: And this is Mr. Gladden over here. He is  
24 unrepresented at this point.

25 We are going to proceed in a moment to jury selection.



1 As you know, this is an important part of the trial, and it's  
2 necessary that you say the truth if you're asked any  
3 questions, so I'm going to ask the clerk to swear you in at  
4 this time.

5 (Oath administered)

6 (Affirmative responses)

7 THE COURT: All right. As you know, when you have a jury  
8 trial, what you need is people who are not biased, who agree  
9 to try the case without any pre-conceived ideas as to the laws  
10 or the facts, who don't have undue sympathy that -- or  
11 prejudice, or anything else that's going to interfere with  
12 their job here. In addition, today we have a person who's  
13 representing himself. And I guess I should say, because it'll  
14 probably come out.....

15 MR. GLADDEN: Object.

16 THE COURT: Yes, sir?

17 MR. GLADDEN: I'm here without assistance of counsel as  
18 secured in the Sixth Amendment of the Constitution.

19 THE COURT: All right. So that's his position. And my  
20 position is he's had enough time to get counsel, so we're  
21 going to try it. Now, what I -- all I want to tell you is,  
22 you have to put that sort of thing aside, hear the case on the  
23 facts and decide it fairly. You can't be prejudiced against  
24 him because he doesn't have a lawyer. You can -- obviously,  
25 I'm going to -- we're -- you know, how the trial works, maybe



1 we'll see how it unfolds, but you have to decide the case on  
2 the evidence and not, in any way, hold anything against him or  
3 against the state. I normally have to rule on objections, and  
4 it may be different in this case, but basically your job  
5 remains the same.

6 If you are excused from service on this jury, you are  
7 done until November. This is the last case that your panel is  
8 on for this calendar. There is a calendar September 8 and  
9 probably another one in October, and -- but for this  
10 particular one, if you're excused, you don't have to call in.  
11 The other two panels will handle next week's trial if it goes  
12 to trial.

13 We expect this case to be a one-day trial. It might go  
14 into another day, I don't know. So if -- when I ask you  
15 questions, you should plan accordingly. We're only --  
16 people -- we need people who are available during the next two  
17 days. And we will start as soon as we get a jury, and go  
18 usually until 4:30 or 5:00. If we need to come, we'd start  
19 tomorrow morning at 8:30.

20 Jury service is an obligation. It's also a privilege  
21 that we have. Everybody's entitled to a jury trial. Your  
22 chance to be the judge of the facts of this case, but I also  
23 understand that you may have other things planned, that you  
24 may have emergencies or some personal hardship that would  
25 prevent you from serving. So I'm going to ask now--I'm not



1 looking for someone who would just be inconvenienced--but if  
2 there's anybody who has an emergency or travel scheduled or  
3 some personal hardship that'll keep you from serving during  
4 the next two days, please stand at this time. Your name, sir?

5 MR. TRUTCHLEY: Vincent Trutchley.

6 THE COURT: Go ahead.

7 MR. TRUTCHLEY: I'm planning to be in Anchorage tomorrow.

8 THE COURT: What time you leaving?

9 MR. TRUTCHLEY: I'd probably have to go on the 10:00  
10 o'clock flight.

11 THE COURT: Ten a.m.? All right, we will excuse you at  
12 this time. Anybody else? All right.

13 MS. GIORDANO: (Indiscernible - away from microphone) I  
14 just got off.....

15 THE COURT: Stand, state your name.

16 MS. GIORDANO: Bonnie Giordano. I just got off work at  
17 7:00 o'clock this morning. I haven't even had any sleep yet.

18 THE COURT: Yeah. Didn't I write you a letter about  
19 that?

20 MS. GIORDANO: Yes, but I wasn't even (indiscernible -  
21 away from microphone).

22 THE COURT: All right. I'm going to let you off this  
23 time. I'm not going to let you off in September. And you are  
24 advised that, you know, an employer has to let you off work,  
25 and if you work nights, they have to let you off the night



1 before. If you want to write another letter or whatever, you  
2 can. You are excused from service on this jury.

3 This is a criminal case. In this case the charge is  
4 driving while license suspended or revoked. It's charged that  
5 on the 4th of February, 20-03, at or near Dillingham, Third  
6 Judicial District, State of Alaska, the above-named defendant,  
7 David Gary Gladden, did unlawfully and knowingly drive a motor  
8 vehicle on a highway or vehicular way at a time when his  
9 driver's license or privilege to drive had been canceled,  
10 suspended or revoked in this or another jurisdiction, or a  
11 limitation placed upon his privilege to drive in this or  
12 another jurisdiction, to-wit, a 1966 Plymouth sedan, Alaska  
13 license PLP-173. To this charge, defendant has pleaded not  
14 guilty.

15 The indictment is -- or the complaint is a formal means  
16 of accusing a defendant of a crime. It's so he knows what  
17 he's charged with. It's merely an allegation. And the fact  
18 that it was filed can't be considered by you for any purpose.  
19 To the charge, he's pleaded not guilty. This places -- it's a  
20 denial. It places in issue all the material allegations and  
21 essential elements of the crime charged. The plea places on  
22 the state the burden of proving beyond a reasonable doubt all  
23 the material allegations and essential elements of the crime  
24 charged. The burden is on the state. It does not at any  
25 time, under any circumstances, shift from the state.



1           The features which distinguish a criminal trial from  
2 other types of trials are the concepts known as the  
3 presumption of innocence and the burden of proof beyond a  
4 reasonable doubt. The law presumes a defendant to be innocent  
5 of crime; thus, a defendant, although accused, begins the  
6 trial with a clean slate with no evidence against him. This  
7 presumption attaches to and continues with him throughout all  
8 stages of the trial and throughout all stages of your  
9 deliberation, until it's been met with proof to the exclusion  
10 of reasonable doubt. Presumption of innocence alone is  
11 sufficient to acquit a defendant unless you're satisfied  
12 beyond a reasonable doubt of his guilt after careful and  
13 impartial consideration of all of the evidence in the case. A  
14 reasonable doubt is a doubt based upon reason and common  
15 sense. Proof beyond a reasonable doubt must be proof of such  
16 a convincing character that, after careful consideration, you  
17 would be willing to rely and act upon it without hesitation in  
18 your important affairs. A defendant is never to be convicted  
19 on mere suspicion or conjecture.

20           Mr. Wolfe, do you -- could you list -- those -- these are  
21 your witnesses?

22           MR. WOLFE: Yes, sir.

23           THE COURT: Gayle Nordon. Is that spelled right? Is  
24 that who that is? Josh Mize, and Dan Pasquareillo. Those two  
25 are officers. The reason that the state has listed those is,



1 see those questions that are typed up there? At some point,  
2 you're going to be asked to respond to those questions, and  
3 you're going to be asked, do you know Mr. Gladden, do you know  
4 these officers, do you know Gayle Norden, and if you do, you  
5 should say, yes, I know them, and then how well you know them.  
6 If you can still be a fair juror, say, yeah, I don't know them  
7 that well, I can evaluate their testimony the same as anybody  
8 else. I don't have an interest, I don't have a pre-determined  
9 idea of what's going to happen in this case, or I do.

10 All right. I'm going to ask you a few questions now to  
11 make sure everybody's qualified.

12 \* \* \*

13 (Jury selection not transcribed)

14 [10:36:10]

15 \* \* \*

16 [10:54:24]

17 (Jury panel not present)

18 THE COURT: Does the state have peremptory  
19 disqualifications?

20 MR. WOLFE: Mr. Kellough, Your Honor.

21 THE COURT: Does -- Mr. Gladden, is there any -- you have  
22 three people that you could disqualify for any reason or no  
23 reason on the jury panel.

24 MR. GLADDEN: Well, once again, sir, without the  
25 assistance of counsel, I respectfully decline to answer that



1 question under the Sixth Amendment of the Constitution.

2 THE COURT: All right. I'm going to put on -- I'm going  
3 to bring the jury back, then, and put Miss Nanalook into seat  
4 number 3. Anything further at this time?

5 MR. WOLFE: Now, Your Honor, with that pre-empt, we had  
6 the six that -- because you originally had seven up there,  
7 so.....

8 THE COURT: Oh, did I?

9 THE CLERK: That's right.

10 THE COURT: Oh, okay. I didn't -- yeah. If we -- you  
11 only think we need six, then? Think we can do this in a day?

12 MR. WOLFE: I think so.

13 THE COURT: All right. Then I would not do that. So,  
14 all right, Mr. Gladden, when I bring them back in, then, it's  
15 my plan to excuse the rest of the jurors and start the trial.  
16 So, Bonnie, since you're back there, could you tell them to  
17 come back in?

