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INVESTIGATIVE REPORT

PUBLIC VERSION

(Finding of Record – Redacted Public Report per AS 24.55.200)

This investigative report has been edited and redacted to remove information made confidential by Alaska Statute and to protect the complainants' privacy rights.

Ombudsman Complaint A2010-0228
October 25, 2013

SUMMARY OF THE COMPLAINT

A Fairbanks woman complained to the ombudsman in November 2009 about her experience with an Alaska State Trooper (AST) on Saturday, October 24, 2009, during an early morning “high-risk” vehicle stop. The complainant said the trooper and back-up police vehicles shined bright lights on her and ordered her to exit the vehicle, humiliating her by exposing her to the view of passing traffic. The complainant said the trooper unreasonably pointed his gun at her, shouted at her, placed her in handcuffs, and refused to respond when she asked what she had done wrong. The complainant said the passenger in the car, her husband, was not ordered to exit the vehicle and was not placed in restraints.

The complainant said the trooper told her husband that AST dispatch had just received a 911 report of shooting in the area, and that the caller said a white car had fled the scene with a male and female in it. The complainant said if the officers had called in their driver’s license numbers on first pulling them over they would have seen that neither she nor her husband had a record of criminal or traffic offenses. She said the officers did not ask to see her husband’s driver’s license or the car registration, did not search the inside of the car and trunk, and almost forgot to check her driver’s license. The complainant said the actions of the trooper and the assisting police officer were unprofessional and did not appear to be in accordance with proper procedure.

The complainant said the trooper decided she and her husband were not who the officers were looking for, removed the cuffs, and said they were free to go. She said the trooper gave her husband a business card and said if either of them had questions about the stop they could call his supervisor at AST detachment headquarters.

The complainant said she felt “violated” and humiliated by the trooper’s actions. She said she asked that the trooper captain call her to discuss the incident, but the captain delayed in responding so long that she believed only an investigation by another agency could get to the bottom of the matter.

ALLEGATIONS

The complainant's allegations, restated to conform to statutory guidelines for investigations by the ombudsman (AS 24.55.150), are as follows:

Allegation 1: Oppressive: an Alaska State Trooper humiliated the complainant and failed to follow correct procedure in performing a "high-risk" stop on the complainant's vehicle.

Allegation 2: Performed discourteously: Alaska State Trooper personnel were condescending in their response to the complainant's concerns about a "high-risk" stop performed on the complainant's vehicle.

Allegation 3: Performed inefficiently: Alaska State Troopers failed to respond promptly and adequately to a complaint about a high-risk vehicle stop.

Allegation 4: Contrary to law: Alaska State Troopers failed to comply with a public records request within the time limits prescribed by 2 AAC 96.325.

Assistant Ombudsman Tom Webster investigated this complaint. He gave notice of investigation by telephone to Captain Burke Barrick of "D" Detachment, Alaska Department of Public Safety, on March 3, 2010.

TERMINOLOGY: "HIGH-RISK VEHICLE STOP"

The law enforcement procedure at the center of this complaint is termed a "high-risk vehicle stop" in Alaska Law Enforcement Training materials used at the Public Safety Training Academy in Sitka, operated by the Alaska Department of Public Safety. This type of traffic stop is used in circumstances where the law enforcement officer has reason to believe the person or persons in a car being stopped may be armed and dangerous. When a car is stopped as a suspect vehicle in a crime involving firearms, officer trainees are trained to use the standard procedure for a high-risk vehicle stop. The procedure, which calls for shouted commands, display of firearms, and use of physical restraints, is described later in this report. The procedure is also commonly referred to as a "high-risk traffic stop," a "high-risk stop," or a "felony stop."

BACKGROUND

Ombudsman Note: Although the woman involved in this complaint and her husband both filed ombudsman complaints, for clarity this report will refer to "the complainant" and "the complainant's husband" or "the husband." They also will be referred to as the "complainants" or the "couple." Information enclosed in brackets [. . .] will indicate the ombudsman redacted or edited confidential information or information that would identify the complainants in any way.

On November 19, 2009, the complainant contacted the ombudsman by telephone to complain about her experience with an Alaska State Trooper on Saturday, October 24, 2009, three and a half weeks earlier. She spoke to Ombudsman Intake Secretary Linda Ritchey. The complainant said she was driving her husband to his Fairbanks workplace in their white sedan at about 5 a.m. when she saw a police car pull up behind her with its red lights flashing. She said she pulled through the intersection and pulled off the street into the parking lot of a closed business. The trooper car stopped behind her car. Meanwhile a second police car pulled up behind her with its lights flashing also. The complainant said she had no idea why this was happening and asked her husband, "What did I do? What did I do?"

When all the vehicles had come to a stop, she said, the trooper ordered her loudly to put her hands up and exit her car. She said it was cold and dark, and she was not dressed for cold or even to appear in public, as she was wearing pajama pants, jacket, hat, and slippers. She had planned to drop her husband off and then return home. She said the trooper and one or more back-up police vehicles shined bright lights toward her, making it difficult for her to see them. She said eventually there were four or five police vehicles parked behind her car.

The complainant said when she got out of her car and faced the officers, she saw them standing behind their open car doors with their guns drawn. She said she was holding her black wallet with her driver's license in her right hand. She said the trooper directed her to keep her hands up and walk backwards toward him. When she had done so, he ordered her to put her arms behind her back and he restrained them with handcuffs. The complainant said she asked the trooper for an explanation, and he replied, "Just do what I tell you to do." The complainant said she felt exposed and humiliated and scared and was "shaking like a leaf." She said there was a dog in one of the police cars that barked throughout the stop, which added to her fright. She said she later learned the trooper, Brian Zeisel, was part of a K-9 (police dog) unit, and it was his dog that was barking during the time she stood outside her car in the cold.

The complainant said she was having dry heaves and another officer told her to sit on the bumper of his car. Meanwhile, she said, an officer approached the passenger side of her car and was talking to her husband. She said her husband was not ordered to exit the vehicle and was not restrained in hand-cuffs. She said the officer near her asked where the two of them were coming from. She said she told the Trooper she was taking her husband to work.

The complainant said the officers decided after a few minutes that she and her husband were not who they were looking for. She said the trooper told her husband they had received a report of a shooting in the area, and that a white car had just fled the scene with a male and female in it. She said if the officers had run their driver's licenses on first pulling them over, they would have seen that neither of them had a record or arrests or traffic citations. She said after the trooper released her from the handcuffs, she was surprised when one officer, as he was handing back her wallet with her driver's license in it, suddenly "grabbed" it back and asked the other officer, "Did you run it?" and the other officer said, "No, I thought you did." She thought this seemed unprofessional and appeared to indicate that the officers had not followed proper procedure. She said it reinforced her impression that the officers had unreasonably neglected to check her record before ordering her around and restraining her with handcuffs.

The complainant said after the cuffs were removed from her wrists and her wallet was returned to her, she got back in her car. She said the trooper gave her husband a business card and said if either of them had questions about the stop they could call his supervisor at AST "D" Detachment headquarters on Peger Road, about two miles from where the vehicle stop was made.

The complainant said she drove on to drop off her husband, and then drove home. She said when she got home she "fell apart" as a result of the stress the incident had caused her. She said she was so upset by what had happened she called her husband at work and "yelled at him" because she felt he had failed to protect her. She said she no longer trusted the police and she felt like she was suffering from PTSD (Post-Traumatic Stress Disorder). At one point during this phone call to the ombudsman the complainant was so emotional that Ms. Ritchey suggested she call back when she had regained her composure. She did so. The complainant said the incident was still

fresh in her mind even though it had been almost four weeks since it occurred. She said she felt “violated” and also felt that “they [the police officers] were laughing at me.”

A few hours after the traffic stop, the complainant called the number on Trooper Zeisel’s business card and spoke to Sergeant Chad Goeden. She said Sergeant Goeden said he had been expecting to hear from her because Trooper Zeisel had said she might call. The complainant said this made her think the trooper knew he had not followed proper procedure and was expecting her to complain. She said this gave Sergeant Goeden time to prepare plausible answers to any questions she might have about the vehicle stop. The complainant said Sergeant Goeden was “condescending” to her and after the call concluded she felt worse than she did before she called.

The complainant said she and her husband visited the AST headquarters and requested a copy of the police report to determine the identity of the officer involved in the vehicle stop. She said they met with Sergeant Rick Roberts about the incident. “He basically talked about himself, and we never got the apology,” she said. “I told him it wasn’t about him.” She said they were told to submit a formal request for a copy of the police report, but had not yet been given a copy. The complainant said she and her husband had asked that the Detachment “D” Captain call her to discuss the incident, but the captain delayed in responding so long that she believed only an investigation by another agency could get to the bottom of the matter. The complainant said at first she just wanted an apology from the troopers, but she “never got it.”

Ms. Ritchey took down all this information and said she would send the complainant an ombudsman complaint form requesting some specific information that would be necessary for ombudsman staff to review her complaint. On December 7, 2009, the ombudsman received a complaint form from the complainant containing further information. She wrote that she was holding her black wallet when she exited her vehicle and she was not asked to drop it. It occurred to her while she was holding her hands up that the wallet might have been mistaken for a weapon. She said she was not told her rights or that she was under arrest before the trooper handcuffed her. She said she wanted the ombudsman to “investigate the incident and policies and procedures followed by Alaska State Troopers and the other law enforcement agencies involved in this stop.”

In keeping with ombudsman policy of asking state agencies to respond to complaints from the public, Ms. Ritchey sent the complainant a letter referring her to the Director of the Alaska State Troopers, Colonel Audie Holloway (now retired), to give AST an opportunity to review the incident and respond to her concerns.

Correspondence

On January 17, 2010, the complainant wrote a letter to Colonel Holloway. She gave a detailed description of the incident, including the details given above, and also described the traumatic effects the incident had on her. She wrote:

Dear Colonel Holloway,

I am writing this letter to you today because of the incident that happened to my husband and me on October 24th 2009 at 5 am in Fairbanks Alaska. We have been citizens of the Fairbanks community for the past 2 ½ years. We built our home; we both work in the community and are tax payers.

The morning of the incident I had decided to drive my husband to work. As I left our home I grabbed my black wallet off the counter and placed it in my lap while driving. We

live about 4 miles from my husband's place of business. We were stopped at the intersection of [Information redacted by the ombudsman] when a Trooper turned his lights on us and a second trooper flew through the intersection pulled up behind the 1st trooper and turned his lights on us. We proceeded when the light was green through the intersection and was told by loud speaker to pull the vehicle over. I turned off into the [business parking lot] located at [Information redacted] and stopped the car. My husband and I were both ordered to put our hands in the air. The trooper then ordered me out of the vehicle. I got out of the vehicle with my black wallet in my right hand. As I was turned towards them I noticed that there were two troopers behind their vehicles front doors with guns drawn on me. I was ordered to turn around and walk backwards towards the officer's vehicle. As I turned, I noticed that there were other law enforcement officers on site. All the while their bright lights were on my husband and I. I could hear a vicious dog barking in the background. The trooper then took the black wallet from my hand and placed me in handcuffs. At no time was I asked for my license or registration. The whole time I'm out of the vehicle I am asking him "What did I do? I didn't do anything wrong". He never answered me. When he placed the handcuffs on me I began to cry. You need to understand it was pitch black out with their bright lights shining on us and a vicious dog barking. I was scared to death. A trooper then asked me where I was going. I told [him] I was taking [my husband] to work. He asked where we came from? I told him we live [Information redacted]. I was having hard time breathing and experiencing dry heaves. The trooper told me sit on the front end of his car (front bumper). During this time my husband was still in the car with his hands in the air. At no time was he asked to exit the vehicle until after I was sitting on the bumper of the trooper's car. He was never asked for his ID or vehicle registration. When I asked the officer why he stopped us he was very nasty in replying they had gotten a report of a man and woman in a white vehicle involved in a shooting. At no time did the officers pat us down or search the vehicle. The trooper started to hand my wallet back to me. As I placed my hand on the wallet he grabbed it back and turned to the other officer and asked if he had called my license in. The officer replied "No I thought you did." I said "What are you doing?" The trooper never answered me. I don't know if they ever called it in. The trooper finally gave me my wallet back. I started back to my car. At this time I could see that my husband was out of the vehicle and talking to trooper Brian Zeisel. My husband helped me back into our car and asked me if I was OK? Trooper Zeisel gave my husband his business card and said if we had any problems to call and report it. About 9 am the same morning I called my husband on the phone at work and was very upset that he didn't do more to protect me because I felt violated by all these male officers. He then told me that he didn't know that I was put into handcuffs and not been read my rights.

My husband then advised me to then call the troopers supervisor. I called the supervisor and he told me the troopers had been in early that morning and told him that he would probably be getting a complaint call from the complainants. Do you really believe that if this incident had been handled correctly that the supervisor would have to be notified about a complaint that he was going to probably receive? He was ready and prepared for my phone call. This supervisor was very condescending in his conversation with me. I felt worse after talking to him. Three days later my husband and I went to the trooper station to get a copy of a police report of this action. After waiting almost ½ an hour a Sergeant Rick Roberts came out and started to discuss this with us. We asked for a copy

of the police report. He gave us a form to fill out requesting the report. He said that he was not sure if we would be able to get the report or not, that it wasn't his call. I turned in the form on Nov. 4th and I still haven't received a copy of the report. My husband had e-mailed Sergeant Roberts asking for his Captain to contact me in regards to this matter. I waited and waited and he called 3 ½ weeks after the fact and left a brief message. My husband and I both felt that this little effort was made too late.

In conclusion, I want you to understand what this has done to me emotionally. The first couple of weeks I was waking up with nightmares just feeling I was going to die a violent death in Alaska. I became reclusive, just going to work and coming home and not venturing out in the dark. I have begun seeing a therapist for acute stress disorder. My son recently came home from [Information redacted] on holiday and I was very overprotective of him venturing out in Fairbanks at night. I feel that this incident has changed my life forever and I will never regain my sense of security or safety back. If something seriously was to happen, I don't know if I could dial 911 if needed.

My husband has spent over 600 hours in police K-9 training for the [Information redacted] in the past and has been on numerous felony suspect arrests. His experience with this has given him some perspective on how this incident was handled. Needless to say, he was appalled in how this stop was handled from beginning to end.

Colonel Holloway asked "D" Detachment Captain Barrick to respond to the complainant's concerns. On February 5, 2010, Captain Barrick wrote her a two-page letter:

Dear [name redacted by ombudsman]:

Colonel Holloway asked me to respond to a letter of complaint you sent to his office dated January 17, 2010. The letter was received in his office on January 22, 2010. In your letter you raised several issues and I will try to address each of them in order. First, a little background; on October 24, 2009, at approximately 0455 hours, the Alaska State Troopers' dispatch center in Fairbanks received a call from a concerned citizen that there had been a shooting at an apartment complex located near the intersection of [information redacted by ombudsman]. The caller told the dispatch center that a man and a woman had left the scene and were driving a "white or silver 4 door sedan." Troopers were dispatched to the scene who responded with their lights and sirens activated. En route to the scene, at least two trooper cars noticed vehicles matching the general description of the suspect vehicle. Both vehicles were pulled over and the drivers and passengers contacted. You, and your husband, [name redacted], were pulled over [information redacted by ombudsman].

During traffic contacts where the troopers have reason to suspect the occupants of the vehicle might be armed or dangerous, law enforcement officers are taught to employ what are called "High-Risk Traffic Stops." During high-risk traffic stops the troopers communicate to the vehicle occupants by way of a public address system, then remove the occupants from the vehicle one at a time and handcuff them before determining their identity or before conducting any further investigation. In your case, the troopers removed you from the vehicle and very shortly after coming in contact with you the troopers at the scene were able to determine you were unarmed and not involved in the initial call. Trooper Zeisel asked you if you were okay, removed the handcuffs from your hands, very briefly explained the situation to you, left you one of his business cards so

you could call him or a supervisor later for more information and then he left to continue on to the scene of the original call to try and locate the reported shooter. The dog you mentioned in your letter is a police K-9 which was locked inside Trp. Zeisel's patrol vehicle during the entire contact with you.

In your letter you also made mention of the fact that later that same day you called to talk to a supervisor to complain about the incident. You wrote that "This supervisor (Sgt. Chad Goeden) was very condescending in his conversation with me. I felt worse after talking to him." I reviewed Sgt. Goeden's recorded 10 minute conversation with you and after listening to it I must tell you that I do not agree with your assertion that Sgt. Goeden was condescending towards you. During the entire conversation Sgt. Goeden was calm, professional, and he went out of his way to answer your Ms. [sic] questions and to explain the situation to you. At the start of the conversation you were obviously very upset and can be heard crying. However, by the time you ended the conversation you were calm and at least twice during the conversation you thanked Sgt. Goeden telling him first: "I appreciate you talking to me and calming me down," and at the end of the conversation you also said, "I appreciate you taking the time."