18 (Jury panel summoned)

19 THE COURT: Same seats for now, I think.

20 UNIDENTIFIED JUROR: Same seats? Okay.

21 THE COURT: Although it's..... Two, three, four, five.  
22 I guess we came back too quick for people this time.

23 Okay, we are on record, the jury is assembling. Mr.  
24 Kellough, I can stop you there now because we are going to  
25 thank you and excuse you at this time.



1 MR. KELLOUGH: Okay.

2 THE COURT: Thank you much for coming in.

3 Those of you who are seated in the rear who were not  
4 called, hang on just a second, because I want to make sure  
5 that these six are okay. We expect to try this case today.  
6 Everybody's feeling all right. When -- if I swear you in as  
7 our juror, this is the trial, and, you know, I wouldn't want  
8 later one of you to say, oh, I meant to tell you something  
9 else, or I held something back, or I can't be fair. So  
10 because the jury system depends on your honesty and integrity,  
11 and by taking the second oath, you're promising to do the job  
12 according to the instructions and to be fair, so anybody have  
13 any hesitation?

14 Okay. If you'd swear the jury panel in, then?

15 (Oath administered)

16 (Affirmative responses)

17 THE COURT: All right, you may be seated. And those of  
18 you who were not selected, thank you very much for coming in.  
19 We needed you to assure that this process worked. You are  
20 excused until September. Thank you, sir, everybody.

21 All right, I don't know how far I instructed most of you  
22 last week, but the way this works now is the state will make  
23 an opening statement. And after that, the defense could,  
24 although it may be he's not going to do anything, because, as  
25 I said, I think he feels like a -- I put him in an untenable



1 situation. But he can or he cannot. He could reserve it  
2 until later. Then the state puts on their witnesses. At the  
3 end of their questions, Mr. Gladden can ask questions if he  
4 wants. At the end of all his witnesses, the defense could  
5 present evidence. It's under no obligation to, he could  
6 remain silent. It's the state that has the burden of proof.  
7 If he does present any evidence, then the state can present  
8 further evidence. When the state's concluded it's case, I  
9 mean, after the -- all the evidence is in, then the state's  
10 going to make an argument saying what they think the evidence  
11 is. Mr. Gladden may make an argument after that, and, then,  
12 if he does, the state can respond. It has the burden of  
13 proof, so it goes first and last.

14 Mr. Wolfe, do you have an opening statement?

15 MR. WOLFE: Thank you, Your Honor.

16 OPENING STATEMENT ON BEHALF OF PLAINTIFF

17 BY MR. WOLFE:

18 Ladies and gentlemen, thanks for your time today.

19 We expect the evidence to show that on the 4th day of  
20 February of this year, Troop -- or Officer Mize was out  
21 patrolling at about 2:30 in the afternoon. He saw the  
22 defendant driving his car on the street. He knew previous --  
23 from previous experience, that Mr. Gladden's license had been  
24 suspended in the State of Alaska, stopped him, talked to him.  
25 Mr. Gladden was asked if he had a driver's license. He said

1 he did and it was back at his apartment. They went back to  
2 his apartment, and he produced a Costa Rica driving permit.  
3 His Alaska license was suspended. He was asked if he'd ever  
4 tried to clear it up, that he hadn't. I have a certified copy  
5 of an Alaska driving record which does show that his driver's  
6 license is suspended, and at the end of this case, we'll ask  
7 you to find that he did commit this offense. Thank you.

8 THE COURT: Mr. Tennyson, could you take that mike in  
9 front of you and flip it around so that anybody who's out  
10 here -- you can just pull it right out and turn it 180  
11 degrees. Thank you.

12 Mr. Gladden, is there anything you want to say by way of  
13 an opening statement?

14 MR. GLADDEN: Yes, sir.

15 THE COURT: You may do so at this time.

16 OPENING STATEMENT ON BEHALF OF DEFENDANT

17 BY MR. GLADDEN:

18 Yes, I'm here by way of a special appearance without  
19 assistance of counsel under the Sixth Amendment of the  
20 Constitution of the United States. And I'll read you an  
21 excerpt from the Sixth Amendment. No person shall be held to  
22 answer for a capital or otherwise infamous crime unless on a  
23 presentment or indictment of a grand jury, except in cases  
24 arising in the land or naval forces or in the militia, when in  
25 actual service in time of war or public danger, nor shall any



1 person be subject for the same offense to be twice put in  
2 jeopardy of life or limb; nor shall be compelled in any  
3 criminal case to be a witness against himself; nor be deprived  
4 of life, liberty or property without due process of law; nor  
5 shall private property be taken for public use without just  
6 compensa -- I'm sorry, here, reading the wrong one. In all  
7 criminal cases--this is the Sixth Amendment--the accused shall  
8 enjoy the right to a speedy trial, speedy and public trial by  
9 an impartial jury of the state and district wherein the crime  
10 shall have been committed, which district shall have been  
11 previously ascertained by law, and to be informed of the  
12 nature and cause of the accusation, to be confronted with the  
13 witnesses against him, to have compulsory process for  
14 obtaining witness [sic] in his favor, and to have the  
15 assistance of counsel for his defense. That -- that was out  
16 of Article VI or the Sixth Amendment of the Bill of Rights.

17 And, of course, we have plenty of case law backing this  
18 up. Quoting to you now from *Johnston v. Zerbst*, Supreme Court  
19 finding since.....

20 THE COURT: Mr. Gladden, the purpose of opening statement  
21 is to talk about the evidence that you expect to be produced  
22 at trial. And it is not for this jury to appoint you counsel.  
23 You've made your pitch to me, it's on the record, the cases  
24 are in the court file. I'm not going to allow further  
25 argument on this subject.



1 MR. GLADDEN: Okay. But the jury hasn't heard that.

2 THE COURT: That's right.

3 MR. GLADDEN: So, if I can continue.

4 THE COURT: You cannot. You've had a.....

5 MR. GLADDEN: Objection.

6 THE COURT: All right, the objection's noted for the  
7 record. Do you have anything you want to say as to anything  
8 else?

9 MR. GLADDEN: Other than I'm here by a special appearance  
10 under -- without assistance of counsel under the Sixth  
11 Amendment.

12 THE COURT: Mr. Wolfe, you can call your first witness.

13 MR. WOLFE: Call the first -- call Josh Mize.

14 MR. GLADDEN: Okay. Sir, I need to see Mr. Wolfe's  
15 qualifications as a prosecutor.

16 THE COURT: Those are pre-trial matters that should be  
17 taken out outside the presence of the jury. At the next  
18 break, we can discuss that subject.

19 MR. GLADDEN: And I've tried -- I've tried to get those,  
20 sir. Have not received them. Am I on the record here? Okay.

21 THE COURT: Whenever this -- numbers are showing, we're  
22 on record.

23 MR. GLADDEN: Okay.

24 THE COURT: The objection's overruled. You may proceed.

25 THE CLERK: Please raise your right hand.



1 (Oath administered)  
2 OFFICER MIZE: I do.  
3 MR. GLADDEN: I.....  
4 THE CLERK: Okay, you may be seated.  
5 MR. GLADDEN: Sir, I object to the objection overruled.  
6 THE COURT: Okay.

7 JOSHUA CLAUDE MIZE  
8 called as a witness on behalf of plaintiff, testified as  
9 follows on:

10 DIRECT EXAMINATION

11 THE CLERK: For the record, please state your full name,  
12 spelling your last name?

13 A Joshua Claude Mize, M-i-z-e.

14 THE COURT: You may inquire.

15 BY MR. WOLFE:

16 Q Tell us your occupation?

17 A I'm currently employed as a police officer with the  
18 Dillingham Police Department.

19 Q And were you so employed back on the Feb -- on February  
20 the 4th of this year?

21 A Yes, sir, I was.

22 Q And were you on duty at around 2:30 in the afternoon?

23 A Yes, sir, I was.

24 Q Tell us what you did at that time.

25 A Office -- Sergeant Pasquareillo and I were patrolling. I



1           observed Mr. Gladden's vehicle driving down the road. I  
2           had had -- I had personal knowledge that his license was  
3           suspended.

4           THE COURT: You know, I actually should give some further  
5           instructions before we go further. So you can stay there if  
6           you want; you can have a seat. There are some preliminary  
7           instructions I usually give at this point, which I didn't do,  
8           and some of them are better heard before the evidence goes,  
9           and some of them I'll give again at the end.

10           Your job is to determine the facts in this case and not  
11           be governed by mere sentiment, conjecture, sympathy, passion,  
12           prejudice opinion or public feeling, but only on a fair  
13           consideration of the evidence, which basically is the  
14           testimony of the witnesses, any exhibits submitted, facts  
15           agreed to by the attorneys, facts judicially noted by the  
16           court. You can use your everyday and common life experiences,  
17           but you can't use any other sources of information not  
18           presented in this court.

19           And, then, as to law, the parties or the district  
20           attorney can object or can argue what it is, but in the end, I  
21           have to tell you what it is. You have to take what I give you  
22           as the law. You're not to take it as.....

23           MR. GLADDEN: I object, sir. I object. I'm here  
24           unlearned in the law without assistance of counsel under the  
25           Sixth Amendment.



1 THE COURT: So, that, for example, is his position on the  
2 law. It's made for the record. If I've made a mistake, he  
3 can appeal and some other court can look at it. But, in the  
4 meantime, it's my instructions on the law that will control.

5 By anything I do, there's no intent on my part, by any  
6 questions, by any rulings, to indicate to you what I think you  
7 should find the facts to be or that I believe or disbelieve  
8 any witness. The rulings I have on evidence have nothing to  
9 do with the merits of the case, guilty or not guilty, that's  
10 your job. I keep evidence out or let it in based on the law.  
11 And if I sustain an objection, that means you can't consider  
12 the question or the exhibit, if there's an answer, you can't  
13 consider that. If I overrule the objection and allow it to be  
14 asked, then it doesn't mean I believe the person or disbelieve  
15 him, or how much weight doesn't -- it has nothing to do with  
16 that. It just means I want you to hear it. And some of that  
17 evidence is kept out because I believe it's not relevant to a  
18 cause that you have to decide. And so I'll keep it out for  
19 that reason. Sometimes it's marginally relevant, but it's  
20 more designed to have you respond emotionally, so that's  
21 another reason I sometimes keep evidence out.

22 You may -- every person who testifies under oath is a  
23 witness. You may believe all, part or none of a witness, but  
24 you should act reasonably in deciding whether to believe a  
25 witness and how much weight to give to the testimony. The



1 things you might want to consider, the witness' attitude,  
2 behavior and appearance on the stand, the way the witness  
3 testifies, the witness' intelligence, the witness' opportunity  
4 and ability to see or hear things about which he is  
5 testifying, the accuracy of the witness' memory, any motive of  
6 the witness not to tell the truth, any bias that the witness  
7 has in the outcome of the case, any bias -- any interest that  
8 the witness has in the outcome of the case, any opinion or  
9 reputation witness about -- reputation evidence about the  
10 witness' truthfulness, any prior criminal convictions relating  
11 to honesty or veracity, the reasonableness or unreasonableness  
12 of the witness' testimony, and the consistency of the witness'  
13 testimony and whether it's supported or contradicted by other  
14 evidence.

15 From now until the end of the trial, I don't want you to  
16 talk or express opinions about the case, either among  
17 yourselves or with other persons. You can only do that when  
18 we're finished. Bear in mind that the case comes in one piece  
19 at a time. You should keep an open mind, form no opinions,  
20 reach your conclusion only after you're excused to the back  
21 room here and after you've had a chance to talk to the other  
22 members of the jury.

23 Second, don't permit anybody else to talk about the case  
24 in your presence. That means anybody, spectators, witnesses,  
25 family, friends. If anybody talks, break it off. If they



1 persist, you should report it to me.

2 Third, although it's a natural tendency to talk with  
3 people with whom you're thrown in contact with, I don't want  
4 you to talk to the officer or the witnesses, Mr. Gladden.  
5 This is until the case is done, because it makes sure that not  
6 only do we have a fair trial, but everybody knows we have a  
7 fair trial.

8 Don't do any investigations or visit any locations.  
9 Remember, you decide the evidence -- decide the case only on  
10 the evidence that comes in here in court.

11 There are notebooks and pencils, and if -- and we didn't  
12 get a chance to get you those. And if you want them, just  
13 tell me as soon as I stop talking here, and we'll -- they're  
14 right adjacent to us. You can take notes if you want. Those  
15 notes are -- it's not required, and those notes are for you  
16 individually so that you can, you know, recall what happened,  
17 if you're better doing that. But you also have to decide  
18 whether the witness is believable, so, you know, that's -- you  
19 know, it might be easier for some people just to look at them,  
20 him or her. So you don't want note-taking to interfere, but  
21 it is your choice.

22 If you do get a notebook, put your name on the first  
23 page, write on pages after that. Don't let anybody look at  
24 yours. We'll destroy them when we're done. If you go back to  
25 deliberations, you shouldn't give any more weight to somebody



1 else's notes than your own recollection, because some people  
2 remember better than others. And we are recording things so  
3 that if anybody wants to hear this when we're done, they could  
4 listen to the record that way.

5 Okay. I want to make sure everybody's comfortable during  
6 the trial. You need to stand up, you can go in the back row  
7 and stretch, you can do that. You want to bring coffee, water  
8 in here, I don't have a problem with that.

9 Anybody need to go get a notebook? All right. You may  
10 continue your questioning, then.

11 BY MR. WOLFE:

12 Q Thank you, Your Honor. So tell us again what you were  
13 doing at about 2:30 in the afternoon on the 4th of  
14 February of this year?

15 A Okay. Sergeant Pasquareillo and I were on routine patrol  
16 down -- through downtown, observed Mr. Gladden's car  
17 driving down the road. And like I said, I had previous  
18 knowledge that his license was suspended. We fell in  
19 behind his car. I radioed police dispatch, asked  
20 them to check on his status. Dispatch informed that his  
21 license was, in fact, suspended. We followed him to  
22 his -- to his residence, pulled into his driveway, and I  
23 approached him there in his driveway.

24 Q And who was the driver of the car you said was Mr.  
25 Gladden's car?



1 A Yeah, Mr. Gladden was.

2 Q Okay. And what type of car was this?

3 A It's an older, a late sixties model, I believe, Plymouth  
4 4-door green sedan.

5 Q And did you -- what type of road was it you saw him  
6 driving on?

7 A It was on Knakknik.

8 Q Is that a road open to the public and is enforced by stop  
9 signs and speed limits and all that?

10 A Yes, sir, it is.

11 Q Okay. So after you stopped and contacted Mr. Gladden,  
12 what happened?

13 A Asked to see his license. He informed me that he had his  
14 license upstairs in his -- in his residence. Followed  
15 him into his residence, and he produced a international  
16 driving permit issued out of Costa Rica.

17 Q Okay. Did you ask him about his Alaska driver's license?

18 A Yes, sir. Sergeant Pasquareillo asked him about his  
19 license, and I believe, without looking at my report, Mr.  
20 Gladden stated that he had not tried to fix that yet.

21 Q Well, you -- if you're in doubt, look at your report.

22 A I left it right there on the desk. I apologize.

23 MR. WOLFE: Okay. Approach the witness, Your Honor?

24 THE COURT: Yes. And was discovery made available to Mr.  
25 Gladden in this case?



1 MR. WOLFE: Yes, back in February, Your Honor.

2 A Well, let's see. Sergeant Pasquareillo asked Mr. Gladden  
3 why his license was suspended. Mr. Gladden stated that  
4 he wasn't sure. We radioed dispatch to find out why his  
5 license was.....

6 THE COURT: All right, hang on. Is there any reason why  
7 the jury needs to know why his license was suspended?

8 MR. WOLFE: Not that I know of.

9 A Okay.

10 THE COURT: All right. And so -- and you're not to  
11 speculate. That doesn't matter.

12 A Uh-huh (affirmative).

13 THE COURT: The conclusion is all we're interest in here.

14 Q Okay. So my question, he did acknowledge that he was  
15 aware that his Alaska license was suspended?

16 A Yes, sir. Sergeant Pasquareillo asked if he had tried to  
17 get his license back, and Mr. Gladden stated that he had  
18 not.

19 Q Okay. Now, the person you're referring to as Mr.  
20 Gladden, is he in.....

21 MR. GLADDEN: Object.

22 THE COURT: The grounds?

23 MR. GLADDEN: I'm here without assistance of counsel  
24 under the Sixth Amendment of the Constitution. I'm unlearned  
25 in the law.



1 THE COURT: Okay. That objection, you've made it once  
2 and it's of record. You've made it more than once, and it  
3 is -- you don't need to continue to make it.

4 MR. GLADDEN: All right. Do you have first-hand  
5 knowledge of the facts?

6 THE COURT: All right, hand on now. You'll get a chance  
7 to ask your questions as soon as Mr. Wolfe's done. Go ahead.