Additionally, you wrote that you and your husband later went to the trooper office to get a copy of the police report of your incident and that you spoke with Sgt. Roberts. You said you asked for a copy of the police report from Sgt. Roberts on November 4, 2009, but that he never responded to you, and further, that you asked him to have me contact you and that it took an additional three and a half weeks for me to contact you. According to my records, you sent an email to Sgt. Roberts on November 10, 2009, asking for a copy of the police report. The police report in question covers the trooper response and subsequent investigation of the report of the shots fired call and the report was not closed out until November 14, 2009. That police report, AST case number 09-95802, does make mention of Trp. Zeisel's stop on your vehicle while en route to the shots fired call. Sometime after speaking with Sgt. Roberts after November 10, 2009, I made two attempts to call and speak with you. The second attempt I made was on November 16, 2009, at 1135 hours, when I left a message on your recorder asking you to call me to discuss the matter. When you did not return my call I assumed that Trp. Zeisel, Sgt. Goeden and or Sgt. Roberts had answered all of your questions and that you had all that you needed. This was a mistake on my part.

After reading your letter, and listening to your conversation with Sgt. Goeden, I believe that while the trooper's actions in this case were appropriate, within policy and necessary for the situation they faced, that to you our response seemed impersonal. I also think that maybe you feel that we should have recognized you as one of the "good guys," more quickly than we did. I think we did well under the circumstances; police cannot simply look at someone and instantly determine their intentions by what they say, by their mannerisms, their driver's license history or other subjective factors. The facts of this case required that the troopers exercise caution until they were able to determine you and your husband were not involved in the original complaint. However, even though Trp. Zeisel gave you some information at the scene, and provided you with his business card and asked you to contact his supervisor for more information, perhaps he or a supervisor should have called you after the initial confusion over the original call subsided and explained to you why we did what we did. The fact the troopers pulled you over was no

reflection on you personally, but rather a reasonable precaution on our part under the circumstances.

I apologize if you felt mistreated in any way and I have included a copy of the police report that will hopefully answer any other questions you may have. If you have any additional questions or concerns about this or any other matter involving the Alaska State Troopers, please feel free to contact me or call me at (907) 451-5100.

On February 13, 2010, the complainant and her husband signed a letter to the ombudsman complaining that Captain Barrick's letter was not satisfactory. The letter sometimes says "we" and sometimes says "I," indicating that the complainant wrote of her personal experience and the complainant's husband contributed to and/or concurred in the content of the letter. They wrote:

We are writing this letter in regards to the response we received from Alaska State Troopers Captain Burke Barrick, D Detachment Commander dated 2/5/2010 received 2/11/2010.

We have concerns with the way he addressed some of the issues but not all of the issues that we addressed in our letter to Colonel Holloway dated 1/17/2010.

Procedure as explained by Capt. Barrick:

Police report- Officer Zeisel says he identified us by our driver's license- he never asked my husband for his ID or registration of the car. I made mention to the officers in my letter that when he was handing me back my wallet- the officer grabbed it back and turned to the other officer asking if he had called my license in. The other officer replied "No I thought you did." I asked 'what are you doing?' The officer never answered me. You can see this in my letter; this was never addressed in the response letter. Also in Troopers Zeisel's report he stated that I was picking up my husband from work and that we were on our way home. This was not the case, I told him I was taking him to work and my husband told him that also.

My conversation with Sgt. Chad Goeden- I mentioned that he was condescending with me in our conversation on the phone. He was, in his tone and the way he addressed the questions I brought up, example "What would you have us do?" was one of his answers. Capt. Barrick said in the recorded conversation he doesn't agree with my assertion that this was the case. I did thank Sgt. Goeden for taking the time to talk to me. He was warned that morning by Trooper Zeisel that he would be receiving a phone call from the [complainants' names redacted by ombudsman]. He was well prepared.

The police report that I asked for finally came with this response letter dated 2/5/2010. As stated by Capt. Barrick he said that the report was not closed until November 14th 2009. We had asked for it November 4th 2009 and it makes sense why it wasn't available until after that date. To finally receive it at this late date (2/11/2010) is questionable. Capt. Barrick's assumption that everything was fine was a mistake on his part. He makes mention that he had made two attempts to call and speak with me. The only one we received is his reference to November 16th at 1135 hours. No further response is recorded on our machine. We have kept this as reference. Three weeks and 2 days after the fact is too late with no written response or follow up phone call. It isn't until he receives a letter from his boss Col. Holloway, does he step it up and respond.

His response is not good enough. He doesn't address all our concerns that I mentioned in my complaint letter, as I have pointed out. I take offense to his comment of "they (troopers) should have recognized you as one of the "good guys" more quickly than we did." This bothers me, I am a citizen and I don't feel this comment is called for. This entire incident was handled extremely poorly from beginning to end. When Captain Barrick refers to this not being a reflection on me personally, I take this very personally.

You see, there were more than just the two officers there. It was very dark with many bright lights on our vehicle that my husband and I could not even see each other sitting right next to each other in the front seat. I was not emotionally upset until I exited the vehicle and both officers had their weapons drawn on me. In regards to the dog barking, I did not know at that point it was a K-9. Again, it was dark, there were bright lights on us, and it was 5 am in the morning.

At the end of his letter Capt. Barrick states "I apologize if you felt mistreated in any way and I have included a copy of the police report that will hopefully answer any other questions you may have."

This response is too little too late, I was mistreated and I expect this to be investigated further.

Thank you for your time,

[names redacted by the ombudsman]

Documents

Police Report

The police report by Trooper Zeisel dated October 24, 2009, contains names of people he interviewed about the reported shooting, as well as a brief summary of how he arrived at the crime scene:

On 10/24/09 at approximately 0455 hrs, Fairbanks AST received a 911 report from [name] of one shot fired at [address redacted by ombudsman] in Fairbanks. [Name redacted by ombudsman] reported that the occupants left in a white or silver 4 door vehicle.

AST responded to the scene to investigate. The door to [address redacted by ombudsman] was unlocked and open. . . .

Page two of the police report lists the persons Trooper Zeisel spoke to at the scene of the reported shooting. Page three contains Trooper Zeisel's narrative, first of the vehicle stop, and then of what he learned at the scene of the reported shooting:

I was dispatched to a shots fired call at [apartment address redacted by ombudsman]. apartment [number]. [name redacted] reported to AST dispatch that a male and female were arguing in the apartment above her. [Name] further reported that she then heard a gunshot from the apartment and a male and female left the area in a white or silver four door car.

I was traveling westbound on [road name redacted] when I saw a white four door vehicle with a male and female occupant traveling southbound on [redacted] at the intersection of [redacted]. I initiated a traffic stop on the vehicle which stopped in the parking lot of the

[information redacted]. FPD [Fairbanks Police Department] responded to assist with the traffic stop. I conducted a felony traffic stop on the vehicle. The driver was ordered out of the vehicle and commanded to walk back toward the patrol vehicle. The female driver was obviously distressed. She was crying and was having difficulty following instructions. I identified the occupants by their drivers license as [names redacted by the ombudsman]. I determined that they were not involved in the incident. [The complainant] stated that she had picked [her husband] up at [redacted] and they were on their way home when they were stopped. I provided them with my business card, released them from the stop and proceeded to the scene of the incident.

On 10-24-09 at approximately 0505 hours, I arrived at the apartment. . . .

The rest of the report details part of the investigation of the shooting incident.

Crime scene location

The apartment complex where the shooting occurred is located a short block from the parking lot where the Trooper stopped the complainant. A person could walk the distance from one location to the other in two or three minutes.

Dispatch logs

The AST dispatch log and the FPD dispatch log taken together show the following information:

| | |
|---------|---|
| 4:59:00 | [AST] dispatch reports shots fired at [redacted] Apts |
| | [AST] Zeisel: suspect white car pulls into [redacted] parking lot |
| 5:00:00 | |
| 5:00:59 | [FPD] Merrion: stopping at [redacted] |
| 5:03:37 | [FPD] Lindhag: this is not the vehicle |
| 5:05:00 | [AST] Zeisel: not the vehicle |
| 5:06:00 | [AST] Zeisel arrives at [redacted] |
| 5:16:28 | [FPD] Lindhag: subject possibly armed with 12 gauge shotgun |

AST Dispatch radio transcription

The AST dispatch radio recording of this time period on October 24, 2009, is transcribed below. The recording lasts 3 minutes, 57 seconds. The recording is quiet with speech interruptions. According to the dispatch log, the event with which this recording begins occurred at 4:59 am. The ten-code numbers are police radio codes (“10-4” is “OK”).

[Dispatch:] 19, We have a shot fired in [apartment name redacted].

[19:] 10-4, [inaudible].

Fairbanks 7, where was that at?

[19:] 19, [inaudible].

[Dispatch:] Confirming [apartment name].

[Dispatch:] [apartment number].

[19:] Is it one of the apartments, or outside?

[Dispatch:] Be [redacted], number [number redacted by ombudsman].

[19:] 10-4.

[Dispatch:] Came from apartment [number redacted by ombudsman].

[Dispatch:] Male and a female are now outside; they're driving away in a white car [1:00].

[19:] Do we have a direction of travel?

[19:] Fairbanks 19, can we get a direction of travel?

[Dispatch:] 19, complainant did not get a direction of travel [1:27].

[19:] Any better description than just a white car? [1:32]

Fairbanks 19, [inaudible due to dog barking] a white vehicle here at [location redacted].
[K-9 dog barking in background obscures several more words in this message] [1:38-1:48].

[Dispatch:] How many?

[19:] [inaudible] in the [business name redacted] parking lot.

[Dispatch:] 19, 10-60 ("all units are safe").

[19:] Fairbanks 19, [inaudible].

[Dispatch:] 19.

[19:] Fairbanks 19, this isn't the vehicle [2:37].

[Dispatch:] 10-4.

[19:] NCIC read, 19 [National Crime Information Center database check] [2:47].

[Dispatch:] Okay, 19.

[19:] 7294969 [2:53].

[Dispatch:] 19, [husband's name redacted by ombudsman], that's a valid license, delta expiring 2012, corrective lenses [3:02].

[19:] 10-4.

[19:] NCIC 19, also [redacted] [3:12].

[Dispatch:] [complainant's name redacted by ombudsman] 10-97 ["no warrants"] valid [3:29].

Fairbanks 7, [inaudible].

[Dispatch:] [inaudible]

[19:] 19, 10-19 [inaudible].

[Dispatch:] 10-4, UAF has 2 units on scene.

[19:] 10-4.

[recording ends at 3:57]

Complainant's call to AST headquarters

On October 24, 2009, about four hours after the traffic stop occurred, the complainant telephoned the number on Trooper Zeisel's business card and spoke with Sergeant Chad Goeden. AST records telephone calls to ensure quality handling of calls and to document reports that might warrant action or investigation. The recording is clear except for a few moments of cross-talk when both parties to the conversation are speaking at once. The call lasted 10 minutes and 52 seconds. The ombudsman investigator transcribed the conversation, which is reproduced below.

Sgt. Goeden: Good morning, Sergeant Goeden, may I help you?

Complainant: Yes, Sergeant Goeden?

Sgt. Goeden: Yes, ma'am.

Complainant: This is [complainant's name redacted by ombudsman]. I'm a, I guess, citizen of Fairbanks here, and my husband and I live at [address] in Fairbanks . . .

Sgt. Goeden: Okay.

Complainant: And this morning I was on my way to [redacted] about five o'clock, and we had gone through the intersection of, um—bear with me, I'm just really upset—[location redacted]. And I was just over the railroad tracks there, and there was a trooper—I think it was a trooper, I'm not even sure if it was a trooper or a Fairbanks police officer—made a u-ey [U-turn] and came back around, and I'm going to my husband, "what did I do, what did I do?" You know, just right away you think, okay, they're after you, they're not after anybody else.

Sgt. Goeden: Sure.

Complainant: And the lights go on and just then another trooper made a U-turn and turned their lights on. And I was through the intersection, going through the intersection, so I waited to pull over, I should have pulled over at [location redacted] probably, but I ended up at that [parking lot].

Sgt. Goeden: Okay.

Complainant: And right away we had the lights on our car, and they're on the loud speaker telling us to get out of the car—

Sgt. Goeden: Okay

Complainant: And then [sob]—I'm sorry, I'm just so upset—and they said, "Driver, show your hands and get out of the car." And I'm, you know, I'm in my pajamas and slippers, and a hat, and I got out of the car, and I faced them, and he said turn the other way, and I turned around, and I had my wallet with my license in it—

Sgt. Goeden: Okay.

Complainant:—in my right hand, and he said, and he came over to me, and he said, "Put your hands behind your back." And I'm going, "What did I do? What did I do?" I don't

know what to do. And he proceeded to cuff, well, he takes my wallet, and then he cuffs me. And all the while the guns are drawn on me. [sobs] I'm sorry, I'm just upset. And my husband is still in the car with his hands in the air. And I'm asking the officer what did I do? What did I do? And he wouldn't answer me right away. And after he got my hands cuffed, he said, "Well, we've had a shooting. And it was—I've got to calm down—he said that it was a male and a female in a white car. Well, of course, we drive a white car. And so I went over—I mean, I'm standing there and I'm shaking like a leaf, and I said—he goes, "Where were you going?" And I said—it's like five-ten or five-fifteen at this point—and I said, "I'm on my way to take my husband to work." And he goes, "Well where does your husband work?" And I said, "[store name]. He's the manager of the downtown [store name]." And he goes, "Oh." And at that point he obviously had my license, and—cause he had my wallet—and I'm asking him, "What did I do?" I'm shaking like a leaf. And I start crying, of course, and I said, "What's going on?" You know. And people are passing us and looking at us, and here I am hand-cuffed and— [sounds distraught]

Sgt. Goeden: Okay

Complainant: it was just—okay? But that's not the worst of it. [crying] The worst of it is at the end of all this, he uncuffs my hands. He asks me, "Just go ahead and sit down on my bumper, [name redacted by ombudsman]." So I sat down on the bumper because I was almost like hyperventilating, and he goes [sniff] he goes, "Are you okay?" And I said, "Yes, I'm okay. I'm a lot better." I said, "No, I'm alive, though." And he goes, "Yes, you're alive." And so then he uncuffs—well, I was already uncuffed at that time, I guess. I was sitting on the bumper. And he goes, um—uh, I've lost my train of thought here—sitting on the bumper, and then he goes, um. He didn't, he didn't run my license, for one thing, and he starts telling us that there, there had been a shooting, and they were just being precauti—you know, uh, cautious, and I don't know the exact words, you know. Just basically doing their job and that. And I said, you know, that's, you know, I understood that. But then, at the end of it, he goes, he hands me back my—he starts to hand me back my wallet with my license, and then he takes it back and he asks his partner, whoever, the other one, Brian Zeesal [phonetic spelling], asked him, if he had ran it. And he goes, "No, did you run it?" "No, maybe we'd better run it." That really upset me. Cause it was like, had they run it, they would have known I had no, [sob] nothing on my record. [crying] I'm a law-abiding citizen and I pay my taxes and do everything by the book, and I am just so distraught over this, [distraught] I can't tell you. I've never had a gun drawn on me in my life, ever. [crying] And it was dark out! Very dark. [crying] I'm sorry— [crying]

Sgt. Goeden: [Complainant's name redacted by ombudsman], let me ask you a few questions, okay?

Complainant: I don't know if I can remember.

Sgt. Goeden: Well, you've explained what happened, and Trooper Zeisel told me what happened, and told me that you might be calling.

Complainant: I've been going to call, but I've been so upset— [crying]

Sgt. Goeden: I'm glad you did. I'm glad you did, because it gives both you and I a chance to explain what was going on and what we were doing at the time. Understand—

Complainant: I know there was a shooting [crying], he told me—

Sgt. Goeden: There was. There was a shooting [redacted] in that area. The witness said that a male and a female left in a white car. We didn't have ages, we didn't have descriptions, and we certainly didn't have names. So running your license wouldn't have told us if you were there or not. And whether or not a person has a background doesn't mean that they were or were not just involved in a shooting.

Complainant: I understand that.

Sgt. Goeden: Okay.

Complainant: But why isn't that protocol, that you run a license just asap [as soon as possible] instead of at the end of an incident like that? I mean, I've been pulled over before and given a warning here for failing to make a complete stop out of our cul-de-sac. And, you know, he ran it asap.

Sgt. Goeden: Right. Well, at the time they're concerned about, do we have any weapons in the car, do we have everybody in the car under control in case these are the people that we're looking for? So you know, on another typical traffic stop that is certainly far less of a concern, and we do want to get people run and get them on their way as quickly as possible. In this case, where we have to assume that we're dealing with two people that may have just shot somebody, then we have to kind of reprioritize a little bit. Does that make sense to you?

Complainant: Yes, that does.

Sgt. Goeden: Okay, so let me ask you this, other than perhaps running your license sooner, which wouldn't have really changed anything, what else do you think we should have done differently?

Complainant: Oh, you know, my husband told me you were going to ask me that, and I honestly don't know. I just, I just wish it had been explained what was going on even while he was cuffing me, rather than—

Sgt. Goeden: Okay, and let me explain why we don't right away. Let's assume for a moment that you were the person that was involved in this, or your husband was and you were the driver, okay? So, if we start saying right away why we're stopping people? It gives them the chance to start making up reasons or excuses and think about stories about why it wasn't them. Does that make sense to you?

Complainant: Yes, it does. It all, I mean, I knew this was com—I mean, I knew this. I just had to talk to somebody about it.

Sgt. Goeden: That's fine, I'm glad you did. But from our point of view we have to assume that the person we're dealing with a) is armed, b) has just shot somebody, and c) he doesn't want to spend a lot of time with the police. Well, as soon as we establish that's not the case, we obviously let the person go. And it sounds like that's what happened in your case. And I know this won't make you feel any better, but right at about that same

time I was stopping another white car with a male and a female occupant in it about three miles away.

Complainant: I know you were, because I was stopped at that intersection by my husband's store, and the cops came back at me at the face of my car, you know, going toward [redacted]there. And they all flew right by, and went down, so I knew something had happened. I mean, they probably caught the guy or whatever. I guess I just needed to have it explained to me, what is protocol, what is procedure in a matter like this, because it was dark, and— [sniff]

Sgt. Goeden: And you were very upset.

Complainant: I was scared. I was scared.

Sgt. Goeden: And you understand that Trooper Zeisel still needed to get to the scene to establish, do we have any other witnesses? Any other victims? So he didn't have the time, unfortunately, that I have right now. So it sounds like he did explain it to you a little bit, and I have no problems whatsoever with you calling back to get a fuller explanation. But understand that at that time the shooting was still very much under investigation, because we had gotten the report minutes before.

Complainant: Yeah, okay. Well, I appreciate you talking to me and calming me down, because this happened like at five o'clock this morning, and I just, I kept thinking, all right, this is fine, I'll get through it. And my husband called, and I was very upset, and he said call the number on the card and just talk to somebody.

Sgt. Goeden: Sure.

Complainant: So that's what I did.

Sgt. Goeden: Let me give you a little bit more information, because I'm sure you're going to wonder about this when we get off the phone. Nobody was actually shot, not a person, but we didn't know that for sure until after we had left you, let you go.

Complainant: Uh-huh.

Sgt. Goeden: Okay? There was a shot fired at a vehicle and the people that—we know, we're pretty sure at this point we know who was doing the shooting. And we think it may be related to some of the other shootings that have been happening around town. And because of that, you're not going to read about this in the paper. Okay?

Complainant: Okay.

Sgt. Goeden: Because we don't want them to know how much we know at this point. So we're kind of keeping tight-lipped about it. And I'm telling you because I don't want you looking in the paper for the next two or three days going, those troopers lied to me, there was no shooting, because we're not telling the paper right now.

Complainant: Okay, okay.

Sgt. Goeden: Okay? So I just wanted you to be aware of that.

Complainant: Okay, I appreciate your telling me this. And your name is Gayden? [phonetic spelling]

Sgt. Goeden: Yes Ma'am. Do you ever read the newspaper?

Complainant: I do read the—I usually just get the Sunday, cause it gives all the information throughout the week.

Sgt. Goeden: Okay. Well, I don't know if you've ever read the "Ask A Trooper" column, but I'm that guy.

Complainant: Okay. [laughs] Okay, well I appreciate your taking the time.

Sgt. Goeden: Any other questions, ma'am?

Complainant: No. That's it.

Sgt. Goeden: All right. If you think of any, feel free to give me a call.

Complainant: Okay, thank you.

Sgt. Goeden: Take care. Bye-bye.

Complainant: Bye-bye. [end of call 10:52]

Complainants' visit to AST headquarters

On November 2, 2009, the complainants visited AST headquarters on Peger Road in Fairbanks to request a copy of the police report filed by Trooper Zeisel on the stop made on their vehicle nine days before. They spoke to Sergeant Rick Roberts. Sergeant Roberts recorded the conversation. The recording is clear except for several instances of cross-talk when more than one party to the conversation are speaking at the same time. In several places one party interrupts while another party is speaking. The recording consists of two sections: the first section runs for 3 minutes and 14 seconds; the second section for 22 minutes and 50 seconds. The first recording ends when Sergeant Roberts leaves the room to find a Department of Public Safety public records request form. On his return to the room, the second recording begins. The ombudsman investigator transcribed the two recordings. The conversation is reproduced below with the break between recordings indicated:

Sgt. Roberts: On tape, 11-2-09. At 17:03 hours going to talk to [complainant's name redacted by ombudsman] reference vehicle stop.

Sgt. Roberts: [complainant's name redacted]? Hi, Sgt. Roberts. What can I do for you?

Complainant: [indistinct] I requested a report of the accident . . . the incident . . . [sobs]

Complainant's husband: We want to file [a complaint?] about [indistinct], and what we want is a report the officer wrote of the incident that happened to us.

Sgt. Roberts: Okay, so what's the complaint? What happened?

Complainant's husband: The complaint—she talked to a supervisor that day. She called and it wasn't very satisfactory. I was in the car, too. It was how it was handled.

Sgt. Roberts: Okay, so what—

Complainant: Do you know what happened?

Sgt. Roberts: I know that they responded to a shots fired call. I just read all the computer documentation on it. I know that they responded to a shots fired call with a silver four-door car—

Complainant's husband: Silver? [simultaneous response with complainant]

Complainant: Silver?

Sgt. Roberts: Yeah, well, sometimes—

Complainant's husband: Just, go ahead, you can say what—

Complainant: [angry] We're really upset right now— [overlapping talk]

Sgt. Roberts: Okay, I just got told that somebody needed to talk to the supervisor, so here I am.

[both complainants talk]

Complainant: No, no, I just want a request form.

Complainant's husband: We want to request the report on it, that's all we came here for.

Sgt. Roberts: Okay, you just need a form to fill out for public records?

Complainant: Right, right, we want a copy of what happened. That is a public record, we found that out, so I would like a copy of it.

Sgt. Roberts: Okay

Complainant: I was handcuffed.

Sgt. Roberts: I understand.

Complainant: I am really angry right now.

Sgt. Roberts: I understand.

Complainant: I was very upset at the time.

Sgt. Roberts: Let me—

Complainant: And I don't need to be explained to any more.

Sgt. Roberts: Okay.

Complainant: What happened was ridiculous! If they had ran the plates, if they had ran our licenses at the time, this never would have happened. But they did not. They did not run my license till the very end of the conversation, and he hands me back my wallet and he kind of has his hand on it like this, and he goes, "Well, wait a minute, did you run the license?" "No, I thought you did." And then he hands—and then he takes it and runs it. It's not okay. And up in Alaska not anything goes, I'm sorry.

Sgt. Roberts: [starts to respond]

Complainant: I'm sorry. I'm a taxpayer, I work in this community, we do everything by the book, and we are treated like common criminals. [Roberts attempts to respond, but the complainant's husband talks over him—both are indistinct in the recording.] I had guns drawn on me.

Sgt. Roberts: Okay, I understand, you don't want to hear—you don't want to hear our side?

Complainant: I heard it, I heard it. From a supervisor.

Sgt. Roberts: I don't know who you talked to. I know—alright, if you don't want to hear it from me, that's okay, I have—

Complainant's husband: That's not going to change anything of how—

Sgt. Roberts: No, but at least it would help you understand where we're coming from.

Complainant's husband: Well—

Complainant: It was ridiculous overkill! [speaking in anger] There were five—there were two white cars that went by while we were standing there. While we were standing there, nobody went over there—

Sgt. Roberts: I, I—

Complainant: —went after them.

Sgt. Roberts: Okay.

Complainant: I mean, I'm in pajamas, for God's sake, with slippers and bare feet!

Sgt. Roberts: I understand that you're upset. I'd love to offer an explanation, but if you don't want to hear it, I won't give it to you.

Complainant: No, but I would like to know about this request.

Sgt. Roberts: Okay, I'll see what I can do.

[Sergeant Roberts walks out of room and turns off recorder. 3:14]

* * *

[second recording begins]

Sgt. Roberts: [to someone else] Take that to the lobby. [re-enters room]

Sgt. Roberts: Here's a copy of a form that people fill out for police reports. You're, uh, this, because you're not a victim or not somebody that's on the police report, you may not get a copy of it. I don't know, but you could put in the request. I'm not familiar with—I write the reports. I'm not, I use my brain cells for other things, and not about what stuff we can release to who. We have a whole army of people that deal with that. There are some things that are public information, and some that aren't. There's a police report being written on this. And you can certainly try to do that. Okay?

Complainant's husband: Okay. We'll go from there. We bring this back here?

Sgt. Roberts: Yeah, you can bring it back here.

Complainant's husband: Okay, that's what we'll do. Thanks.

Sgt. Roberts: All right. Bye. I'm sorry that you won't listen to our perspective.

Complainant's husband: Well, she did with one supervisor. But that wasn't really good, so we're gonna go—

Sgt. Roberts: You have a second chance here, but if you don't want to listen, that's okay.

Complainant's husband: Well, it's not that we don't want to listen—

Sgt. Roberts: No, you're—no, that's exactly it.

Complainant's husband: No, [exasperated] don't tell me what I'm saying! Okay? Don't go there.

Complainant: [inaudible with crosstalk]

Sgt. Roberts: Well sir, I think that—

Complainant's husband: Don't tell me what I—

Sgt. Roberts: I think there's a misunderstanding going on here.

[three-way crosstalk]

Complainant's husband: —know what happened—

Sgt. Roberts: Okay.

Complainant's husband: Okay? That's where it is. Don't tell me what I'm thinking.

Sgt. Roberts: Listen, I just, I'm trying to offer. But that's okay, if you don't—

Complainant: Excuse me. I've got more. I was handcuffed! I was degraded in front of the whole community that morning, in handcuffs by a policeman!

Sgt. Roberts: I understand that.

Complainant: You don't understand!

Complainant's husband: Here's the thing, okay? It sounds like—see, I was in the car, too. She was driving me to work. I'll just give you a quick synopsis. We were pulled over, hands up, then they made her get out and back up, under guns and whatever—

Sgt. Roberts: Um-hum

[At several points in the following dialogue Sgt. Roberts begins to interject something but doesn't say more than a couple of words, while the complainant's husband calmly but forcefully describes his experience of the traffic stop.]

Complainant's husband: —which is, I understand, but they put her in cuffs, and I didn't even know that. They didn't have me get out of the car. I just sat there. Then this officer, who was very nice, one of your troopers, came up and talked to me, said, "Well, we had a call," and gave me a synopsis. I had no clue that they'd cuffed her, had her standing over there, cuffed, okay?

Sgt. Roberts: Um-hum.

Complainant's husband: Which was probably wrong, because they hadn't even run her ID. Cause after the one guy, I don't even know if it was a trooper or it was a Fairbank [sic] cop, or UAF. I don't know—

Sgt. Roberts: Um-hum.

Complainant's husband: —there were five of them there. And I don't know, she couldn't tell. Okay? The guy goes, "I thought you did." Well, you know, give me a break here. Before you throw somebody in cuffs, if they don't have anything in their hands, you

know, a gun or a weapon showing, and they're cooperating, you just don't pile them into cuffs. Okay?

Sgt. Roberts: I disagree—

Complainant's husband: We can disagree, that's fine, but to put her in cuffs without even running anything. Why wasn't I even taken out of the car if they were so worried about somebody shooting a gun? And then the guy just says, "Come on, you can get out." And at that time she's still in cuffs!

Sgt. Roberts: Okay.

Complainant's husband: Procedure was not really good. Okay? It's probably a little overzealous on somebody's part back there. I couldn't see who they were. You know, with all the lights on and all that. I have no clue who it was. Your trooper was nice to me, and apologized and that to her. But I had no clue that she had been cuffed. And then she takes me to work and I find out a few hours later, okay? I think procedure was not real good, okay? I've trained K-9 dogs, over 600 hours training K-9 dogs for [information redacted]. I mean I've ridden over 600 hours, I've seen a lot. Not that I'm an expert. Don't get me wrong, I'm not. But I've seen things come down when they hear about guns and things like that. I think there was a little overzealous happening going on with her, you know, as being the driver, whatever. And that's our complaint here. I want a record of the police report and who these dudes were back there.

Sgt. Roberts: Okay.

Complainant's husband: Okay? That's what we want.

[crosstalk]

Sgt. Roberts: Have you guys had a chance to fill out a statement form? Or—

Complainant's husband: We have never filled anything out. We haven't filled anything out.

Sgt. Roberts: Would you guys like a copy of a statement form to take home and fill out? Or would you like to e-mail something to somebody?

Complainant's husband: I will take a statement form, but I want to get [taps on table] the police report. That's what I want I want to get.

[crosstalk]

Sgt. Roberts: Okay, I know, I know that it's not—it's still open. Trooper Zeisel, who's in charge of writing it—I don't know if that's the trooper you talked to or not—that's the guy who stopped your car—he's attending his daughter's wedding out of state—

Complainant's husband: Okay.

Sgt. Roberts: —so it's not going to be done for at least another week or so. Just to let you know there's going to be a delay there.

Complainant's husband: That's fine. I mean, he was the guy I talked to. Okay? He didn't handle her at all. I don't know who the guys were back there handling her.

Sgt. Roberts: Okay.

Complainant's husband: They handled it poorly, very poorly. And I don't know if it was a trooper or a Fairbank [sic], I couldn't tell. There were so many rigs there. His rig was behind us.

Sgt. Roberts: Okay.

Complainant's husband: Cause the dog was going off, and I mean—but he talked to me, you know, when he got me out of the car, and he was nice and all that, and that's not a problem. But I didn't know what they had done to her. And I was a little surprised, I wasn't out of the car and being checked, I was never patted down—

Complainant: I wasn't patted down, the car wasn't checked, nothing. It was such a side— [inaudible due to crosstalk]

[crosstalk]

Sgt. Roberts: Well, things can change rapidly for us as we're responding to things. I show up to car crashes regularly. And let's say I have five people that identify themselves as witnesses for me. And I'm still perplexed after almost 12 years how out of five people I can get 10 different versions of something that happened. That's just everybody's perspective, and sometimes people call stuff in and they're wrong.

Complainant's husband: The procedure, what happened, is wrong. And that's what our complaint is. It was how she was handled.

Sgt. Roberts: Okay.

Complainant's husband: Okay? And I know there's multi guys there, not just troopers. I saw a Fairbank cops, I'm not sure if there was a UAF cop there or not, but I know that there were more than one outfit there.

Sgt. Roberts: Okay.

Complainant's husband: Okay? And uh, it's interesting you come out and say a "silver" car. We were told a white car. That's what I was told.

Sgt. Roberts: Well, our computer—our computer says a silver or white car left the area, cause people can't tell sometimes at night what color, so—

Complainant's husband: Well, that's the first time I ever heard silver. We were told white.

Sgt. Roberts: What kind of car were you guys in?

Complainant's husband: A white. A white car, but you know, that's all I ever heard was white. Okay? Well, okay, we're in a white car. Okay? But the way it kind of went down to what happened, I don't agree with.

Sgt. Roberts: Okay.

Complainant's husband: She doesn't either, and I've every right not to agree with it.

Sgt. Roberts: Absolutely.

Complainant's husband: And that's where we're at.

Sgt. Roberts: You absolutely have the right not to agree.

Complainant's husband: You know, the thing that bothers me is they threw her in cuffs, hadn't even run her ID, nothing, I mean nothing, zero.

Sgt. Roberts: I understand that. And I—

Complainant's husband: That's wrong. And I'm sure there's guys, "Hey, you know, what's going on?" I mean, guys get pumped up, they think there's a gun. I understand, but she wasn't treated very well.

Sgt. Roberts: When was this?

Complainant's husband: The 24th at five am just a—

Sgt. Roberts: Just like a week ago?

Complainant's husband: A week ago, yeah, the week before Halloween.

Complainant: We turned it—I've had horrible—

Complainant's husband: [interrupts] She's had a terrible time.

Complainant: I don't know if it's because the guns were drawn on me, if it was because I was put in handcuffs, if it's because [begins to sob] I was wearing pajamas—

Sgt. Roberts: It's a stressful situation, and it's a stressful situation. No matter which component of that, each one of those components alone would be stressful, and to have them all put together—

Complainant's husband: [inaudible] is it Zeisel?

Sgt. Roberts: Trooper Zeisel.

Complainant's husband: He told his boss, or his supervisor, that I'm sure you're going to get a call. I'm sure you're going to get a call. Because when she called them, whoever she talked to—

Complainant: That morning.

Complainant's husband: —the supervisor said, "Oh, yeah, he said you'd be calling." Well, so, you know, she talked to him. I wasn't witness to that, I was at work. But it was kind of like, you know, well, that's the way it is. Well, no, it isn't the way it is. I think we can go just a little bit deeper here—

[crosstalk]

Sgt. Roberts: Like I said, there's some, there's some components of this that probably could have been at play—

Complainant's husband: Possibly.

Sgt. Roberts: Well, I understand that right now we've got nine recruits in training, and we're still making mistakes, and we're still picking up the pieces even on calls. And we're trying to do our best to alleviate the damage that they do while they're out there, because they're making mistakes. But that's how they learn. That's how we get people to do things at any job, is to have them do it. So, part of that is if we've got people like that on the scene, we get descriptions of cars that leave with numbers of occupants in it and we stop those cars because of their time, place and distance to the vicinity. And with the

type of call that we got, with the shots being fired, and the guns and other things, that's a precaution that we take, is we make sure that we go home to our families, that we try not to have anybody, you know, and you know, we—

[crosstalk]

Complainant's husband: I understand. I understand that.

Sgt. Roberts: —and running people until after they're in handcuffs—

[crosstalk]

Complainant: We have rights, too. I had no rights that morning. I had to prove I was innocent. I mean, I was guilty—

Complainant's husband: [interrupts] The thing that bothers me is, the procedure of what happened to her isn't quite right.