8 Q Okay. You were -- were you present when Officer  
9 Pasquareillo was talking to the defendant?

10 A Yes, sir, I was.

11 Q So you overheard these things?

12 A Yes, sir.

13 Q Okay. Now, is the person that you're referring to as Mr.  
14 Gladden, is he in the courtroom?

15 A Yes, sir, he is.

16 Q Would you please point him out for the jury?

17 A Sitting right there.

18 THE COURT: Record will reflect that the officer  
19 identified Mr. Gladden.

20 Q Now, as part of your investigation, did you order a  
21 certified copy of his driving -- Alaska driving record?

22 A Yes, sir. When I got back to the police station, I had  
23 police dispatch send a message to Juneau and I asked for  
24 a true and certified copy of Mr. Gladden's driving record  
25 and license status.



1 MR. WOLFE: Approach the witness, Your Honor?

2 THE COURT: You may.

3 MR. GLADDEN: Yeah, I object to that informa.....

4 THE COURT: Any other grounds?

5 MR. GLADDEN: No way of certifying that record.

6 THE COURT: Okay. Mr. -- I'll let him ask the questions.

7 It's not going to go to the jury until it's been

8 authenticated.

9 Q And, Officer, handing you what's been marked plaintiff's  
10 exhibit number 1 for identification, can you examine that  
11 and tell me what it is?

12 THE COURT: We may have to close that door there, it  
13 seems like there's something going on. It's been so hot we  
14 haven't wanted to close anything so this courtroom doesn't get  
15 warm. Thank you.

16 A This would be a true and certified copy from Juneau of  
17 Mr. Gladden's driving record.

18 Q Okay, and that's certified by the Alaska Department of  
19 Motor Vehicles?

20 A Yes, sir, that's -- yes, sir.

21 Q Does it bear an original seal certifying?

22 A Yes, sir, it -- it's -- bears Susan Miller's, Division of  
23 Motor Vehicle, Department of Administration, and the seal  
24 for State of Alaska.

25 Q And that is a two-page document, and both pages are



1 certified, is that correct?

2 A Yes, sir, they are.

3 Q Okay. And what date was that certified record run?

4 A I'm sorry?

5 Q What date was the certified record run?

6 A Four-18 of 2003.

7 Q Okay. And does it show the current status of the  
8 defendant's license?

9 A Yes, sir, it does.

10 MR. WOLFE: And I'm going to hand you a highlighter.

11 Approach the witness, Your Honor?

12 THE COURT: You may.

13 Q And I'll ask you to highlight the portion where it states  
14 the current status. And what does it say?

15 A Suspended.

16 Q Okay. And does it contain a date at which the license  
17 was first suspended during this period?

18 A Yes, sir. It is first suspended 5/24/2001.

19 Q Okay, all right. And does it show that between that date  
20 and the date it was run, that he had attained a valid  
21 license?

22 A No, sir, it does not.

23 MR. WOLFE: Okay. Your Honor, I offer state's exhibit 1  
24 into evidence.

25 / / /



1 VOIR DIRE

2 BY THE COURT:

3 Q All right. And does that exhibit contain any information  
4 as to why the license was suspended?

5 A Yes, Your Honor, it does.

6 Q Let me see. And have you relied on these in the past,  
7 these.....

8 A Yes, sir, we have.

9 Q .....printouts?

10 A Yes, sir.

11 Q Have you independently determined whether they -- how  
12 they get their information and whether or not they're  
13 accurate?

14 A I'm sorry?

15 Q Have you ever compared a driver's license record that you  
16 know from Dillingham with one of these printouts?

17 A Yes, sir.

18 Q And are they accurate?

19 A Yes, sir.

20 Q Are they kept in the regular course of business by the  
21 Department of Motor Vehicles?

22 A Yes, sir.

23 MR. WOLFE: I'll point that section out, Your Honor.

24 THE COURT: Mr. Gladden, do you have an objection, other  
25 than the one you've already stated, to this driving record



1 being offered, exhibit 1?

2 MR. GLADDEN: No, I have some questions about it.

3 THE COURT: All right. I will let you ask questions of  
4 the officer. And, Mr. Wolfe, do you have any -- is there any  
5 reason why we can't excise and submit a redacted copy so that  
6 the jury doesn't have to know for what reason a license was  
7 suspended?

8 MR. WOLFE: I don't see any reason why we couldn't, Your  
9 Honor.

10 THE COURT: Okay. So you might make a copy of this and  
11 do that if, in fact, it's admitted. Mr. Gladden, you may ask  
12 your questions on this subject.

13 *VOIR DIRE*

14 BY MR. GLADDEN:

15 Q Okay. I need -- or could I see your credentials as  
16 you're an officer of the City of Dillingham?

17 A What credentials are you asking for, sir?

18 Q Your officer credentials as an officer of the City of  
19 Dillingham, as in your oath of office, your employee  
20 affidavit?

21 A I don't carry around copies of that stuff, sir.

22 Q Okay.

23 A That's in city hall, as far as I know.

24 THE COURT: The -- these are not your general questions,  
25 Mr. Gladden. These are questions about the exhibit here. If



1 you have any questions about this subject only, otherwise I'm  
2 going to rule on admissibility of the exhibit.

3 Q I was just trying to verify your authority in giving  
4 evidence against me, and so that's why I'm asking these  
5 questions, to see that you're properly credentialed in  
6 order to do what you're -- whatever it is you're doing.

7 THE COURT: Any questions on this exhibit, Mr. Gladden?

8 Q That seal, okay, that's on there, is State of Alaska.  
9 Can you -- can you tell me, is that seal public or  
10 private?

11 A It's State of Alaska, Department of Administration  
12 official seal.

13 Q Yeah. Is that seal a private seal or a public seal? Is  
14 that.....

15 A I say it's a state seal on -- on say it's a public state  
16 seal, one that the.....

17 Q Okay.

18 A .....Department of Administration uses.

19 Q So it is a public seal, then?

20 A I would believe so.

21 Q Okay. Okay. And, then, on the international driver's  
22 permit, is that acceptable in Alaska?

23 THE COURT: Okay, hang on now. We're only talking about  
24 this exhibit at this point. I don't think the state's.....

25 MR. GLADDEN: Okay.



1 THE COURT: .....finished all their questions to this  
2 witness. Or have you?

3 MR. WOLFE: Actually, I have, Your Honor, so.....

4 THE COURT: Okay. Well, then -- and do you have any  
5 objection to these -- to that question? Because, if not, I'm  
6 going to allow him to ask about the international -- it's kind  
7 of a question of law, but.....

8 MR. WOLFE: Well, that's -- I think the court needs to  
9 instruct on the law, not the officer.

10 THE COURT: Well, I'll let him ask the question he was  
11 going to do, but first I'm going to rule on this exhibit since  
12 the questions on that are done. Exhibit 1 is received with  
13 the proviso that the state redact and submit it to the jury in  
14 a redacted form. All right, questions?

15 (Plaintiff's exhibit 1 admitted with conditions)

16 JOSHUA CLAUDE MIZE

17 called as a witness on behalf of plaintiff, testified as  
18 follows on:

19 CROSS-EXAMINATION

20 BY MR. GLADDEN:

21 Q Okay. The question was on the seal, and the officer  
22 testified it was a public seal, the State of Alaska public  
23 seal that's on that piece of paper, or on that copy of the  
24 driving record.

25 THE COURT: Other questions for the witness?



1 Q Okay. Is the international driver's permit acceptable in  
2 Alaska?

3 A By state law, no, sir, it is not if you're a resident in  
4 the state, or if you -- or if you've been previously  
5 licensed by the state.

6 Q Could you give me a cite?

7 A It's Alaska Statute 28.15.281(a)(3).

8 Q 28.15.8-3?

9 A No, 281(a)(3).

10 Q I'm sorry, I still -- 281.15.....

11 A It's Alaska Statute 28-dot-15-dot-281(a)(3).

12 Q (A)(3)?

13 A Yes, sir.

14 MR. GLADDEN: Okay. That's all the questions I had.

15 THE COURT: Any other questions, Mr. Wolfe?

16 MR. WOLFE: No, sir.

17 THE COURT: You may step down. Any other witnesses?

18 MR. WOLFE: No, Your Honor.

19 THE COURT: Mr. Gladden, do you have any witnesses?

20 MR. GLADDEN: Yes, Mr. George Gottschalk, Junior, please.

21 THE COURT: Mr. Gottschalk, come forward and be sworn.

22 THE CLERK: Please raise your right hand.

23 (Oath administered)

24 MR. GOTTSCHALK: Yes.

25 THE CLERK: Okay. Please be seated.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

GEORGE F. GOTTSCHALK, JR.

called as a witness on behalf of defendant, testified as follows on:

DIRECT EXAMINATION

THE CLERK: For the record, please state your full name, spelling your last name?