Sgt. Roberts: So, the—

Complainant's husband: So I want to see the report, and that's what I'm going to ask for, is the report, and see—

Sgt. Roberts: The fact that they responded to the gun call, and pulled her out of the car was inappropriate? Or when they ID'd her.

Complainant: All of it.

Complainant's husband: No, when they—they didn't pull her out of the car. Number one, they didn't pull her out of the car.

Sgt. Roberts: We had her get out of the car and back up?

Complainant's husband: They had her get out of the car and back up.

Sgt. Roberts: Okay.

Complainant's husband: I understand, but they cuffed her immediately, then you know took, like, when I think they actually uncuffed her finally, "did you run her ID?" —

Complainant: [inaudible]

Complainant's husband: "No, did you?" You know, it's like, you know, come on, boys. Don't we run that stuff, kinda, maybe before we uncuff them? Or we have some kind of a—you know what I mean? You know where I'm going. I don't know all your procedures. I'm just saying, procedure was not good there.

Sgt. Roberts: Okay.

Complainant's husband: And so—

Sgt. Roberts: And so they didn't run it before they got her out of handcuffs, and that's—

Complainant: Not just that. [inaudible] either. The license tabs—

Sgt. Roberts: That ran that. We have a copy of that. They ran the plate. They did that when they—

Complainant: [inaudible] where we were coming from.

Sgt. Roberts: But we don't know where you're coming from until we talk to you. We have—when you're driving down the road, we have no idea where you—

Complainant: [inaudible] our house—

Sgt. Roberts: But we don't know that. You could have been coming from somebody else's house. We don't know where you're coming from.

Complainant: In my pajamas and my slippers.

Sgt. Roberts: We can't see that until we get you out of the car, though.

Complainant's husband: Right. Well, the only thing is the procedure—

Sgt. Roberts: I understand that—

Complainant's husband: You understand that? If I would have know [sic] at that time they had cuffed her. And—cause when I saw her she was uncuffed. Okay? I wouldn't have left. I mean, she was taking me to work. I would have said, we're stopping a minute here and I want everybody's names. Which I didn't, I just took his, you know, and he gave me his, and that's fine. I would not have left if I would have known that.

Sgt. Roberts: Okay.

Complainant's husband: Cause of just procedure I've seen done, and, you know, it's kind of upsetting a little—

Complainant: The apology was given by him to you. There was no apology given to me.

Complainant's husband: Yeah.

[crosstalk with complainant and her husband]

Complainant's husband: [interrupts] And I just thought it was really strange he didn't have me get out of the car. You know, it's just weird. He got two of us, two people. I was told a man and a woman—

Sgt. Roberts: Well, I'm sorry that you guys happened down the road—

Complainant's husband: Well, it happens. [inaudible] the report, requesting that.

Sgt. Roberts: We went to a domestic a couple of weeks ago where a guy's chasing another guy through the neighborhood. And then as we almost get there, they get in an older blue Ford pickup truck. And as we pull in, here comes one pulling out. And so, we stop it. Guns are drawn, we get the guy out of the car—when the correct bad guy truck—they're within a model year of each other—drives out the next street. And so we tell that guy, thank you very much, you're obviously now not our guy, and we have to run and go contact that guy. You know, I mean, well, it might be the bad guy or not. Do we let 'em go or do we stop 'em? You know, sometimes, it's, you know, but I understand where you're coming from, but this—

[crosstalk]

Complainant's husband: I understand. [inaudible]

Complainant: I can understand the apology to him. I mean, I understand he was pulled over, too, and there was not— [pause] I was the one that was totally humiliated in this whole situation, and I want an apology.

Complainant's husband: [interrupts again] She was the one [inaudible]. I mean, I just sat there. And then he opened the door so I can get out, okay? I just thought it was kind of weird, you're looking for two people, you get them both out—

Complainant: Yeah, exactly.

Complainant's husband: —or something, generally you would, generally you would. Okay? She's still back there during this time he's talking to me, you know, after, whatever—so I'm not ticked at Officer Zeisel, I'm ticked about how it happened to her, and the procedure of maybe some overzealous boys back there going, you know, hey, we got a gun. I understand. But it wasn't handled very correct, in my opinion, correctly. I have every right to find out about it. I think she's owed an apology for what happened to her. The way, procedurally, it was not right. I mean, I think that's the least—

Sgt. Roberts: Okay. For what it's worth, I'm sorry that it was such an embarrassing and traumatic incident for you. I am. I wish that it wouldn't have happened. I wish that it didn't happen to you.

Complainant: I'm sorry, I don't even want to hear it. I don't even want to hear it!

Complainant's husband: She's having a hard time with it.

Sgt. Roberts: I understand that.

Complainant: The good old boys, after all,—

Sgt. Roberts: Absolutely not.

Complainant: —here's this woman in her pajamas out in the middle of what, five spotlights on her—

Sgt. Roberts: Ma'am—

Complainant: What you have to understand, I have—it's hard enough being pulled over for a traffic ticket—

Sgt. Roberts: I'm a resident of this area. I'm a state trooper for 40 hours of the week or a little bit more overtime. I'm a dad with five kids. I go to church on Sundays. I go to my kids' scout camp and scout group with them. I go to my daughter's youth activities. Okay? I see other police officers in the community when I'm off duty. Okay? I don't necessarily agree with things, but I can tell you one thing. The guys that I work with, for the most part, and especially on my shift—okay? There isn't a good-old-boy-come-back-and-laugh. We're humans, and we try to treat people like humans.

Complainant: [sobbing] They should have apologized. [louder] They should have apologized, but they didn't. And you have to understand—

Sgt. Roberts: Well, I understand. I understand where you're coming from. But if we're still looking for something and we need to cut things loose, sometimes we're preoccupied with getting on to looking for maybe the right car, and that gets forgotten. And I understand—

Complainant: [sobbing] There were five of them there, there were five with their spotlights on us, it wasn't just a passing—

Sgt. Roberts: I understand.

Complainant: —police car that pulled us over. It became a circus out there. It was a circus and it was embarrassing. It was humiliating. Being a taxpayer and a member of this community, being treated like that, and not even getting an apology at the end. And that's all I have to say. [sobbing]

[complainant exits room]

Complainant's husband: She's having a rough time with it, okay?

Sgt. Roberts: I understand.

Complainant's husband: I think she has every right to have that, because she was the one that was treated poorly. I wasn't so much—

Sgt. Roberts: She was only treated poorly because she was handcuffed. And—

Complainant's husband: Yeah, but, hey, nothing was ever said to her. Say, "I'm sorry but we don't have, we have the wrong people here. I'm sorry, have a nice day."

Sgt. Roberts: I understand. I understand that didn't happen.

Complainant's husband: That would have been [inaudible], that didn't happen. That's what she's having a really hard time with.

Sgt. Roberts: All right. I've been trying to figure out what we can do better in it, because procedurally some of the things you've been describing, even though you don't agree with, are things that we do. And that we teach our guys. And because now I understand what we could have done better, I will make sure that I communicate with the other supervisors here and our troopers. And it's common sense and decency that we would do that. And—

Complainant's husband: Usually it would be if you have the, you know, if it's the wrong person—

Sgt. Roberts: Yeah, sometimes we forget to do that. And I will make sure that I bring it back up, and that we get our guys to be thinking about that kind of thing.

Complainant's husband: In the report, who was the supervisor she talked to?

Sgt. Roberts: Uh, I don't know for certain, but I think it's probably Sgt. Goeden.

Complainant's husband: Okay, I don't know.

Sgt. Roberts: Yeah, I think it—Sgt. Goeden was working that night.

Complainant's husband: He was—it would have been nine in the morning. He could have still been on. I don't know, she called about nine on that morning, and, uh, or maybe a little before that. Somewhere in that vicinity.

Sgt. Roberts: It was probably Sgt. Goeden.

Complainant's husband: In her conversation—what she related to me from him—it was like he was all ready to go. Hey, I'm waitin', you know. Which, hey, I'm in the public

business, too. I've been 37 years working with the public, okay? I understand what it's like. It seemed like he really, I don't think he conveyed maybe a—

Sgt. Roberts: Okay.

Complainant's husband: —an apology, or something there, I don't know—

Sgt. Roberts: I can give you—I can either run and go get you a statement form, so you can hand-write out, or if it's easier for you, and most of the people nowadays, it's easier just to open up an e-mail on your computer and sit in the confines of your home and write it.

Complainant's husband: Right.

Sgt. Roberts: If you want to forward me the things that are irritating you, and that you felt weren't followed, and especially this part, you know, about "I felt that the supervisor kind of just brushed it off and things" —

Complainant's husband: [inaudible]

Sgt. Roberts: Well, put all that stuff down, and what I will promise you that I will do, and you have my word, as a human being and as an Alaska State Trooper, as your Alaska State Trooper—that I'm going to bounce that to Captain Barrick, our detachment commander so that he can then review it himself, and that he can look at it and decide whether, you know, he can talk to the sergeant and say—

Complainant's husband: That's not why we came. We're not trying to get the guy reprimanded, we're just trying to—

Sgt. Roberts: We, just like everybody, need course corrections. We're just like everybody out there. If you forget to use your turn signal, it's not the end of the world, it's worth a ticket. Sometimes we'll stop you and just warn you because you just needed a course correction.

Complainant's husband: Exactly.

Sgt. Roberts: And sometimes we need those, too.

Complainant's husband: She's just having a really hard time with it. Because, nothing's been said to her. I mean, nothing. Honestly, if I would have known they had her in cuffs, I wouldn't have let 'em leave, or I wouldn't have let, I would have not just said, hey, thanks, appreciate it, bye.

Sgt. Roberts: Yeah.

Complainant's husband: I wouldn't have. I would have stayed there and at least talked to one of them, you know. Everybody else can take off, as far as I'm concerned. I want to know who those two dudes were back there with her. I don't know if they were troopers, Fairbank [sic], I don't know.

Sgt. Roberts: Okay.

Complainant's husband: I do not know. I think they were a little overzealous in what they did. I mean, I've seen lots, you've probably seen way more than me, but I've seen a lot of—

Sgt. Roberts: More than the average person, yeah.

Complainant's husband: [inaudible] it's like, I did not know they had cuffed her. I mean, she went out of my sight cause I was just sitting there—

Sgt. Roberts: Yeah.

Complainant's husband: —and all the lights, you can't see, you know that. But it was like, she didn't tell me till, you know, pretty upset, she dropped me off at work, and then went home. She told me later. I had no clue. I saw her sitting on the bumper of a car, was the last I saw of her. And Zeisel, or—

Sgt. Roberts: Zeisel.

Complainant's husband: Zeisel, he was just, told me, you know, I'm sure, "If you have any problems, you know, call supervisor, blah, blah, blah." I mean, he was nice. Don't get me wrong. But he never talked to my wife—

Sgt. Roberts: Okay.

Complainant's husband: —you know. Who do you think's going to be more emotional? Uh, ding, ding, ding, I think it's a woman. Especially a woman that's been asked to back up, you know. I can see it for what it is, but she's having a hard time with that.

Sgt. Roberts: I totally understand.

Complainant's husband: And it's wrong, what happened. You know? Part of it, somewhere, somewhere it could have probably been done a little bit better. She needs an apology from somebody, cause she's not going to let it rest. I can guarantee you she will not let it rest till something is done to make her feel better.

Sgt. Roberts: What is it that she, I mean—

Complainant's husband: I mean, I can't tell you. She wants to see the report. Okay? So—

[crosstalk in following exchange]

Sgt. Roberts: Why? I can—

Complainant's husband: —so get a report—

Sgt. Roberts: —almost guarantee that what the report's going to say is, they responded to this call—

Complainant's husband: Sure, but it will list the officer's names on it, who—

Sgt. Roberts: Possibly.

Complainant's husband: —took the suspect into cuffs, or—

Sgt. Roberts: Well—

Complainant's husband: —you know? I apprehended, you know, I mean [inaudible] it's got names there somewhere, generally—

Sgt. Roberts: Sometimes it's like when we did this big DV where I was saying the guy was shooting with guns, and we wanted to pull over the wrong truck—

Complainant's husband: Sure.

Sgt. Roberts: —you know, I never ID'd that guy, cause the other guy came out now. He's the one with the guns. I don't know who this guy is. He was driving a '96 blue Ford truck. You know, "Hey, sorry man, it's over here." And we left, and he—he does, you know—we talk about stopping a blue truck, but there's not much other mention in it.

Complainant's husband: Well, I don't know, but I'm sure all the officers that had to respond should be somewhere on that report. And you know, maybe Zeisel will know. I don't know.

Sgt. Roberts: Okay.

Complainant's husband: But I just—

Sgt. Roberts: Well, write something up about it all, and I'll bounce it to Captain Barrick.

Complainant's husband: I mean, she needs something better than what's happened. And I think for her to rest on it, it's gonna have to happen. If not, we're both [inaudible]. Okay?

Sgt. Roberts: Well, I think—

Complainant's husband: That's the thing. I have to live with her.

Sgt. Roberts: Well, I understand, and I understand that she's emotional.

Complainant's husband: She's emotional.

Sgt. Roberts: She just has to find out exactly what it is that she wants and be able to articulate that so we can try to help her with that.

Complainant's husband: Well, the thing is, I think it's how it came down, and what happened to her. Okay? I think that's where it's gonna come down to.

Sgt. Roberts: Um-hum.

Complainant's husband: Cause I mean, I'm fine. I didn't have a problem, I mean, nothing really happened to me, but I'm just sitting there waiting.

Sgt. Roberts: Well, you're being a good husband now, that what you're supposed—you know?

Complainant's husband: I've seen some things, you know, training and all that. It's been a few years now. But—

Sgt. Roberts: Well, sometimes tactics change, and sometimes tactics place to place change. We've got—four of our twelve recruits in here are folks that have come to us from other agencies, and they're like, "Wow, okay, things are different in Alaska." You know, and they just—they differ from place to place as well. So, anyway. Take your time, write that stuff down, forward it to me—

Complainant's husband: I appreciate your talking to me—

[crosstalk]

Sgt. Roberts: —and I'll bounce that to Captain Barrick to let him know your concerns, and we'll see what we can do to make some course corrections, and . . .

Complainant's husband: Okay, well I think I'll fill this out now and drop it by. She needs to see something. Okay?

Sgt. Roberts: Okay. And like I said, parts of it you may be entitled to, parts you're not, but we'll let them with the rules figure that out. Cause I don't know—

Complainant's husband: Yeah, figure it out, but you can always ask.

Sgt. Roberts: —what, cause I don't know what, I don't know all the rules there.

Complainant's husband: I understand.

Sgt. Roberts: I always tell people to call them, cause I don't know.

Complainant's husband: I don't either.

Sgt. Roberts: All right, sir, thank you for your time. [22:50; recording runs silent to 23:15]

Complainant's husband's E-mail to Sergeant Roberts

On November 10, 2009, the husband wrote a brief e-mail message to Sergeant Roberts with a request attached for the trooper's report on the incident:

From: [complainant's husband's name redacted]

To: Roberts, Richard R (DPS)

Sent: Tue Nov 10 11:36:04 2009

Subject: [complainants' names redacted by ombudsman] Incident Report

Good afternoon Sergeant Roberts,

Attached is an [sic] request about our incident report.

...

The attached request was a Microsoft Word document that reads:

11/09/09

Sergeant Rick Roberts,

We would like to first thank you for taking the time in listening to our concerns that happened on October 24th, 2009 at around 5:00 am. As you are well aware of the situation that happened to my wife and me on that morning, we would like to express our concerns and disappointment in the actions that the Troopers and other law enforcement agencies that were in [sic] involved in this stop that happened to us. However, before we move forward we would like to make it very clear that we have not yet received a copy of the incident report that we requested. As law abiding citizens of the Fairbanks community when can we expect to have the report?

Please forward this request on to your Captain for his review and handling.

Thank you for your time,

[complainants' names redacted by ombudsman]

Captain Barrick's phone message to the Complainants

Trooper Zeisel completed the police report on Saturday, November 14, and Captain Barrick called the complainants on Monday, November 16, 2009. He recorded the call and provided a copy of the recording to the ombudsman that the investigator transcribed:

This is a telephone contact with [the complainant's husband]. It's November 16, Monday, 2009, approximately thirty-five minutes after eleven. The phone number I'm calling is 374-3442. This is regarding a complaint about an incident that happened October 24th 09. [dial tone, dialing tones, six rings before automatic message picks up] "You have reached [complainants' names redacted by ombudsman]. We're not here to take your call at this time. Please leave a message. We'll get back to you as soon as we can." [tone to record]. Hello, this is Captain Burke Barrick with the Alaska State Troopers. Sergeant Rick Roberts asked me to give you a call at this number. I am in and out of the office all day Monday through Friday, but you can reach me at 451-5100. Please give me a call back. Thank you. Bye. [hangs up] This ends contact, er, attempted contact.

Sergeant Roberts' memorandum to Captain Barrick

Sergeant Roberts described his meeting with the complainants in a memorandum to Captain Barrick dated March 8, 2010:

[The complainants] came to AST on November 2, 2009. I contacted them at 1806 hours. Dispatch spoke to me about the case and I read the case notes. I went out into the lobby and spoke with them. I made two audio recordings of the contact.

In the first audio contact (1806 hours to 1810 hours) [the complainant] told me she wanted a copy of the police report. She wanted a form to be able to request the report. [The complainant's husband] said he wanted to file a complaint. [The complainants] had talked with a supervisor about the event already and that she was not satisfied with what happened. She became upset and raised her voice at me as she recounted some of the events. I knew very little about the case but tried to offer an explanation based on my experience with DPS policy and teaching both at the academy and in the Field Training and Evaluation Program. She refused to hear any of what I had to say. She feels we should have just known who she was and what they were doing.

I turned off my audio and went to locate a records request form. I came back out to the lobby with the form and reactivated my audio recorder for the second contact (1813 hours to 1836 hours). During this conversation I told them they could request the report but there may be some rules that might limit what kind of information they could get. I said I was sorry that they would not hear my perspective on the event. I told them I felt there was a misunderstanding and that I was sorry they refused to listen to what I had to say. [The husband] went through the events of the traffic stop. He became upset because his wife was handcuffed and did not have her ID run by the time she was let out of handcuffs. He says we should not have put her in handcuffs without running her ID. He said "the procedure was not real good." He said the trooper apologized and he did not even know his wife had been handcuffed until later in the day. He thinks there was some overzealousness on the part of the troopers. I asked if he had written any of his concerns down. I offered a statement form.

[The husband] said his complaint was with how things went that night. I agreed with them that they have the right to be upset. [The complainant] said she thought she could handle it but she has not been handling it well. She doesn't know if it was the guns or something else but she is having trouble with the case. I talked about how we had recruits in training and at times they make mistakes and their trainers work to keep mistakes to a minimum. I explained that things change rapidly and often what we are called to is not what actually happened.

At one point I offered an apology that [the complainant] felt she had been mistreated and she stormed out of the building. [The husband] and I spoke some more and he left the office. He emailed me on November 10, 2010, to request the report. That e-mail was relayed to you.

FPD Supplementary Narrative

Fairbanks Police Officer John Merrion wrote a supplemental report, at the request of AST, dated March 13, 2010:

On 10/24/09 at 0459 hours, I heard AST dispatch reporting shots fired inside an residence at the [name] apartments. AST dispatch reported a white four door sedan was seen leaving the area in an unknown direction of travel.

I responded to the area to assist AST in locating the vehicle. I drove down Airport Way to University and tuned northbound. As I was approaching the Oasis bar, I saw Trooper Zeisel was in the process of stopping a white four door sedan that had been traveling south on University from the area of the [name] apartments.

Trooper Zeisel activated his overhead emergency lights and the sedan pulled into the [location redacted] parking lot and stopped. I pulled in beside Trooper Zeisel and activated my overhead emergency lights. Trooper Zeisel conducted a high risk felony stop on the vehicle. The driver, identified as [complainant's name redacted by ombudsman], was ordered out of the vehicle and walked back towards my patrol vehicle. I saw [the complainant] was sobbing almost immediately as she exited her vehicle. Trooper Zeisel walked [the complainant] back to my patrol car and she was handcuffed.

Trooper Zeisel then contacted the person in the front passenger seat, identified as [name redacted by ombudsman]. Trooper Zeisel observed there were no other persons in the vehicle and it was determined that they were not involved in the shooting. Both parties were quickly released and advised of the reason for the stop.

Trooper Zeisel was very professional during the contact and both parties were immediately released when it was determined they were not involved. It was only a couple of minutes from the time of the stop until [the complainants] were released.

I did not have any further case involvement. I did not save any video or audio from the stop as the incident occurred approximately five months ago.

Captain Burke Barrick's timeline

On April 26, 2010, Captain Burke Barrack sent the ombudsman investigator a timeline he constructed relating to the complaint filed by the complainants:

Mr. Webster, here is the timeline we discussed as well as some of my thoughts on the complaint. Please understand this information is a compilation of my recollection of events that are now several months old but as I have been able to find documentation I have tried to note the source.

- The incident took place on October 24, 2009, at 0500 hours. Trp. Zeisel, although in the middle of a search for two possibly armed suspects, took the time to explain to [the complainant] what had happened and gave him a business card and suggested he call Sgt. Goeden. [The complainant], at the time, expressed that while he was frustrated at being stopped by the troopers/police, he understood the circumstances that led to the stop. Trp. Zeisel explained that there were two suspects; one male and one female, that the suspect vehicle matched the description of the [couple's] car almost exactly and that the incident took place very near to the place where [the couple was] stopped.
- Prior to 0900 hours on October 24, 2009, [the complainant] called Sgt. Goeden and he gave her a full explanation as to what happened and why. Despite statements to the contrary in her signed letter of 01/17/2010 to Colonel Holloway, at the end of the recorded conversation with Sgt. Goeden on 10/24/2009, [the complainant] seemed happy with the explanation and admitted that she did not know what the troopers could have done differently. She did not ask for a copy of a police report at that time and Sgt. Goeden, and Sgt. Yancey who was listening to the conversation on speaker phone, both left the conversation with the impression that [the complainant] understood what had happened and why we did what we did and that no further action was needed or being requested. You have a copy of the contact with [the complainant] and Sgt. Goeden and can clearly hear [the complainant's]'s comments.
- On November 2, 2009, almost two weeks after speaking with Sgt. Goeden [the couple] went to the AST Trooper HQ and spoke with Sgt. Roberts and asked for a copy of "the" police report. Prior to speaking with the [the couple] Sgt. Roberts, who didn't know anything about the incident originally, reviewed the case card of the incident and tried to explain to the [the couple]the process for people requesting copies of police reports in which they are not mentioned and why the [couple]were stopped and what our procedures are in cases such as these. You have reviewed the recorded contact between [the couple]and Sgt. Roberts. Contrast Sgt. Roberts calm, patient, rational attempts at interaction with [the couple]with the manner in which they treated Sgt. Roberts. The difference is startling.
- [The couple]claims they came to AST HQ and submitted a written request for a copy of the police report on November 4, 2009. I checked with the two administrative clerks at the front counter who receive requests from the public and asked if they recalled [the couple]dropping anything off on or about November 4, 2009. Both said that they did not. I then sent out emails to all of the troopers and civilians in the building requesting anyone who may have had contact with [the couple]to contact me but nobody who responded had any recollection of taking anything from [the couple]. If [the couple]dropped anything off here on November 4th; nobody here remembers receiving it. I am not saying [the couple]didn't drop something off but the fact [the couple] waited several months to make their complaint to your office has hampered my search for information as logs for information dropped off by the general public at the front counter

are destroyed a month or so after the requests have been filled. There are no logs that go back to November 2009 now.

- On November 9, 2009, [the complainant's husband] sent an email to Sgt. Roberts requesting a copy of the report. You have a copy of this email request and the attachment from [the couple].
- On November 10, 2009, Sgt. Roberts sent me a copy of the above email from [the complainants] with an attachment containing the official request from [the complainants] for a copy of the police report. I was out of town through November 8, 2009, and while I was gone a Fairbanks trooper was involved in a shooting. When I returned to work a request for a report that was not completed and which did not directly reference [the complainants] [were] not my first priority for the week.
- Sometime between November 10, and November 14, 2009, I was able to access the email from Sgt. Roberts and that was probably when I noticed that the police report was not complete and that there was no mention of the traffic contact between Trp. Zeisel and [the complainants]. Instead it focused on the original call and the suspects in the shooting. I asked someone, probably Trp. Zeisel, to include a paragraph about the traffic stop with [the complainants] in the police report (09-95802). Trp. Zeisel added a paragraph about the contact with [the complainants] (again, this was not part of the original police report and was not required to be part of the report but in an effort to give [the complainants] something, we added the part about their traffic contact to the police report).
- On November 14, 2010, Sgt. Goeden notified me that the police report was completed and signed off and ready to be distributed and asked me to call [the complainants].
- On November 16, 2010, I called [the complainants] to speak to them and to make a copy of the then completed report available to them. I know I called them because I recorded what I believe was one of two attempts to reach [the complainants] and you have a copy of that attempt. I believe I also tried to call them at least one other time sometime between November 14 and November 18 but because I did not note the attempt in my notebook or record the call, I cannot prove that I called them a second time. I believe I called them a second time though because I remember thinking "I have called them twice now, the ball is in their court." In any event, I called them to discuss their complaint and to arrange to give them a copy of the report. When they failed to call me back, I must have assumed they felt the issue was resolved to their satisfaction or that they had changed their minds about wanting anything so I put the issue out of my mind and went back to work.
- Two months and one day after I left my message with [the complainants] (11-16-09) to speak with them and provide them with a copy of the police report, they wrote a letter to Colonel Holloway (01-17-10) expressing their view that the traffic stop of October 24, 2009, was somehow unnecessary, improper or in violation of policy.
- At some point after [the complainants] sent their letter to Colonel Holloway, but before I was able to gather the facts and respond to them in writing, Lt. Wall called [the complainants] at least twice and offered to meet with them but his offers were refused.

- On February 5, 2010, I sent a letter to [the complainants] and tried to explain what Trp. Zeisel, Sgt. Goeden, Sgt. Roberts, and Lt. Wall had all tried to explain before me. In my letter I attempted to address each of the issues [the complainants] raised and included a copy of the police report for them to read. While I believed then, and still believe now, that the trooper and the Fairbanks police officer acted appropriately under the circumstances, I apologized to [the complainant] if she felt mistreated and offered to speak with her further about this incident but she declined to speak to me or call me back; again.
- [The couple] then waited another several weeks apparently before filing a complaint with your office.

Additionally please note the following:

- In her letter, the complainant claims that it took three and a half weeks for me to call her. This statement is misleading. I can't find anything to suggest the [couple] ever asked Trp. Zeisel, Sgt. Goeden or Sgt. Roberts to have me call them. Sgt. Roberts, on Nov. 2, 2009, when he met with [the complainants] at the Peger Road HQ, told them he would forward their request for a police report to me as soon as [the complainants] made the request. The request finally came in to Sgt. Roberts via email on 11-09-09 and it was forwarded to me the next day. It did take me seven days to respond to them but as I mentioned above, the email came to me on the 10th and it took at least two days to open the email due the fact that I did not have the operating system on my computer to read the attachment from [the complainant's husband]. While I did eventually manage to open the email the police report they requested was not actually completed until the 14th. On the day the report was finished Sgt. Goeden suggested I call [the complainants] and two days later I called [the complainants] and left a message on their answering machine to discuss their request and give them a copy of the report but they have yet to respond to my call. In summary, at most it was seven days from the time of the receipt of their request (to me through Sgt. Roberts) until I called. In hindsight, I wish I had been able to speak to [the complainants] sooner but seven days is not three and a half weeks.
- The complainant claimed in her letter that when she spoke with Sgt. Goeden on October 24, 2009, that Sgt. Goeden "was very condescending in his conversation with me [the complainant]. I felt worse after talking to him." You have now heard the tape of the conversation. Even if you listen to the conversation in a light most favorable to [the complainant] and give her the benefit of the doubt that she wrote the letter months after the incident or that her memory has been clouded over time, you cannot listen to that exchange with any kind of objectivity and say that Sgt. Goeden was anything but kind, patient and professional in his interaction with [the complainant]. [The complainant's] statement is inaccurate.
- Sgt. Roberts was also patient, kind and professional with [the complainants] during his attempts to explain the situation to them.
- During my initial contact with you, you raised the possibility that our policy or training should somehow be changed to better handle this type of situation in the future. I was initially open to the idea but the more I have learned about this case, the more I am convinced that the troopers and officers acted appropriately that morning and that the

system worked. Sgt. Goeden, although he did not initiate the phone call, was on the phone with the complainant less than 4 hours after the incident and that is sooner than anyone else from command would have been able to get to the office, review the daily logs, get briefed on the situation, interview the trooper/police officers and then contact a complainant(s).

Finally, I have tried to answer all of your questions and I have tried to give you information that I believe will help you complete your review of this case. It is my conviction that the trooper and police officer acted correctly on the morning of the incident and while it is unfortunate that [the complainants] were caught up in this situation, there was no malice or negligence on our part. I believe the record shows that Trp. Zeisel, Sgt. Goeden, Sgt. Roberts, Lt. Wall and I (through my letter) have addressed all of [the complainants'] questions about the circumstances surrounding the stop and why we did what we did that morning. We have explained, apologized, provided [the complainants] with a copy of the police report, and even offered to meet with them (through my phone message and letter) but they did not respond.

Additionally I have provided you with several minutes' worth of audio recordings, letters, at least one email from the [complainants] to Sgt. Roberts, photographs of the suspect and the couple's vehicles, Google maps of the area where the stop took place, a copy of the supplemental Fairbanks Police report and other items related to this case. You have also been provided with training curricula from at least two police training academies and you have been given resource or contact information for agencies like the International Association of Chiefs of Police, the Alaska Peace Officer's Association and trade journals like Police magazine.

I believe that I have given you all the cooperation and information you have requested and I do not believe there is anything else that I can reasonably do to further this case. However, if there is anything else you need or if you have any other questions please feel free to contact me at any time.

Fairbanks weather on October 24, 2009

According to the Alaska Climate Research Center at the University of Alaska Fairbanks, temperatures for Fairbanks on October 24, 2009, ranged between a low of +19 degrees and a high of +40 degrees Fahrenheit. Sunrise was at 9:13 am.

INVESTIGATION

The ombudsman investigator obtained from AST a variety of records, including copies of dispatch logs and recordings, an unredacted copy of the police report, copies of the recordings made during the complainant's initial telephone conversation with Sgt. Goeden and the discussion she and her husband had with Sergeant Roberts at AST headquarters, and correspondence by the complainant and Captain Barrick. In addition, he reviewed Alaska Law Enforcement Training Academy training materials for high-risk traffic stops and did an Internet search on the topic to see how this procedure is done outside Alaska.

Contacts and Interviews

In addition to interviewing the complainant, the ombudsman investigator also interviewed or contacted the following people:

- Complainant's husband

- Trooper Brian Zeisel
- Fairbanks Police Officer John Merrion
- Fairbanks Police Lieutenant Tara Tippet
- Trooper Captain Burke Barrick

Ombudsman Interview with Complainant's husband

The ombudsman investigator spoke to complainant's husband on April 15, 2010 and July 29, 2010. The complainant's husband said he had experience training K-9 dogs for two governmental agencies in other states. He said he had "ridden" with police officers more than 600 hours and had observed many arrests.

The complainant's husband said he was disturbed by the fact that his wife was handcuffed without any explanation at the same time that he was not even asked for identification. He said he did not realize she had been handcuffed because he was sitting in the car with his hands up, and by the time he stepped out of the car, the complainant had been released from the cuffs. He said if he had known at the time his wife had been handcuffed, he would have insisted that one of the officers stay a few minutes to answer their questions. He said he would have asked the names of the officers who participated, because he did not think the procedure was performed appropriately.

If I had known at the time that they had cuffed [my wife], I would never have left the scene. I would have asked for everybody's badge number, because the way it went down wasn't right, the way she was treated. I wasn't even asked for my ID. It was kind of strange that I wasn't even questioned about anything.

The husband said he did not remember exactly what he was wearing that morning, but it was probably his usual work attire: He said his name badge would probably not have been visible under his coat, so he was puzzled how the officers verified who he was. "They never saw my name. I was never asked to produce an ID."

The husband said when they were pulled over, he told his wife, "Just do what they say." He said he knew one of the units was a K-9 unit because he heard the dog barking. He said it was dark and there were at least three police vehicles with their lights spotlighting the complainants' car. He said some of his uncertainty about what happened was due to the bright lights. Besides the trooper car that pulled them over, the complainant's husband said, "I saw two other units for sure. And there could have been a third, but it's hard to say. It was so dark, and with their lights, you can't see back there that well." In addition, he said, he had been ordered to sit upright with his hands visible, so he did not turn around to watch what was happening.

The husband said he was annoyed by the initial attitude of the trooper sergeant at headquarters when he and his wife went there to request a copy of the incident report. "He tried to tell me what I was going to say, and I said, 'You're not going to tell me what I'm going to say. You weren't there.'" He said they were surprised when the sergeant said the suspects had fled in a "silver" car because no one had said anything to them up to that point about a silver car. The complainants' car is white. He said it gave him the impression that the sergeant did not know what had happened, so initially he just repeated several times that they were requesting a copy of the incident report.

The husband said he found the troopers explanations about wanting to “go home safe at night” one-sided and somewhat offensive. He said two of his best friends outside Alaska are police officers and he understands that they often deal with people who lie and may be dangerous. Still, he said, he believes the troopers seemed to have pat answers to questions and did not listen well. He said the troopers should try to understand what it’s like to be on the receiving end of their use of force. “I can tell you I wasn’t happy when I walked out of that place after the conversation we had.”

The husband said he had witnessed “numerous, numerous arrests,” and what happened to his wife was not something he had seen before. He said the trooper could have made the situation much more acceptable if he had spoken briefly with the complainant before leaving the scene:

If they would have taken maybe two more minutes and apologized to her, that may have gone a heck of a lot farther than what happened. You know, just an apology and give her a chance to catch her breath. It would have been a lot better situation than it escalated to. I still think the way it was handled wasn’t the most professional way.