A For the record, I am George Frederick Gottschalk, Junior. I live in Dillingham. What else did you want?

THE COURT: That's it. Mr. Gladden, any questions for Mr. Gottschalk?

BY MR. GLADDEN:

Q Yes. Are you familiar with the Constitution of the United States?

MR. WOLFE: I'm going to object to this line of inquiry.

A Fairly -- I'm -- I'm familiar with it, as well as everyone else should be.

THE COURT: The objection's sustained. Unless it has something to do -- unless you can show me how it has to do with this case and not a legal issue, but the facts of this case, then I'm not going to allow the inquiry.

MR. GLADDEN: Well, sir, I'm unlearned in the law, and that's why I'm trying to find out. This -- this man has some information that we need on the court record here, and in particular, the Sixth Amendment.....

THE COURT: All right.



1 MR. GLADDEN: .....of the Constitution.

2 THE COURT: The objection's sustained. I'm not going to  
3 allow inquiry on the Sixth Amendment.

4 A The -- the sub -- the Sixth Amendment guarantees you a  
5 assistance of counsel.

6 THE COURT: All right.

7 MR. GLADDEN: Okay.

8 THE COURT: That's it. We're not going to talk about the  
9 Sixth Amendment. The jury has a -- it gets its law in the  
10 instructions and we have been through that.

11 A And the Constitution is the supreme law of the land, and  
12 the supremacy clause says that the Constitution shall be  
13 observed in all -- by all courts of the land.

14 MR. GLADDEN: Thank you.

15 THE COURT: Questions on other subjects?

16 MR. GLADDEN: Okay. No, I think that'll do it.

17 THE COURT: Any questions? You're excused, Mr. Gott.....

18 MR. WOLFE: No, sir.

19 A I'm not finished yet.

20 THE COURT: But you are finished.

21 A There -- there -- there are some other issues that  
22 haven't been addressed here.

23 THE COURT: They're not going to be addressed in front of  
24 the jury. The jury is going to be instructed on the law by  
25 me. So you are excused at this time.



1 MR. GLADDEN: I object. I object. Let Mr. Gottschalk  
2 speak.

3 THE COURT: Your objection's noted for the record. Do  
4 you have any other witnesses?

5 MR. GLADDEN: No.

6 THE COURT: All right. Let me ask the jury, if you  
7 would go through that door for a minute, we're going to take  
8 up one matter, and then we'll call you back. Maybe two  
9 matters, now that I think about it.

10 (Jury panel excused.)

11 THE COURT: First of all, Mr. Gladden, I want to tell you  
12 that, of course, you have the right to remain silent. You do  
13 not have to testify in this action. And if you don't testify,  
14 I will instruct the jury that that is your right and they  
15 shouldn't hold it against you. I also want you to know that  
16 you have the right to testify, and so -- and that is your  
17 decision. So I guess I need to make sure that you understand  
18 that and know whether or not you're going to testify or not.

19 MR. GLADDEN: Yeah. Once again, without the assistance  
20 of counsel under the Sixth Amendment, I can't answer that.

21 THE COURT: All right. The second question is, Mr.  
22 Wolfe, you've filed proposed jury instructions which I have in  
23 front of me. My -- the file indicates that the magistrate  
24 says that you dismissed Count II at arraignment.

25 MR. WOLFE: Your Honor, I thought I had, but didn't see



1 anywhere where I -- anyway, I was confused, so I think the  
2 court is correct on that.

3 THE COURT: All right. So that would take care of  
4 verdict form number 2, and count -- and if you could -- so if  
5 you could redo the charging document provides as follows?

6 MR. WOLFE: Yes, sir.

7 THE COURT: I have a verdict form already. And you have  
8 the other instruction. But you have some other instructions  
9 you want to supply?

10 MR. WOLFE: Yes, Your Honor.

11 THE COURT: Do you want to break for lunch and get those  
12 after, or do you think you can.....

13 MR. WOLFE: That would.....

14 THE COURT: .....do them now? I mean, I don't know how  
15 long it's going to take you.

16 MR. WOLFE: Take me about 10 minutes. What I would plan  
17 on doing, if the court would approve, is put a blank piece of  
18 paper over Count II and.....

19 THE COURT: You don't have any other definitions that you  
20 need, any other instructions?

21 MR. WOLFE: I've got them here. They brought to me  
22 during a break, so.....

23 THE COURT: All right. Let's take a 10-minute break at  
24 this time. You also need to redact your instruction, your  
25 exhibit number 1.



1           Mr. Gladden, the jury instructions -- I submitted a basic  
2 packet, which I will change the one about you not testifying.  
3 The state then has one called the charging document reads as  
4 follows. They have several more. We will reconvene in 10  
5 minutes and talk further about the instructions to be given  
6 the jury. Anything further at this time?

7           MR. GOTTSCHALK: Does the accused have a right to make  
8 any (indiscernible - away from microphone)?

9           THE COURT: He could testify or he can make a closing  
10 argument when we're done. Those are sort of the options at  
11 this point, and put on any other witnesses, but they have to  
12 talk about what happened.

13           All right, we'll reconvene in 10 minutes.

14           (Off/on record)

15           (Jury panel not present)

16           THE CLERK: Back on record.

17           THE COURT: Okay, you've tossed some new jury  
18 instructions up here. Okay. So the jury instructions I put  
19 out this morning are 1 through 4; 5 says the complaint is a  
20 mere accusation; 6 would be the complaint reads as follows; 7  
21 would be the elements in this case; and then once the  
22 privileges of a person have been suspended; and then a  
23 definition of vehicular way or area. Is there anything else  
24 that the state wants to propose?

25           MR. WOLFE: No, Your Honor.



1 THE COURT: Does the defendant have any objection to the  
2 jury instructions that we have?

3 MR. GLADDEN: Yes. I object. Without assistance of  
4 counsel under the Sixth Amendment, I'm unlearned in the law,  
5 have no way of evaluating these instructions.

6 THE COURT: All right. That objection has been noted,  
7 and I'm going to give the -- you don't need one as -- what's  
8 the mental element here?

9 MR. WOLFE: Knowingly. Oh, did we not do a knowingly?

10 THE COURT: And did you define knowingly?

11 MR. WOLFE: Did I not do a knowingly? Oh, darn it. I  
12 can have one run up real quick.

13 THE COURT: Well, I can probably get one, too, but.....

14 MR. WOLFE: We can pull one out of that last file.

15 THE COURT: I can pull them out of a lot of places. I  
16 just want to make sure you got what you want in here before I  
17 hear from the defense. You need a definition of knowingly  
18 after the elements. All right.

19 MR. GLADDEN: Sir -- sir, I have a question.

20 THE COURT: Yes?

21 MR. GLADDEN: What is your definition of the right to  
22 travel?

23 THE COURT: The right to travel is -- I don't have a  
24 definition in the instructions on the right to travel.

25 MR. WOLFE: And I do have this redacted driving record,



1 I.....

2 MR. GLADDEN: Let the record so show that you have no  
3 definition for the -- the right to travel.

4 THE COURT: And the -- so you're requesting an  
5 instruction on the right to travel?

6 MR. GLADDEN: Well, you know, I'm asking you for a  
7 definition of the right to travel.

8 THE COURT: Well, I could come up with a definition, but  
9 the question is whether I would tell the jury about it. And  
10 my ruling at this point is no, but I'm willing to hear any  
11 argument you have on it.

12 MR. GLADDEN: Well, let the record so show.

13 THE COURT: The record will show it. And these jury  
14 instructions will become a part of the record, and what's in  
15 them is in them. So I'm going to get a knowingly instruction  
16 and put them in and make copies. Prepared to go in about five  
17 minutes with closing arguments?

18 MR. WOLFE: Yes, Your Honor. I'm just going to show Mr.  
19 Gladden this redacted, took everything out except the one.....

20 THE COURT: I asked him to take out the reasons for the  
21 license suspension because it has nothing to do with the case  
22 and it might prejudice the jury. So that exhibit is received  
23 with that.