The husband said he was surprised the troopers were not better at public relations. “I’m in the business of customer service. Police men need to have a little bit of customer service even though they deal with not the best folks in the world,” he said. “I think a little customer service there probably would have gone a long way.” The husband added, “We were the wrong people. And that probably doesn’t happen that often. I’m sure most of their stops are the right ones, but it was a very bad experience for my wife.”

He said the experience was even worse for the complainant because he didn’t know for quite some time that she had been handcuffed. She assumed he knew and dropped him off, and only later did he learn that she had been handcuffed. He said that’s when he suggested she call the number on the trooper’s business card and talk to someone about it. “Somebody needs to step up about it and take some kind of responsibility for it.” The husband said. “Just because I wear a badge, that doesn’t mean I can do anything I want.” He added, “If somebody had said something right away, it probably wouldn’t have gotten to this. Maybe my wife wouldn’t have gone through that strain that she had to go through because of it.” He added, “It was a very intense five minutes, not just five minutes of twiddling your thumbs.”

The husband said he thought the troopers should assess how they handle a high-risk stop where the people turn out not to be suspects. “They could probably take a lesson on maybe, if it’s the wrong people, that’s understandable, but a little apology or something would have gone a lot farther than just cutting us loose.” He said he did not understand was why he “was never taken out of the car,” why the trooper “never looked at my wallet, never looked at anything, no ID.” “I didn’t have to produce a thing,” he said, “and they’ve got her back there on gunpoint, cuffed, and I’m thinking, what about the guy in the car? It just didn’t seem quite right.”

When the ombudsman investigator told the husband that the dispatch log shows that his driver’s license was run, he asked, “How did he get mine?”

He never had it out of my wallet. Zeisel came up and knocked on my window and says, you can get out of the vehicle now. I was sitting in there the whole time. Did he run it from the plate of the car? I don’t know. I never had to produce my ID or anything. They never asked me.

The husband said he lost sight of his wife when she was ordered to back up.

And I'm just sitting there the whole time, just doing what, you know, keep your hands up. Next thing, a guy's knocking on the window, and that was Zeisel. Don't get me wrong, Zeisel seemed like a pretty good guy. But he's saying, "Get out," and you know, "Here's my card." I turned around, and I could see [my wife] sitting on the bumper of that car. The other officer was getting her up and bringing her back. But it was, "Here's my card, do you have any questions?" or whatever he said, you know, "You can call."

The husband said he remembered when he got out of the car, he swore at the officer:

I think I swore at him. I asked him, "What the F are you doing?" I was so pissed that I was never asked for my ID. I just stepped out and said, "What the F are you doing?" And I don't say that very often. But he never asked for my ID. Never once. So that's why I was a little hot. But he never asked for it. I'll swear on a Bible. I would have pulled my ID out. Did they get it from the plate of the car? I don't know.

The husband said his wife was driving him to work and was planning on driving back home to sleep a little longer.

She was in her pajama pants and a coat. We don't live that far from where she was taking me. I remember that morning, I says, "I'll drive to work." And she says, "No, I'll take you, I'm up." So she took me. Bad day to take me, right? It was unfortunate.

The husband said they did not return Captain Barrick's call because the complainant had already decided to complain to the ombudsman. "She figured she would get through the ombudsman's office first before getting back to Barrick."

Ombudsman Interview with Trooper Brian Zeisel

The ombudsman investigator interviewed Trooper Brian Zeisel on April 9, 2010. Trooper Zeisel said he had been with AST seven-and-a-half years. For the previous two-and-a-half years he worked with his dog as a K-9 unit. Trooper Zeisel said he had performed high-risk traffic stops "probably 30 times" before he conducted a high-risk stop on the complainants' vehicle. He said most such stops result in arrests; only "a small percentage are not the right people." Trooper Zeisel said he assisted with another felony stop later the same day. He said there was "not a lot of traffic" at the time he stopped the complainants' car, and the complainant drove by the crime scene just seconds after dispatch described the getaway vehicle as a white or silver four-door sedan with a man and a woman inside.

Trooper Zeisel said the complainants' car was slow to pull over into a parking area after he activated his emergency lights behind the vehicle. "The vehicle was kind of slow to stop, so that concerned me a little bit," he said. He said the driver pulled slowly off the road into a parking lot, causing him to wonder if the driver was trying to find a location favorable to attacking him or fleeing the scene. "Usually when someone pulls over, they usually pull over fairly quickly," he said, "and they pull to the side of the road, they don't necessarily pull into a parking lot, so that was a concern of mine." Once the car had stopped, he said, he exited his vehicle, stood behind the open door with his hand gun drawn at "low guard" position, and shouted commands to the car's driver. "That's standard, how we usually do it," he said. "We're trained to be ready in case something happens."¹

¹ <http://www.lawofficer.com/article/training/ready-or-not>

At this moment a Fairbanks Police car pulled up behind the suspect car to the left of Trooper Zeisel's car with its emergency lights activated.

Trooper Zeisel ordered the driver of the white car to get out of the car with hands raised. He said the complainant was crying when she got out of her car. "I could immediately tell she was sobbing." He said when she faced away from him as instructed, her shoulders were heaving in a way that showed she was sobbing. That was unusual in his experience, he said. Trooper Zeisel said he ordered her to back toward the Fairbanks police officer to his left. When she reached that officer, the FPD officer handcuffed her while Trooper Zeisel watched the passenger side of the vehicle. He said he did not tell the driver at that point why he stopped them. "At this point we're not concerned with explaining our situation," he said, "we're just concerned at that point to make sure that everything's safe." He said this is because on a high risk traffic stop officers don't know who the people in the vehicle are or anything about their circumstances or history. He said he did not recall seeing the complainant holding anything in her hands, but he did recall that she followed his instructions.

Trooper Zeisel said as he approached the passenger side of the vehicle he could see easily that no one else was inside the vehicle except the passenger in the front seat, and there were no weapons visible. The passenger had his hands up as instructed. Trooper Zeisel said he contacted the man in the front passenger seat, who was wearing a shirt with a [store name] logo. Trooper Zeisel said he could see this when the passenger opened the door and exited the vehicle to talk. Trooper Zeisel said he did not cuff the passenger because the driver was restrained, the passenger was calm, and there were now two other police vehicles at the scene as backup. At that point, he said, "I started thinking that this probably was not the people that we were looking for." He said the complainant's husband's reaction and what the husband said about where they were going both suggested this was not the suspect car. The whole stop lasted "two, three minutes," he said, "so this all happened fairly quickly."

Trooper Zeisel said he let the FPD officer know that this was not the right car, and "he immediately started uncuffing her." He said the complainant "was obviously upset" by what had happened. He said he apologized to the husband and explained about receiving a dispatch call that some shots had been fired nearby, that the description of the vehicle in which the shooter fled matched [the complainants'] vehicle, and that the car's occupants were reported to be a man

Dave Spaulding, the 2010 Law Officer Trainer of the Year and Law Officer's Firearms columnist for the Web site LawOfficer.com, is a 28-year law enforcement veteran. He wrote that the two primary police confrontation positions are the *guard* position, also known as *low ready*, and the *chest ready* position for the Web site on February 20, 2012. The ombudsman believes Trooper Zeisel is referring to the guard or low ready position when he speaks of the "low guard." Mr. Spaulding described these positions:

In the guard position, you hold the gun away from your body in a firing grip with the muzzle low enough to see the suspect's hands, usually at ground level off their feet. To fire an accurate shot at 15–20 feet, the gun is raised a mere 12 inches or so, and the muzzle movement is minimal with a wide field of view. The guard position is the best threat management position because it offers the greatest level of intimidation and requires very little movement for a fatal shot.

...

The goal of the ready position is preparedness. At the same time, the muzzle needs to be in a position in which non-hostiles can't be shot inadvertently. Movement to a confrontation or shooting position should be minimal because little time to react will be available. To maximize this minimal motion, both hands should be on the gun in a shooting position. If a threat is seen, the gun is directed to the target and the trigger depressed. There are two ready positions: *compressed low ready* and *high ready*.

and a woman. Trooper Zeisel said the husband replied, "I understand. I'm just frustrated about the situation." Trooper Zeisel said, "He was frustrated that we had scared his wife, is what he was upset about." Trooper Zeisel said he told the husband he didn't have time to explain in detail what was going on, but gave him his business card and invited him to call the number to find out more. "At that point she had been uncuffed," he said, "and we left that area to go to the scene where the initial call originated from."

Trooper Zeisel said he did not recall what order [the complainants'] drivers licenses were run, but he knew they had been run because they were in the dispatch logs. "I called in the license plate when I did the traffic stop," he said. "Because we had contacted them, we have to identify them. We do that just as standard on traffic stops, try and identify everybody in the vehicle and run the vehicle. That's what we're trained to do." Trooper Zeisel said, however, that checking for identification has to wait until everyone in the vehicle has been contacted. "We're not going to run people when we're pulling them out of the car."

Trooper Zeisel said he told Sergeant Goeden that [the complainants] might be calling for an explanation, "because it's not like every shift we do a felony traffic stop. So absolutely, I think it would be irresponsible not to have said something like that."

Trooper Zeisel said, "I understand why she was upset. Not everybody gets pulled out of their vehicle at gunpoint and handcuffed, especially when they're just driving home from work." Still, he said he would not have done the stop any differently. "That's just what we're trained to do," he said. The point is to make sure that everyone is safe under the circumstances. "[The complainant] wasn't held any longer than was absolutely necessary once we determined that these folks were not involved." He continued, "This is a situation that's kind of unfolding as we realized that they weren't the people. We still had some suspects out there who potentially were dangerous, and so we needed to move on and hopefully find those people."

In hindsight, Trooper Zeisel said, "She was obviously upset, and I understand that. But under the circumstances and the description of the vehicle and everything that we were given, I just don't know how else I could have done it any differently. It was just really an unfortunate coincidence."

Trooper Zeisel said he had received training at the Sitka Public Safety Academy several times and was scheduled to go there again for more training the week following this interview. The ombudsman investigator asked if the training he had received included discussion of the potentially traumatic impact on persons who out of the blue are pulled over and subjected to the felony traffic stop without having any idea why. Trooper Zeisel said he had never received such training. He said the emphasis at the academy is on performing the procedure correctly with intense focus on disarming any kind of violent response by the vehicle's occupants and minimizing opportunities for them to flee the scene. He said the training is intended to enable officers to control the situation and prevent anyone from being harmed. "We're actually keeping everybody safe, because if you have this procedure on how to do a high-risk felony traffic stop, it's a specific way to do it, so that everybody does it the same way. So there's no deviation from it, and I think in that respect it's done as safely as possible, as carefully as possible, so that no one does in fact get hurt."

Trooper Zeisel said he could see that this reasoning might not be obvious to an innocent person who is stopped due to circumstances beyond their control. "When we realized that these people were not involved, I tried to explain it. I couldn't spend a great deal of time explaining, but that's

why I provided them with my business card.” He continued, “I was glad that they did call, so that the sergeant could talk to them a little further.” “Under the circumstances,” he added, “I really feel like we did the best we could do.”

Trooper Zeisel said his K-9 dog was in his kennel in the back seat of the trooper vehicle “the whole time” during the traffic stop. He said the dog barks when the unit is involved in some activity. “He barks, that’s what he does. The lights go on and the radio, that kind of cues it in, so he starts barking, too. He’s a good dog.”

Ombudsman Interview with Fairbanks Police Officer John Merrion

The ombudsman has authority to investigate administrative acts of Alaska state government agencies. The office does not have jurisdiction to investigate complaints against elected officials, judges, municipal government employees, or the private sector. The Fairbanks Police Department is not within the ombudsman’s jurisdiction. However, the ombudsman investigator contacted FPD Officer Merrion because he assisted at the scene of the high risk traffic stop and later submitted a supplementary narrative of his recollection of the incident. The narrative is dated March 13, 2010, nearly five months after it occurred.

The ombudsman investigator interviewed Officer Merrion on April 14, 2010. Officer Merrion said he wrote the supplementary narrative at the request of AST Captain Barrick, who asked him to write what he recalled about the traffic stop. Officer Merrion said he drafted the narrative based on FPD records and his recollection of the event. He said he did not write a contemporaneous report of the incident because it was not an FPD case and he was not asked to gather evidence. He said he had conducted and participated in high-risk traffic stops on many occasions and recalled that this one was conducted in standard fashion.

Officer Merrion said the case was an AST case and there is no Fairbanks Police Department record of this investigation. He said it was obvious that the driver was very upset when she got out of her vehicle. He described her response as “way more emotional than you might expect from a traffic stop.” He said he wondered at first if there was someone unseen in the car who had made her so upset. When she appeared to be having a physical reaction to being detained and cuffed, Officer Merrion said, he suggested she sit on his front bumper. He said he was recording the incident with his dash video camera but did not save the recording beyond the week or so that non-case records are normally kept.

Fairbanks Police Lieutenant Tara Tippet

The ombudsman investigator interviewed FPD Lieutenant Tara Tippet on April 14, 2010. He asked her about this type of incident to find out more about standard police procedure. Lieutenant Tippet said it is “quite common” to conduct a felony traffic stop for anyone the officer thinks may have been involved in a shooting. When the wrong people are stopped, she said, it’s a case of someone being “as the saying goes, ‘in the wrong place at the wrong time,’ but in the right-looking vehicle.” Police officers have to operate on the information that is available at the time, she said, such as proximity to the crime scene and vehicle description. She said people stopped in those circumstances understandably have no idea why they are being stopped, “and we wouldn’t tell them that before we were done.” “Even then,” she said, “the explanation would be perfunctory. Someone is fleeing the crime scene, and we can only say, ‘we’re sorry and we gotta go.’”

Lieutenant Tippett said she understood it could be frightening to be the subject of a felony stop, but officers are trained to conduct such stops in a way that minimizes the chance of being shot at. She reminded the investigator that a Fairbanks police officer had recently been shot at when she attempted to stop a criminal suspect. Because the officer had drawn her gun, she was able to defend herself and stop the shooter. She added that the perpetrators of crimes are not surprised to be pulled over because “they know what they did.”

Lieutenant Tippett said it is standard procedure for one officer to take charge of the stop, to shout commands to the driver and any passengers in the stopped vehicle, to control the situation and make the suspects incapable of fleeing or hurting the officers. Other officers if available will assist by parking behind the stopped car and helping the first officer control the suspect vehicle’s occupants, shining lights on the suspects and maintaining radio contact with dispatch.

Lieutenant Tippett said standard FPD procedure is not to keep recordings unless they are evidence of a crime. She said FPD lacks storage capacity to keep every recording its officers make day in and day out, so officers are instructed to download recordings needed as evidence in cases within seven days of the recording. They can store other recordings if there seems to be some reason to do so. Lieutenant Tippett said she personally often keeps recordings of contacts in case a question or complaint comes up later. She said people often remember things differently than they happened, and a recording is helpful in setting the record straight.

Trooper Captain Burke Barrick

AST Captain Burke Barrick spoke to the ombudsman investigator on several occasions and provided documentation of the traffic stop and subsequent interactions between the complainants and the AST, including a map the crime scene and the location of the high-risk stop, suspect car photos illustrating that similar looking vehicles can match a generalized description, dispatch recordings and logs, recorded conversations between the complainants and AST personnel, Trooper Zeisel’s report, FPD Officer Merrion’s supplemental narrative, and other records related to the incident. Captain Barrick had no first-hand knowledge of the traffic stop or the complainants’ contacts with AST personnel. He directed the ombudsman investigator to the Alaska Public Safety Training Academy training unit on high-risk vehicle stops, as well as other law enforcement training and standards resources. Captain Barrick also provided a detailed chronology of his agency’s interactions with the complainants and made his staff available for interviews.

After reviewing the October 24, 2009 recording of the complainant’s call to Sergeant Goeden and the complainants’ November 2, 2009 meeting with Sergeant Roberts, as well as the correspondence between the complainants and AST, Captain Barrick wrote to the ombudsman investigator on March 4, 2010:

Please note that the entire length of the traffic is 3:38 from the time to [sic] the trooper received the call from dispatch and went 10-19 (en route) to the scene until he stopped the suspect car, checked the driver and then left the location of the stop to get to [name] Apartments (the actual location of the shooting). I am confused as to the exact nature of the [the complainant’s] complaint though as she seems to be arguing that the proper High Risk Traffic Stop procedure was not followed -- which would have necessitated the following:

1. removing her from the car

2. handcuff her
3. removing her husband from the car
4. handcuff him
5. searching them both and then securing them separately in different patrol vehicles
6. securing their vehicle by searching for additional suspects and weapons
7. establishing their identities by running their driver's licenses for criminal history
8. interviewing them both separately

All of which would have taken substantially longer than 3:38. On the other hand, [the complainant] also seems to be complaining that the trooper took too long, or should not have stopped her in the first place, or that had he simply run her license before contacting her he would have known she was a good person and (presumably) simply let her drive off. Sgt. Goeden does a pretty good job of explaining why we did what we [did] and [the complainant] seemed to understand that when they spoke that same morning shortly after the stop.