24 Are [sic] there anything else we should do before closing  
25 arguments? Mr. Wolfe?



1 MR. WOLFE: No, Your Honor.

2 THE COURT: Mr. Gladden?

3 MR. GLADDEN: Yes. I'd like to recall Mr. Gottschalk to  
4 the witness stand.

5 THE COURT: All right. Tell me what it is you want to  
6 testify -- have him testify about.

7 MR. GLADDEN: Okay. I have some questions about the  
8 supremacy -- to the supremacy clause in the Constitution.

9 THE COURT: No, I'm not going to allow it.

10 MR. GLADDEN: Objection.

11 THE COURT: Objection is noted. We'll take a 10-minute  
12 recess and come back for closing arguments.

13 (Off/on record)

14 (Jury panel not present)

15 THE COURT: We ready to -- we're on record without the  
16 jury. Ready to bring the jury in?

17 MR. WOLFE: Yes, sir.

18 THE COURT: Anything further, Mr. Gladden?

19 MR. GLADDEN: No.

20 THE COURT: All right, let's bring the jury in.

21 (Jury panel summoned)

22 THE COURT: Okay, we're back again, and as I understand  
23 it, the state has rested, the defense has nothing further, and  
24 so we are ready to get this case to you. I have some  
25 instructions I have to read to you at this time.



1           You've heard the evidence in the case. You're now about  
2 to hear argument as to its meaning, then you'll begin your  
3 deliberations. Please listen carefully to these instructions.  
4 They contain the law that you are to apply to your evident --  
5 to the evidence in your effort to reach a just verdict.  
6 You'll have a copy of these instructions with you when you  
7 retire to deliberate, but I urge you to listen. Sometimes the  
8 spoken word is clearer than the written word.

9           The order in which I read these has no relation to their  
10 importance, nor does their length. Some concepts just require  
11 more explanation than others. They're all important. Try to  
12 understand them and see how they relate to each other.

13           Your job is to determine the facts, that is, what  
14 happened from the evidence that was admitted. The evidence is  
15 the testimony that you've heard and the exhibit that was  
16 received. You then take the law from these instructions,  
17 apply it to the facts to decide the case.

18           It's my job to rule on admissibility of evidence. You  
19 can't concern yourself for the reasons for any rulings I might  
20 have made. You can't consider any evidence on which an  
21 objection was sustained or which was ordering [sic] stricken.

22           In determining whether the proposition's been proved,  
23 consider all evidence bearing on it without regard to which  
24 party produced it. Remember, the exhibit's not necessarily  
25 entitled to any more weight than oral testimony.



1 Don't worry about how many witnesses testified on  
2 opposing sides. You're the ones to consider all the evidence,  
3 testimony, exhibits, see how they relate to each other,  
4 evaluate how convincing they are, and determine how much  
5 weight, if any, to give to each.

6 I have not intended by anything I've said or done or by  
7 any question or ruling to suggest how you should decide any  
8 question of fact, or that I believe or disbelieve any witness,  
9 or what your verdict should be. And if anything I did seemed  
10 to indicate that, please disregard it and form your own  
11 opinion. While you are obligated to follow these  
12 instructions, you are the judges of the facts and the verdict  
13 is in your hands.

14 The distinguishing features of a criminal trial are the  
15 presumption of innocence, the burden of proof beyond a  
16 reasonable doubt. The law presumes a defendant to be innocent  
17 of crime so that a defendant, although accused, begins the  
18 trial with a clean slate, with no evidence favoring  
19 conviction. The presumption of innocence alone is sufficient  
20 to acquit a defendant unless you're satisfied beyond a  
21 reasonable doubt of his guilt after careful and impartial  
22 consideration of all the evidence in the case. This last  
23 requirement, that you be satisfied beyond a reasonable doubt  
24 of defendant's guilt, is what's called the burden of proof.  
25 It's not required that the prosecution prove guilt beyond all



1 possible doubt, for it's rarely possible to prove anything to  
2 an absolute certainty. Rather, the test is proof to the  
3 exclusion -- excuse me -- proof to the exclusion of reasonable  
4 doubt. A proof -- a reasonable doubt is a doubt based upon  
5 reason and common sense. Proof beyond a reasonable doubt must  
6 be proof of such a convincing character that, after careful  
7 consideration, you will be willing to rely and act upon it  
8 without hesitation in your important affairs. A defendant is  
9 never to be convicted on mere suspicion or conjecture.

10         The burden of proving the defendant guilty beyond a  
11 reasonable doubt always rests on the prosecution. The burden  
12 never shifts throughout the trial, but the law never imposes  
13 upon a defendant in a criminal case the burden or duty of  
14 calling any witnesses or producing any evidence. A defendant  
15 has the absolute right not to testify, and you must not draw  
16 any inference against him for not testifying. Thus, a  
17 reasonable doubt may arise not only from the evidence  
18 produced, but also from a lack of evidence. Since the burden  
19 is upon the prosecution to prove every essential element of  
20 the crime charged beyond a reasonable doubt, a defendant has  
21 the right to rely upon the failure of the prosecution to  
22 establish such proof. A defendant may also rely upon evidence  
23 brought out on cross-examination of witnesses for the  
24 prosecution.

25         The complaint is the charging document in this case.



1 It's a mere accusation against defendant. It's not evidence  
2 of his guilt, and you should not permit yourself to be  
3 influenced to any extent, however slight, against the  
4 defendant because of the filing of the complaint.

5 The charging document in this case reads as follows:  
6 That on or about the 4th of February, 20-03, at or near  
7 Dillingham, Third Judicial District, State of Alaska, David  
8 Gary Gladden did unlawfully and knowingly operate or drive a  
9 motor vehicle on a highway or vehicular way at a time when his  
10 driver's license or privilege to drive had been canceled,  
11 suspended or revoked in this or another jurisdiction, a 1996  
12 Plymouth sedan, Alaska license BLP-173.

13 So the complaint that said a 1966 Plymouth was a typo,  
14 and you want me to amend it to say a 1996 Plymouth?

15 OFFICER MIZE: No, a '66. It's a '66.

16 MR. WOLFE: I guess I'd ask that you just delete the  
17 date. I don't think that's a important part of the charge.

18 THE COURT: To the charge, the defendant has entered a  
19 plea of not guilty, which places upon the state the.....

20 MR. GLADDEN: Objection.

21 THE COURT: Objection to the deletion?

22 MR. GLADDEN: No, objection to the -- the plea of not  
23 guilty. I'm here without assistance of counsel under the Si  
24 -- and it's on the record. Haven't -- haven't had assistance  
25 of counsel all the way through.



1 THE COURT: All right. So -- but the instruction says,  
2 to the charge, the defendant has pleaded not guilty. He may  
3 not have, he may have just said he doesn't have the assistance  
4 of counsel, but we.....

5 MR. GLADDEN: I didn't plead.

6 THE COURT: .....entered a not guilty plea for him. And  
7 that still places on the state the burden of proving each and  
8 every allegation of the charge beyond a reasonable doubt.

9 The defendant is charged in this case with the crime of  
10 driving while license suspended. The state must prove that  
11 defendant committed the crime of driving, and I'll add a while  
12 to the elements, while license suspended. This requires the  
13 state to prove beyond a reasonable doubt, the following:  
14 First, that the event in question occurred at or near  
15 Dillingham and on or about February 4, 20-03; second, that  
16 defendant, David Gary Gladden, did operate or drive a motor  
17 vehicle; third, on a highway or vehicular way; and, fourth,  
18 during a time when his license was canceled, suspended or  
19 revoked by the Alaska Department of Motor Vehicles; fifth,  
20 knowing that his license was canceled, suspended or revoked.

21 If you find from your consideration of all the evidence  
22 that each of these propositions has been proved beyond a  
23 reasonable doubt, then you shall find the defendant guilty.  
24 If, on the other hand, you find from your consideration of all  
25 the evidence that any of these propositions has not been



1 proved beyond a reasonable doubt, then you should find  
2 defendant not guilty.

3         And I'm also going to add knowingly in element second,  
4 knowingly operate or drive a motor vehicle.

5         Vehicular way or area means a way, path or area other  
6 than a highway or private property which is designed by  
7 official traffic control devices or a customary usage and  
8 which is open to the public for purposes of pedestrian or  
9 vehicular travel, and which way or area may be stricted [sic]  
10 in use to pedestrians, bicycles, or other type of vehicles as  
11 determined by the department or other agency having  
12 jurisdiction over the way, path or area.

13         Once the privileges of a person to drive a motor vehicle  
14 have been suspended in Alaska, such suspension continues until  
15 the person applies for and receives a new license issued by  
16 the Alaska Department of Public Safety.

17         A person acts knowingly, with respect to conduct or a  
18 circumstance described by the law, when the person is aware  
19 that his or her conduct is of that nature or that the  
20 circumstance exists. When knowledge of the existence of a  
21 particular fact must be proved by the state, that knowledge is  
22 established if the person is aware of a substantial  
23 probability of the existence of the fact unless the person  
24 actually believes it does not exist.

25         State of mind may be shown by circumstantial evidence.



1 It can rarely be established any other way. While a witness  
2 may see or hear what a person does or fails to do, and so be  
3 able to testify directly on this, no one can see or hear  
4 another's state of mind. But what a person does or fails to  
5 do may indicate the state of mind.

6 In determining a person's state of mind, you may consider  
7 any statements made or acts done or omitted by the person, and  
8 all facts and circumstances in evidence which you find  
9 helpful.

10 A fact may be proved by direct evidence, by  
11 circumstantial evidence, or by both. Direct evidence is given  
12 when a witness testifies about an event which the person --  
13 witness personally saw or heard. Circumstantial evidence is  
14 given when a witness did not personally see or hear an event,  
15 but saw or heard something which, standing alone or taken  
16 together with other evidence, may lead a jury to conclude that  
17 the event occurred. Both types of evidence are admissible and  
18 may be considered by you. Neither is entitled to any greater  
19 weight than the other.

20 Any person who testifies under oath is a witness. You,  
21 as the jurors, are the sole judges of their believability. In  
22 deciding whether to believe a witness or how much weight to  
23 give to the testimony, you should consider anything that  
24 reasonably helps you to judge the testimony. Among the things  
25 you should consider are the witness' attitude, behavior and



1 appearance on the stand and the way the witness testifies; the  
2 witness' intelligence; the witness' opportunity and ability to  
3 see or hear things about which the witness testifies; the  
4 accuracy of the witness' memory; any motive of the witness not  
5 to tell the truth; any interest that the witness has in the  
6 outcome of the case; any bias of the witness; any opinion or  
7 reputation evidence about the witness' truthfulness; the  
8 consistency of the witness' testimony and whether it is  
9 supported or contradicted by other evidence.

10       If you believe a witness testified falsely as to part of  
11 his or her testimony, you may choose to distrust other parts  
12 also, but you're not required to. You should bear in mind  
13 that inconsistencies, contradictions in a witness' testimony  
14 between that and others do not necessarily mean you should  
15 disbelieve the witness. It's not unusual for a person to  
16 forget or be mistaken about what they remember, and this may  
17 explain some inconsistencies and contradictions. It's not  
18 uncommon for two honest people to witness the same event and  
19 see or hear things differently. It may be helpful, when you  
20 evaluate consistencies -- inconsistencies and contradictions,  
21 to consider whether they relate to important or unimportant  
22 facts.

23       You may believe all, part or none of the testimony of any  
24 witness. You need not believe a witness, even though the  
25 testimony's uncontradicted, but you should act reasonably in



1 deciding whether or not you believe a witness, how much weight  
2 to give to the testimony.

3         It is a constitutional right of a defendant in a criminal  
4 trial not to take the witness stand. You must not draw any  
5 inference of any kind from the fact that defendant does not  
6 testify, nor should this fact be discussed by you or enter  
7 into your deliberations in any way.

8         In your deliberations, do not discuss or consider the  
9 subject of possible penalty or punishment. That subject must  
10 not in anyway affect your [sic] jury.

11         At the close of the case, counsel may argue the case to  
12 you. The arguments, based upon his study and thoughts, maybe  
13 and usually are helpful. However, it should be remembered  
14 that arguments are not evidence and cannot be considered as  
15 such. It is your duty to give careful attention to the  
16 arguments, if they're based on the evidence and upon the law  
17 as given to you by me in the instructions. But the arguments,  
18 if they depart from the facts or the law, should be  
19 disregarded. Although acting in good faith, counsel and the  
20 parties may be mistaken in their recollection of evidence  
21 given during the trial. You're the ones to determine what  
22 evidence was given in the case, as well as what conclusions of  
23 fact should be drawn from it.

24         The attitude and conduct of jurors at the beginning of  
25 their deliberations are matters of considerable importance.



1 It's rarely productive for a juror, at the outset, to make an  
2 emphatic expression of his or her opinion on the case or state  
3 how he or she intends to vote. When this is done at the  
4 beginning, a juror's sense of pride may be aroused, and the  
5 juror may hesitate to recede or change the position, even if  
6 shown it's wrong. Remember, again, you're not partisans or  
7 advocates in this matter, but judges.

8 As jurors, you have a duty to consult with one another  
9 and to deliberate with a view towards reaching an agreement,  
10 if that can be done without violence to individual judgment.  
11 Each juror must decide the case independently, but only after  
12 an impartial consideration of the evidence with the other  
13 jurors. In the course of deliberations, you should not  
14 hesitate to re-examine your own views and change your opinion  
15 if convinced it's erroneous. But not juror should surrender  
16 an honest belief as to the weight or effect of the evidence  
17 solely because of the opinion of other jurors or for the mere  
18 purpose of returning a verdict.

19 You were accepted in this case in reliance on your  
20 answers to the questions asked. You're just as much bound by  
21 those answers now and until you're finally discharged as you  
22 were then. Your oath obligates you to consciously --  
23 consider -- conscientiously consider and weigh the evidence  
24 and render a verdict based on the law and the evidence.

25 When you return to the jury room, select one juror to



1 preside over your deliberations. Once you've agreed to the  
2 verdict on the decision, submit it to your presiding juror.  
3 Should complete, date and sign the verdict form. Then the  
4 bailiff should be notified you've reached a verdict. They'll  
5 advise me, and I'll summon the parties. Once you've all  
6 assembled, you'll be brought into open court to return your  
7 verdict. Until it's received in open court, your verdict is  
8 secret and you should tell no one what it is, including me or  
9 the clerks or the bailiffs.

10 What we're going to do, is right after this, we're going  
11 to have argument, and then you're probably going to have lunch  
12 in there. So I'd suggest you eat your lunch, then make your  
13 deliberations, and we'll -- and when you reach a verdict, let  
14 us know.

15 If it's necessary for communicate with me, send a note  
16 through the bailiff signed by your presiding juror or by one  
17 or more members of the jury. No member of the jury should  
18 ever communicate with me by any means other than a signed  
19 writing which should have the date and time on it. And I'm  
20 not communicate back on any matter touching on the merits  
21 except in writing or here in open court.

22 If you have any questions, you can send them out.  
23 Although I can't always answer these, I'm free to tell you, if  
24 you desire to be informed on any point of law, you may write  
25 which point of law you want to be instructed about on a piece



1 of paper and hand it to the bailiff. And I will notify the  
2 parties and consider the question.

3 You als -- we've recorded the proceedings so that if you  
4 need to rehear the testimony, you can write which testimony  
5 you need to hear, and we'll arrange it. No new evidence will  
6 be presented. A delay will occur prior to a response to your  
7 question or request since I must contact the defendant and  
8 counsel for consideration. I'm not telling you this to  
9 discourage you, just so you'll know if there's any delay.

10 Ms. Savvo will likely be the bailiff appointed to keep  
11 you together and prevent conversation between you and any  
12 other persons. She will provide lunch, make any phone calls  
13 for you, if necessary. She can't answer any questions about  
14 the case or provide you with any information, books or  
15 materials. The bailiff, as well as other persons, are  
16 forbidden to communicate in any way with -- or any manner with  
17 any member of the jury touching on the merits of this case.

18 Bear in mind you're never to reveal to any person, not  
19 the bailiff, not me, how you stand numerically or otherwise on  
20 the question of guilt or innocence until authorized by the  
21 court. Any violation of any item of which I have cautioned  
22 you on is to be recorded to the court -- reported to the  
23 court.

24 The verdict form is attached to these instructions. In  
25 order to reach a verdict, you must all agree. You may decide



1 to end deliberations for the day at 4:30, or you may decide  
2 you want to go later. If you want the clerk to order supper,  
3 let her know. It's unusual for a jury to deliberate past 7:00  
4 or 8:00 o'clock, but if you all agree you're making progress,  
5 wish to go a little later, send out a note saying this, that  
6 same as.....

7 All of you must be present for deliberations. Don't  
8 discuss the case when some members are absent for a break,  
9 and, of course, you cannot discuss the case when you return  
10 home. If you don't reach a verdict today, you may return  
11 home, but you have to come back at 8:30 tomorrow to continue  
12 it. And I'm going to sign and date this today.

13 It's now time for the closing arguments. The parties  
14 will outline what they think has been proved, any inferences  
15 reasonably drawn. What is said here is not evidence, it's  
16 arguments. And since the state has the burden of proof, they  
17 go first, and if the defense chooses to argue, they go last.