On March 10, 2010, in response to a question from the ombudsman investigator, Captain Barrick provided more information bearing on investigation of this complaint:

We do require our people to routinely record all traffic contacts, and in fact, we routinely record many of our telephone contacts with the public. Our department had purchased in-car digital recording equipment for every marked patrol car in our inventory about two years ago. Unfortunately, we did not get the funding to purchase the data storage equipment and servers that would be necessary to retain every traffic stop by every trooper for any period of time. So, at the time of this traffic contact, the in-car video system was installed but we were not recording our stops. Since then (early February) we have received the needed equipment and now any time we turn on our traffic lights we automatically start recording. However, it is our policy to record all traffic contacts with the public with our portable pocket recorders and this was the policy at the time of our contact with [the complainants]. Unfortunately, these recorders are small, the buttons are sensitive, they are battery operated, and in real-world police work sometimes we forget or they fail. When you get in and out of your car repeatedly at minus 20-40 degrees there are often times when the recorder doesn't work or the trooper hits the wrong button with a gloved hand or the recorder doesn't pick up a conversation as the recorder is in a uniform pocket and the pocket is covered with a ballistic vest or a winter coat, etc.

In this case, back in November, when [the complainants] actually made their complaint, I asked Trp. Zeisel if he had a recording and he said he believed he did not make one for that stop for whatever reason. Trp. Zeisel is on vacation now but I saw him in the building a few days ago and asked him to go back and review his dozens or hundreds of recorded contacts to make sure that he did not have a recording of the traffic stop. He said he would do that and as soon as he returns from vacation and has completed the search I will let you know what he found. Believe me; I hope there is a recording because I am confident it will further support Trp. Zeisel's actions that night and would probably have eliminated this complaint entirely had the recording been available from the start. . . .

I am mailing the copy of our academy training materials to you now and have included the following web links and encourage you to contact the following training organizations for questions about unknown risk traffic stops. They are in order of top to bottom: the *International Association of Chiefs of Police*; the *International Law Enforcement Educators and Trainers Association*; and the *Federal Law Enforcement Training Center*.

On April 5, 2010, Captain Barrick provided further information to the ombudsman investigator:

1. Yes, you may speak with Trp. Zeisel. He works the grave shift from 2200-0800 hours from Thursday through Sunday with Monday, Tuesday and Wednesdays off. Please call him at 451-5100 to set up an appointment and feel free to have him stop by and meet with you at your office or, likewise, feel free to come over to our building and interview him here. I think it is very important that you speak to him face to face.
2. I have attached the recording of my attempted contact with [the couple] on 11-16-10. I believe I tried to call them one other time sometime between 11-14-09 and 11-18-09 but I cannot find a notebook note or a recording of the "second" attempted contact. I do recall thinking I had tried to speak with [the couple] twice and that they could call me back if they still needed to speak with me. Unfortunately, I cannot prove that I made a second attempt.
3. I was able to confirm with Trp. Zeisel that he has reviewed his recordings and does NOT have a recording of the incident.
4. When we first spoke I mentioned that we arrest most of the people we point guns at. I believe that to be true but I have no way to quantify this statement. I am not aware of any database that would track this information. I will say though that in the five years I have been here this is the only complaint I can think of where we pointed a firearm at someone under circumstances similar to those in the [the couple's]'s situation and it resulted in a complaint. Frankly, it is the only complaint of this kind that I can think of. Ultimately, most members of the public understand that we have a difficult job, that we are acting on the information as we receive it, and that we make a good-faith effort to resolve these situations with the safety of the public, the suspect(s) and the trooper(s) in mind. I believe we did that here.
5. While I am certainly eager to talk to you about a policy to contact people after this type of incident, I would point out that this is probably a solution in search of a problem. [The complainants] are the only reported complaint of this type in the last five years in this detachment. The trooper explained the situation to [the complainant's husband] at the scene and gave him a business card to call his supervisor if he had any questions. The sergeant, Sgt. Goeden, ended up speaking with [the complainant] just three hours after the incident and believed he had explained the situation to her satisfaction. I find it hard to see how a policy could have had anyone from command, like me, contact [the complainant] any earlier in the morning than when she ended up speaking with Sgt. Goeden to begin with. We could write a policy but the fact remains most troopers handle strange situations like this every day without a specific policy and no policy can cover every conceivable permutation of possible human behavior. If this was something that happened weekly, monthly, yearly or even every couple of years then I would agree; but

this is the first time I have heard of this exact complaint in the 20 years I have been a trooper and for the five years I have been the commander in Fairbanks.

6. I think I understand what you mean by the term "Spectrum of Public Response to the Exercise of Law Enforcement Authority," but I suspect this topic is not covered in our training, at least as you may understand the term. Where did you see this term in print? What do you understand the term to mean? Who teaches this?

On April 26, 2010, Captain Barrick sent the ombudsman investigator the chronology quoted above in the "Documents" section of this report.

STANDARDS

Excerpt from Wikipedia.com article on "Traffic Stop":

A "felony" or "high-risk" traffic stop occurs when police stop a vehicle which they have strong reason to believe contains a driver or passenger suspected of having committed a serious crime, especially of a nature that would lead the police to believe the suspect(s) may be armed (such as an armed robbery, assault with a weapon, or an outstanding felony warrant for the registered owner). In a high risk stop, officers attempt to provide for everyone's safety by issuing instructions to maintain absolute control over every step of the proceedings. They will have additional officers on scene for back-up, often waiting for additional officers to join up before initiating the stop. They will typically have their weapons drawn, and stay back from the suspect vehicle, using their patrol cars for cover. If there is no choice but to make the stop on a busy street they will often stop traffic. They will address the driver and any passengers over the PA speaker of the patrol car, typically instructing the driver to turn the engine off, remove the keys from the ignition, and sometimes toss them out the window. They will instruct the occupants, one at a time, to exit the vehicle with empty hands showing, place their hands on top of or behind their heads, walk backwards some distance, and then lay flat on the ground, where they will remain until all occupants have done likewise, at which point officers will move up, apply handcuffs, do a body search and then secure the suspects in the patrol cars. The vehicle is then typically searched for weapons and other evidence.

http://en.wikipedia.org/wiki/Traffic_stop

Alaska Public Safety Training Academy.

Alaska Law Enforcement Training Unit: "High-Risk Vehicle Stops." Microsoft PowerPoint Presentation.

The following bullet-points applicable to the procedure that resulted in this complaint are excerpted from the PowerPoint presentation, which covers a variety of other possibilities.

- Some departments call them "felony stops."
- Which cases might require a high risk stop?
- Robbery / Domestic [Violence] Suspects.
- Murder or Felony Assault Suspects.
- Suspect believed to be armed (deadly weapon) and may be a threat to you or another person.

- All high risk stops are different and officers must be able to analyze the situation and use safe, appropriate, and effective tactics.
- High risk traffic stops require an aggressive tactical mindset.
- You must be ready and willing to use deadly force.
- Always assume the suspects will have weapons and be inclined to harm you.
- Any unknown risk stop can become a high risk stop.
- Be prepared to escalate up the use of force continuum.
- High risk stops should “NOT” be handled by one officer.
- Wait for back-up!!!
- This is dangerous.
- There may be hidden threats.
- You may have to use deadly force.
- It is not something you want to do alone.
- Request backup, either through dispatch or directly to other units.
- [Radio] Your location and direction of travel.
- [Radio] License plate and vehicle description.
- [Radio] Number and description of occupants.
- Call for 10-33 [emergency radio traffic only].
- Suspect may ignore your lights and keep driving.
- Suspect may suddenly come to a stop.
- Suspect may try to flee.
- Suspect may bail and run on foot.
- Drop back and create space.
- Turn on all white lights.
- Check for traffic.
- Give accurate 10-20 [what is your location?].
- Patrol cars are 2-3 car lengths, about 50 feet, behind suspect vehicle.
- Use ALL your lights, even in daytime.
- The use of blinding light gives you concealment, both day and night.
- [Contact officer] Makes the initial stop.
- Immediately exit and go to guard.
- [Contact officer] Illuminates the suspect vehicle.
- [Contact officer] “Is in-command of the stop.”
- [Contact officer] Uses voice commands to control suspects.
- [Contact officer] Handcuffs and searches suspects.
- Contact officer uses clear and simple voice commands.

- Identify yourself, state reason for the stop, and give a warning: *"This is the Alaska State Troopers. You are suspects in an armed robbery. Do exactly as I say and you will not be hurt."*
- Each occupant has a title: "Driver," "Passenger," etc.
- [Contact officer] Must be clear, loud, authoritative and commanding.
- Use the PA if possible, be able to communicate without if necessary.
- Order all hands visible.
- Have driver shut off engine.
- At night, have driver turn on interior lights.
- Roll down windows.
- Have driver put keys on roof. Do not have them throw or drop the keys on the ground.
- Unfasten seatbelts.
- [Have driver] Slowly exit the car with hands up.
- Having driver make a slow 360 degree turn is optional.
- Make sure driver remains facing away from you.
- Cuff and quickly search for possible weapons.
- Place cuffed and searched suspect in a secure location, or in the custody of another officer.
- Handle each suspect the same way.

Washington State Criminal Justice Training Commission.

Training presentation: "High-Risk Vehicle Stops." Microsoft PowerPoint Presentation.

This presentation lists many of the same instructions listed above from the Alaska Public Safety Training Academy presentation. On a few points this training presentation is more detailed than the Sitka presentation. For example, it includes this slide on what to say to the suspect(s) in the vehicle:

Announce

Immediately challenge the occupants and announce:

Authority

"This is the Police!"

Intent.

"You are suspects of an armed robbery".

"You are occupants of a stolen vehicle".

"You are suspects of a drive-by shooting".

Directive.

"Put your hands on the roof of the vehicle".

"Put your hands out of the windows".

"Put your hands where I can see them".

Near the end of the Washington State procedure, after all suspects have been restrained, under the heading “Conclusion” are the following directives:

- **Notify radio / other officers the vehicle is clear.**
- Resume normal radio traffic.
- Perform a frisk of the vehicle, or a search incident to arrest, where appropriate.
- Secure any weapons or evidence in your trunk.
- Interview suspects separately.
- Perform a records check of all occupants; verify identity.
- Move or impound the vehicle, where appropriate.
- Document your actions in a police report.
- High-Risk Vehicle Stops are considered a **Use Of Force** and require documentation; **pull an incident number.** [emphasis in original]

Legal Standards – Alaska Public Records Act

2 AAC 96.320. Initial action upon receipt of a request

(a) Except for requests governed by 2 AAC 96.300, a public agency shall maintain a log of each written request for public records that it receives. The log must include the date the request was received by the public agency, the name of the requestor, a notation on whether notice of receipt was sent to the requestor under 2 AAC 96.310, and the date that additional information, if required, was requested under 2 AAC 96.315. If the request is received by the office of the public agency that does not maintain the requested records, the receiving office shall promptly forward the request to the office responsible for maintaining those records.

(b) The log of requests for public records is a public record. It must be preserved, included as a separate item on the public agency's record retention schedules, and provided upon request in accordance with this chapter.

2 AAC 96.325. Response to request; time limits

(a) Except as otherwise provided in this section, as soon as practicable, but not later than the 10th working day after the date the agency receives a request for public records that complies with this chapter, the public agency shall

- (1) furnish all requested records that are disclosable; and
- (2) advise the requestor which of the requested records are nondisclosable, if any, and the specific legal authority and specific facts supporting nondisclosure.

(b) If the public agency decides that a public record is, in fact, a request for electronic services and products, the public agency shall advise the requestor of its decision within 10 working days after receipt of a request and the reasons for this decision.

(c) Any time that elapses between the time a requestor is sent notice that processing the request will generate chargeable fees and the time the requestor makes suitable arrangement for payment of those fees under 2 AAC 96.355 and 2 AAC 96.360 is excluded from the 10-working-day period of (a) of this section, or any extension of that period.

(d) A public agency may extend the basic 10-working-day period established under (a) of this section for a period not to exceed 10 additional working days by providing notice to the requestor within the basic 10-working-day period. The notice must state the reasons for the extension and the date by which the office expects to be able to furnish the requested records or to issue a determination that the records are not disclosable. The notice must include a statement that the extension is not invoked for purposes of delay. The basic 10-day period may be extended only when one or more of the following circumstances exist, and then only as to those specific documents within the request as to which the circumstances apply:

- (1) there is a need to search for and collect the requested records from field or other offices that are separate from the office responsible for maintaining the records;
- (2) there is a need to search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request;
- (3) there is a need for consultation with an officer or employee who is absent on approved leave or official business;
- (4) the basic response period comes during a peak workload period; or
- (5) there is a need to consult with legal counsel to ensure that protected interests of private or government persons or entities are not infringed.

(e) If a search or copying task will, within the 10-day period and any authorized extension under (d) of this section, substantially impair the other functions of the public agency or an office responsible for maintaining the requested records, the agency head may request an additional extension from the attorney general. Upon receipt of a request for an additional extension, the attorney general shall promptly give the requestor and the agency an opportunity to be heard. The attorney general shall tender a speedy decision. The attorney general may grant an extension only to the public agency in extraordinary circumstances and only for the minimum period determined by the attorney general to be required to complete the search or copying of the public records without substantial impairment of the other public agency functions.

(f) A public agency shall give a written response granting or denying a written request for public records within the prescribed time limit. If a response is not received by a requestor by the expiration of the time limit, the requestor may consider the request denied.

(g) The time limits set out in this section do not apply if the requestor agrees in writing that the requested records need not be supplied until a specified date. If the requestor does not agree in writing to an extension of time beyond that date, an extension beyond the specified date is governed by (d) and (e) of this section.

2 AAC 96.330. Deletion of nondisclosable information

(a) If a record contains both disclosable and nondisclosable information, the nondisclosable information must be segregated and withheld and the disclosable information must be disclosed. If the disclosable portions of a record cannot reasonably be segregated from the nondisclosable portions in a manner that allows information meaningful to the requestor to be disclosed, the public agency may not disclose the record.

(b) If an electronic file or database contains both nondisclosable and disclosable records, a public agency must

- (1) delete or mask the nondisclosable information before releasing the requested record; or
- (2) write a program to extract the requested disclosable public records from the electronic file or data base.

(c) Masking or deleting nondisclosable information does not constitute providing an electronic service or product. Except as provided by 2 AAC 96.355 or other law, a fee charged shall be consistent with 2 AAC 96.360.

ANALYSIS AND FINDINGS

AS 24.55.150 authorizes the ombudsman to investigate administrative acts that the ombudsman has reason to believe might be contrary to law; unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unsupported by an adequate statement of reasons; performed in an inefficient or discourteous manner; or otherwise erroneous. “The ombudsman may investigate to find an appropriate remedy.”

Under 21 AAC 20.210 the ombudsman evaluates evidence relating to a complaint against a state agency to determine whether criticism of the agency’s actions is valid, and then makes a finding that the complaint is *justified*, *partially justified*, *not supported*, or *indeterminate*. A complaint is *justified* “if, on the basis of the evidence obtained during investigation, the ombudsman determines that the complainant’s criticism of the administrative act is valid.” Conversely, a complaint is *not supported* if the evidence shows that the administrative act was appropriate. If the ombudsman finds both that a complaint is *justified* and that the complainant’s action or inaction materially affected the agency’s action, the complaint may be found *partially justified*. A complaint is *indeterminate* if the evidence is insufficient “to determine conclusively” whether criticism of the administrative act is valid.

The standard used to evaluate all Ombudsman complaints is **the preponderance of the evidence**. If the preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation should be found justified.

*

Allegation 1 Analysis

Allegation 1: Oppressive: an Alaska State Trooper failed to follow correct procedure in performing a “high-risk” stop on the complainant’s vehicle.

Under ombudsman policy and procedure at 4040, an administrative act is “oppressive” if:

- (A) unreasonable or unjust preconditions were imposed on the complainant;
- (B) the complainant was treated with flagrant inequality comparing the burden imposed and the benefit received; or
- (C) the agency placed the complainant at a disadvantage relative to all others, and the disadvantage was unreasonable.

High-risk vehicle stops, also called “felony stops,” are standard procedure for police agencies throughout the United States. The point of the procedure is to safely contact unknown persons who may be connected with criminal activity and who may be armed and dangerous. This is not

an inherently unreasonable approach, and there have been many instances of law enforcement personnel being shot at during traffic stops. On June 9, 2010, “an Anchorage police officer was shot multiple times and gravely wounded during a traffic stop” (*Anchorage Daily News*).

In this case, the trooper who stopped the complainants’ vehicle was responding to a report of a shooting near the place where he activated his emergency roof-lights and pulled over a white, four-door sedan with what appeared to be a male and a female inside. The trooper had not gotten to the crime scene yet and did not know if someone there had been shot. A person who has already shot someone might not hesitate to shoot a police officer while trying to get away. As Sergeant Goeden explained to the complainant the same day she was stopped,

We have to assume that the person we’re dealing with a) is armed, b) has just shot somebody, and c) he doesn’t want to spend a lot of time with the police. Well, as soon as we establish that’s not the case, we obviously let the person go. And it sounds like that’s what happened in your case.

It was not unreasonable for AST to explain that this procedure is used to ensure the safety of law enforcement officers stopping a possible suspect in a violent crime. The complainant insisted that “This is not about them, it’s about me.” She asked why they proceeded as they did, and they explained why. From the information available, what happened that morning was legitimately as much “about” the law enforcement officers’ safety as it was about hers. The trooper was stopping a vehicle that might have been occupied by people who reportedly had fired shots and fled the scene in a white or silver four-door sedan just moments before.