18 Mr. Wolfe?

19 CLOSING ARGUMENT ON BEHALF OF PLAINTIFF

20 BY MR. WOLFE:

21 Thank you, Your Honor.

22 Ladies and gentlemen, I appreciate your time and  
23 attention.

24 The judge said there's five things the state must prove  
25 in order to convict the defendant of this offense. First, the



1 event in question occurred at or near Dillingham and on or  
2 about February 4th of this year; second, that he did operate  
3 or drive a motor vehicle.

4 THE COURT: To which I added knowingly, that he knowingly  
5 operated.....

6 MR. WOLFE: Knowingly.

7 THE COURT: .....a motor vehicle.

8 MR. WOLFE: And in this case, the testimony was that he  
9 was driving a Plymouth automobile; third, that it happened on  
10 a highway or vehicular way. The trooper -- the officer  
11 testified it was Knakknik Road, a public highway. Fourth,  
12 that it was during a time when his license was canceled,  
13 suspended or revoked. You'll have the exhibit to take back to  
14 the jury room, and it does show that his license has been  
15 suspended for some time and was suspended on this day. Fifth,  
16 that he knew his license was suspended, canceled or revoked.  
17 You heard the officer testify that he was asked about if he  
18 had tried to get his license back, and he said he hadn't. I  
19 suggest to you that this indicates that he did know it was  
20 revoked.

21 We ask you to carefully consider the evidence and to  
22 render a fair verdict of guilty in this case.

23 Thank you.

24 THE COURT: Mr. Gladden, is there any argument you wish  
25 to give to the jury?



1 MR. GLADDEN: Yes, there is, sir.

2 THE COURT: You may proceed.

3 CLOSING ARGUMENT ON BEHALF OF DEFENDANT

4 BY MR. GLADDEN:

5 I -- I thank you for coming out and caution you jurors  
6 that the sole purpose that you've brought -- been brought in  
7 here is to absolve the judge and prosecutor of their  
8 wrongdoing in violating the Constitution. That's mainly the  
9 Sixth Amendment, assistance without -- or without assistance  
10 of counsel.

11 And -- and, then, whatever prosecutor John Wolfe says,  
12 I -- I would caution you what he's been saying, because we  
13 still aren't certain what his -- what capacity is he operating  
14 in. And I -- I've repeatedly requested his credentials, you  
15 know, ignor -- been ignored, not found out what -- what he's  
16 doing here. And, then, while you were in the -- being  
17 instructed a few minutes ago, we have it on record that Judge  
18 Torrissi refused to acknowledge the supremacy clause. That's  
19 Article VI, Clause 2 of the Constitution, which I have a copy  
20 of right here. It.....

21 THE COURT: Oh, you can't hand anything to the jury.

22 MR. GLADDEN: Okay.

23 THE COURT: There's no law given to them except for the  
24 instructions that have just been read.

25 MR. GLADDEN: Okay. And also the difference between



1 attorney and counselor at law. And we have some case law  
2 supporting this.

3 (Indiscernible - away from microphone).

4 THE COURT: Any further argument, Mr. Wolfe?

5 MR. WOLFE: No, Your Honor.

6 THE COURT: All right. I'm going to say again, I mean,  
7 in some ways, this is a difficult thing because you're in the  
8 middle of something that you don't know the history of. I've  
9 given you the instructions that I want you to follow, you've  
10 heard the evidence. We will send back the jury instructions  
11 and the exhibit. You can -- lunch is either there or will be  
12 here shortly, so we would ask that when you've reached a  
13 verdict, you'll let us know and we'll get everybody back in.

14 Anything -- oh, as to playbacks, if you do want to hear a  
15 playback, we have recorded this thing, so all you have to do  
16 is let Miss Savvo know, and -- but if you come back in to  
17 listen to the testimony again, it's just like you heard it the  
18 first time. There's no -- you can't ask questions. You can  
19 take notes, you can listen, you can ask her to play a certain  
20 part, but when you deliberate, you should all be in there and  
21 only in there.

22 And, folks, if you'd -- if counsel and Mr. Gladden would  
23 remain just a minute longer, we'll determine where you're  
24 going to be so we can notify you when there's a verdict.

25 We're in recess.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Off/on record)

THE CLERK: We're back on record.

THE COURT: Please be seated. Do you have a verdict?

FOREPERSON: Yes, we do.

THE COURT: If you'd -- yeah, somebody could bring it around. We're sort of all trapped behind our benches here. Okay. The verdict is: We, the jury, find the defendant, David Gary Gladden, guilty of driving while his license suspended, revoked or canceled.

Mr. Gladden, do you want the jury polled?

MR. GLADDEN: No.

THE COURT: All right. With this service -- with this verdict, your service is complete. I thank you for serving, and we're done with trials until September.

There's nothing now secret about this case. You can talk to anybody you want to, or you can not talk to anybody you want to. You don't have to talk to anyone about it. And you're free to stay as we do sentencing, or you're free to stay and talk to me later this afternoon if you have any questions about anything. You can talk to the parties or anybody else. Again, I thank you for your service. Anybody who wants to leave right now is excused.

We ready to proceed to sentencing?

MR. WOLFE: Yes, Your Honor.

THE COURT: Any sentencing remarks?



1 MR. WOLFE: Your Honor, this is Mr. Gladden's first  
2 criminal conviction. We recommend a sentence of 60 days with  
3 50 suspended. Instead of the 10 days, though, he could do 80  
4 hours of community work service, and a 90-day license  
5 revocation and one-year probation.

6 THE COURT: Mr. Gladden, you have again the right to  
7 remain silent, or you can speak at this time. Is there  
8 anything you want to say?

9 MR. GLADDEN: Without assistance of counsel present under  
10 the Sixth Amendment, I have -- no, regrettably cannot answer  
11 yet.

12 THE COURT: Okay. There is a sentence we always give in  
13 this case where there's somebody walks in or is found guilty.  
14 I see no reason to depart from it. The only thing I'm going  
15 to say because, I mean, obviously we're not hearing each other  
16 in this one, is that there was another gentleman in town who,  
17 I'm not going to say he reminds me of you, but he had what I  
18 considered to be, bad legal advice, and he ended up --  
19 although he didn't have much money and he wouldn't have owed  
20 much taxes, he ended up not paying his federal taxes, losing  
21 his house, losing a lot of things because he listened to  
22 people who were giving him a version of the law that had been  
23 overruled and denied many times in the past. I think you're  
24 in the same situation. The next -- this statute has a next  
25 time, I have to give you 10 days in jail, and, you know, it



1 goes up from there. Plus, you start never getting your -- you  
2 then have to keep adding 90 days to when you could get your  
3 license back, so if you decided to go get one, and it's hard  
4 to survive here or a lot of places without a driver's license.

5 The objective here is the legislature set a minimum, and  
6 I see no reason to depart from it. I sentence you to 10 days,  
7 10 days suspended. I'm going to fine you -- I guess we don't  
8 usually -- I'll fine you \$200.00, suspend your license for a  
9 period of 90 days, or you can get it back in 90 days after  
10 when it could have been available. Wait a minute, let me see  
11 if I've got that right. Yeah, I guess that's all I do is I  
12 suspend it so it's not less than 90 days after your license  
13 could have been restored. So your license is suspended for  
14 90. And I have to grant 80 hours of community work service.  
15 I'll give you six months to get that done. Place you on  
16 probation for one year on the condition you only drive if  
17 properly licensed and insured.

18 Any questions, Mr. Wolfe?

19 MR. WOLFE: No, Your Honor.

20 THE COURT: Mr. Gladden? You have the right to appeal,  
21 and I'm not going to deign to give you the exact procedure,  
22 but it's a short time period. Fifteen days to the Court of  
23 Appeals, 30 days to the superior court is my recollection.

24 Anything further? Plus, there's also a \$50.00 mandatory  
25 surcharge.



1 We're in recess.

2 (Off record)

3 [1:33:36]

4 END OF REQUESTED PORTIONS

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 / / /

**brief encounters**

(907) 230 - 6691



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRIBER'S CERTIFICATE

I, KRISTEN K. REYNOLDS, do hereby certify that:

I am a Alaska State Court Systems certified transcriber, and have been such since 1981; that the foregoing transcripts of proceedings was transcribed by me; and that said transcripts constitute a full, true and correct record of said proceedings taken on the dates indicated therein.

Further, that I am a disinterested person to said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of October, 2003.

---

Kristen K. Reynolds  
Alaska State Court System Certified  
Transcriber