Trooper Zeisel said the car was slow to pull over into a parking area after he activated his emergency lights behind the vehicle. “The vehicle was kind of slow to stop, so that concerned me a little bit,” he said. He said the driver pulled slowly off the road into a parking lot, causing him to wonder if the driver was trying to find a location favorable to attacking him or fleeing the scene. “Usually when someone pulls over, they usually pull over fairly quickly,” he said, “and they pull to the side of the road, they don’t necessarily pull into a parking lot, so that was a concern of mine.”

This agrees with what the complainant told Sergeant Goeden later that morning: “I was through the intersection—going through the intersection, so I waited to pull over. I should have pulled over at [location redacted] but I ended up at that [redacted] parking lot.”

Once the car had stopped, Trooper Zeisel said, he exited his vehicle, stood behind the open door with his hand gun drawn at “low guard” position, and shouted commands to the car’s driver. “That’s standard, how we usually do it,” he said. “We’re trained to be ready in case something happens.” At this moment a Fairbanks Police car pulled up behind the suspect car to the left of Trooper Zeisel’s car with its emergency lights activated.

When the complainant described the incident to Sergeant Goeden, she said she became upset as soon as the police vehicle turned on its flashing lights behind her, asking her husband, “What did I do? What did I do?” FPD Officer Merrion said the complainant was sobbing as she exited the vehicle before she could have seen the guns. He said it made him think something very unusual was going on, perhaps even that someone inside her car had been threatening her. Trooper Zeisel also said that the complainant was sobbing when she got out of the car and that her shoulders were heaving. He said he ordered the complainant to back toward Officer Merrion, whose was to the left of Officer Zeisel.

Officer Merrion said that following the procedure for high-risk stops he had his gun out and “at the ready,” but definitely not aimed at her. He said Trooper Zeisel was conducting the stop and in accordance with standard procedure directed the driver to exit the vehicle with hands held high, walk backwards toward Officer Merrion, and extend both arms behind her. She apparently had some difficulty following these instructions, probably due to her distress at being stopped, but when she neared Officer Merrion with her hands behind her, he applied handcuffs. Officer Merrion said the complainant seemed to be extremely upset and somewhat unsteady on her feet, so he suggested that she sit on his front bumper for support.

While Officer Merrion stayed with the complainant, Trooper Zeisel approached the suspect vehicle from the rear on the passenger side, scanned the vehicle for persons in the back seat, and engaged the front-seat passenger in conversation. Trooper Zeisel said he could see into the vehicle and there was no one else inside besides the complainant’s husband. Based on his contact with the complainant and a brief conversation with her husband, Trooper Zeisel said, he concluded that this was not the suspect vehicle they were searching for. He communicated this to Officer Merrion, who released the complainant from the cuffs. Trooper Zeisel gave the complainant’s husband a brief explanation for the stop, gave him his business card, and invited him to call headquarters if the complainants had questions. Then he went back to his car and drove to the crime scene two blocks away.

The complainants’ contention that the trooper should have checked their drivers licenses before restraining the complainant is without merit, first, because procedure calls for verifying identification after all occupants of the vehicle are under control, and second, because it would not have proved where they were coming from or that they had not been involved in the reported shooting two blocks away. For that reason, the alleged confusion the complainant complained about over whether one of the officers had already run her driver’s license before handing back her wallet is not particularly important. The complainant’s husband said repeatedly and emphatically that no one asked to see his driver’s license, that his wallet remained in his pocket the whole time, but the contemporaneous dispatch recording has Trooper Zeisel calling in his number and getting back the information, “[husband’s name redacted] , that’s a valid license, delta expiring 2012, corrective lenses.” This is difficult to explain.

Under the circumstances, it is not surprising that the complainants would be confused about the sequence of events or the events themselves. What is somewhat surprising is the vehemence of their assertions. They did not know the procedure, yet they were sure it had been wrongly executed. This opinion was based in large part, it appears, on the reasoning that it was absurd for “law-abiding” citizens to be stopped as possible crime suspects. They dismissed logical explanations of police procedure as defensive rationalizations of poor performance based on their speculation about what was going on in the minds of the law enforcement personnel they encountered.

It appears that Trooper Zeisel did not state why he stopped the couple. Sergeant Goeden later explained that troopers do not announce that to avoid giving suspects an opportunity to fabricate misleading stories. However, the Sitka Training Academy trains officers to state the reason for the stop: “Identify yourself, state reason for the stop, and give a warning: *“This is the Alaska State Troopers. You are suspects in an armed robbery. Do exactly as I say and you will not be hurt.”* The Washington State Criminal Justice Training Commission presentation contains a similar directive: “Challenge the occupants and announce, ‘This is the Police. You are suspects

of an armed robbery. Put your hands where I can see them.” This discrepancy between theory and practice suggests that Detachment “D” officers may need refresher training on this point.

It is also unfortunate that Trooper Zeisel failed to activate his recorder before exiting his vehicle as AST procedure calls for. A recording of the stop would have answered many of the questions the complainants later had about the stop. It is also unfortunate that no one thought to ask FPD for the dash video-cam recording Officer Merrion made while it was available, as it might have answered some of the complainants’ questions. Under FPD policy, by about November 1, 2009, at the latest the recording would have been deleted to make room available for further recording.

Finding on Allegation 1

“Nearly all citizens who experience police force view the police behavior as improper.”
— *The Public Image of the Police: Final Report to The International Association of Chiefs of Police* by the Administration of Justice Program at George Mason University (October 2, 2001).

It is easy to understand why the complainant was upset about the high-risk traffic stop. She happened to be driving a white, four-door sedan near the crime scene and was stopped as a suspect, shouted at, ordered out of her car, and restrained with handcuffs. She was not dressed to appear in public but was illuminated by bright lights, as called for by standard procedure for high-risk vehicle stops, and she had to wait outside in the cold despite being inadequately dressed to do so for the three minutes or so that it took Trooper Zeisel to decide that these were not the persons who fled the crime scene. However, it is difficult to fault the trooper for stopping the couple’s car so near the scene of the reported crime, and given the report of a shooting, it is difficult to fault his decision to conduct a high-risk vehicle stop. Two 12-gauge shotgun shells, one of them spent, were later found at the scene of the shooting, and a car in the parking lot there had seventeen shotgun pellet holes.

As Captain Barrick pointed out, had Trooper Zeisel performed a full, formal high-risk vehicle stop, he would have restrained both occupants of the vehicle and interviewed them both separately, a process that would have taken much longer than the amount of time he detained the complainants. Because Trooper Zeisel decided based on the complainant’s reaction to the stop and the information she provided that these were not the persons who fled the crime scene, he discontinued the procedure, had Officer Merrion release the complainant, gave the complainant’s husband his business card, verified their identification, and departed shortly afterward to the crime scene.

Anyone who was driving that vehicle at that spot at that time would have been stopped and restrained. Had the husband been driving, he would have been the one who was ordered to get out of the car first, back up, and submit to being cuffed. In a high-risk vehicle stop, the driver is ordered to exit the vehicle first to prevent the suspect(s) from driving off while the officer is busy restraining the first person to exit the vehicle. It was chance that the complainants were stopped, and it was chance that the complainant was driving. Neither of these circumstances could have been predicted by the trooper, and the complainant was not singled out for unequal treatment. The complainants were not arrested and were released within a few minutes after being stopped.

As noted above, procedure calls for the officer in command to announce to the occupants of a car in a felony stop their identity and the reason for the stop. (“This is the Alaska State Troopers. You are suspects in a [crime]. Do exactly as I say.”) It appears that Trooper Zeisel may not have

done this at first when ordering the complainant out of the car and toward Officer Merrion, though he did explain the reason for the stop to the complainant's husband shortly afterwards. Perhaps the complainant's state of emotional upset made saying this to her at the outset impracticable. However, the fact that Sergeant Goeden explained to the complainant later that morning why a trooper would not make this announcement suggests there is a gap between theory and practice on this point. One way or the other, they should be brought into conformity.

On balance, for the reasons set out above, the ombudsman finds Allegation 1, that the trooper oppressively failed to follow correct procedure in performing a "high-risk" stop on the complainant's vehicle, not supported by the evidence.

Allegation 2 Analysis

Allegation 2: Performed discourteously: Alaska State Trooper personnel were condescending in their response to the complainant's concerns about a "high-risk" stop performed on the complainant's vehicle.

Under ombudsman policy and procedure at 4040, an agency or its employee "performed discourteously" if:

- (A) the employee engaged in unprofessional conduct (complaints alleging that a state employee's performance was negligent or failed in a duty that the employee owed to the public apart from misconduct under the state's criminal statute) or
- (B) the employee was guilty of individual rudeness or discourtesy.

The complainant experienced Trooper Zeisel's conduct as discourteous, first because he would not answer her questions while he was ordering her to get out of her car with her hands raised and walk slowly backwards to be handcuffed, and second because she believes he did not apologize to her before leaving the scene.

The complainant's husband, on the other hand, described Trooper Zeisel as courteous and professional, and said Trooper Zeisel apologized to him and gave him his business card before leaving the scene. The husband said he did not realize his wife had been handcuffed until a few hours later when she called him at work and told him she was upset about that.

Asked five months later to write a supplemental narrative describing the stop, FPD Officer Merrion recalled that the complainant's emotional state on getting out of her car was unusual in his experience and that she appeared to be very frightened just to have been stopped. He said at first he thought someone in the car might have been threatening her. When she had difficulty standing while Trooper Zeisel contacted the passenger, Officer Merrion suggested that she sit on his front bumper. It should be remembered that the complainant was taken completely off guard by the high-risk traffic stop. She might easily have thought she had a tail light out or had inadvertently violated a traffic code. She obviously did not expect to see drawn firearms or to be restrained with handcuffs. Nor was she dressed to appear in public.

The entire stop from start to finish lasted about four minutes, but it was long enough to make a very strong impression on the complainant. From this complaint and past complaints to the ombudsman it is obvious that innocent people subjected to a high-risk vehicle stop are likely to find the experience unnerving, and they also are likely to feel the effects of it long afterward. As one law enforcement officer commented to the ombudsman investigator, this is understandable for someone who has no idea why they are being stopped. No one likes being stopped, no one

likes appearing in public to have been detained for wrong-doing, and many people are justifiably annoyed to be suspected of that. On the other hand, people who know they have done something wrong are not surprised to be pulled over and often react calmly. There is a context for the occurrence and they are focused on what to say to the officer rather than wondering what led to this surprising situation.

Again, it is unfortunate that Trooper Zeisel failed to activate his recorder before exiting his vehicle as called for by AST procedure. As Captain Barrick wrote to the ombudsman investigator, a recording of the stop would have been dispositive in answering questions about the trooper's conduct during the incident. It is unfortunate, too, that no one thought to ask FPD Officer Merrion for his dash video-cam recording of the stop before it was deleted as unnecessary because it was not related to a criminal investigation.

Given the lack of recorded evidence, it is difficult for someone not present at the scene to evaluate whether someone was discourteous to someone else. In this case, the evidence is that the complainant's husband and Officer Merrion both thought Trooper Zeisel was professional and courteous, while the complainant experienced the contact differently. Some of Trooper Zeisel's conduct as described by the complainant would have been standard procedure for a high-risk vehicle stop—not answering her questions, for example, shining bright lights on her and restraining her with handcuffs, and checking her driver's license at the end of the stop. She does not recall him apologizing to her directly at the time, and five months later he did not recall exactly what he said either.

Neither of the complainants accused Trooper Zeisel of misconduct, despite generalized allegations that whoever handcuffed the complainant was “overzealous” and had not followed “correct procedure,” and there is no evidence that he behaved improperly during the stop.

Later on the morning of the stop the complainant called the number on the business card Trooper Zeisel had given the complainant's husband and spoke to Sergeant Goeden for about 10 minutes. The ombudsman investigator listened carefully to the interview and then transcribed it word for word. Independent review of this recording does not confirm the complainant's recollection that Sergeant Goeden was “condescending.” The complainant alternated between a calm, conversational tone and distraught speech interrupted by sobbing and crying. Sergeant Goeden was calm throughout the conversation. The complainant described what happened and explained that she was extremely frightened by the incident, having guns drawn on her in the cold and dark while standing in the search lights in her pajama pants and slippers. The complainant broke down crying several times during the conversation, and Sergeant Goeden did his best to calm her and answer her questions. At the end of the conversation the complainant thanked Sergeant Goeden for talking with her.

The complainant's husband's opinion about this conversation, that it was “not very satisfactory,” reported to Sergeant Roberts several days later, can be dismissed as based on hear-say. He was not present and did not participate in the conversation. The complainant's allegation that Sergeant Goeden had been forewarned by Trooper Zeisel that they would be complaining and was “well prepared” to discuss the matter with them carries the clear implication that Sergeant Goeden necessarily had improper motives for explaining why the complainants' car was pulled over and why the complainant was ordered out of the vehicle and handcuffed. This implication seems unfair. Indeed, the complainants were not consistent on this point. On the one hand, the complainants told Sergeant Roberts that Sergeant Goeden was “condescending,” forewarned, and

“all set to go” with excuses when the complainant called, and on the other hand the complainant’s husband said to Sergeant Roberts, “We’re not trying to get the guy reprimanded.” Impugning the motives of Sergeant Goeden while denying intent to get him reprimanded is inconsistent.

The similar difficulty is illustrated by what the complainant wrote of Captain Barrick’s phone message on November 16, 2009: “Three weeks and 2 days after the fact [i.e., after the traffic stop] is too late with no written response or follow up phone call. It isn’t until he receives a letter from his boss Col. Holloway, does he step it up and respond.” This characterization of Captain Barrick’s response is inaccurate and unfair. The captain had every reason to suppose that Sergeant Goeden had answered the complainant’s questions on October 24 and that she would contact Sergeant Goeden again if further questions occurred to her after the call, as Sergeant Goeden invited her to do. Neither she nor her husband called Sergeant Goeden with follow-up questions.

When the complainants met with Sergeant Roberts on November 2, he told the complainant’s husband he would watch for their public records request and “bounce it to Captain Barrick.” The complainants submitted their request by e-mail on Tuesday, November 10, and Sergeant Roberts did what he said he would do—he forwarded their request and concerns to Captain Barrick.

The complainants’ request stated:

. . . we would like to express our concerns and disappointment in the actions that the Troopers and other law enforcement agencies that were in [sic] involved in this stop that happened to us. However, before we move forward we would like to make it very clear that we have not yet received a copy of the incident report that we requested. . . . Please forward this request on to your Captain for his review and handling.

Captain Barrick had no direct information that the complainants might want to talk to him until Sergeant Roberts forwarded this message to him. Six days later, on Monday, November 16 he phoned the complainants and left a message asking them to call him.

While Captain Barrick may, as he admitted, be mistaken that he tried calling the complainants one other time, he did call six days after the complainants sent their request to Sergeant Roberts, and they did not return his call. Rather, the complainant criticized him for not calling again and argued that he waited “three weeks and two days after the fact” to call. It had been three weeks and two days since the traffic stop, but only two weeks since Sergeant Roberts had said he would refer their complaint and request to Captain Barrick, and just six days, including a weekend, since the complainants had sent their records request.

It is difficult to ignore the complainants’ attitude toward the troopers because it surfaces frequently in the documentation of this complaint. The complainant’s husband reacted strongly to Sergeant Roberts’ accurate comment that the husband appeared unwilling to listen to any further explanations when they met on November 2, saying more than once, “Don’t tell me what I’m thinking.” Yet the complainants repeatedly claimed to know what others were thinking. The complainant referred to Trooper Zeisel and the other officers as “good old boys.” She said Sergeant Goeden was “condescending.” She said Captain Barrick had to be reminded by his superior officer to do the right thing: “It isn’t until he receives a letter from his boss Col. Holloway, does he step it up and respond.” This prejudicial attitude toward AST personnel was unfair and undermines the complainants’ credibility.

Regarding the matter of an apology, the complainant repeatedly demanded an apology for how she was treated in the early morning of October 24, 2009. Officer Merrion recalled that Trooper Zeisel made a point of explaining his actions to her and/or her husband before the officers left the scene to go to the crime site nearby. Trooper Zeisel recalled apologizing to the husband when the two of them were talking. The husband said Trooper Zeisel apologized to him. It appears that Trooper Zeisel did not apologize directly to the complainant, who was the person most directly impacted by the stop. This was an unfortunate oversight.

Sergeant Goeden empathized with the complainant's fright during his phone conversation with her later that morning and attempted to explain why she had been ordered out of the car and handcuffed, and why the trooper did not explain immediately what was happening. He listened carefully to what she said and tried to answer her questions. She was distraught and the recording shows he responded appropriately in a professional manner.

Sergeant Roberts apologized to both of the complainants when they met with him November 2. When he did so, the complainant stormed angrily out of the room. Captain Barrick apologized to the complainants in his letter. Everyone understood that the incident upset the complainant and they sought to convey their sympathy. However, none of them apologized for the traffic stop having been conducted; it was necessary under the circumstances, however unpleasant the complainant found it.

This appears to have been a sticking point for the complainant. She felt humiliated by "all these men" who subjected her to the indignity inherent in the procedures of a high-risk vehicle stop. Had the complainant been the passenger, she likely would not have been affected so strongly. The complainant told Sergeant Roberts he was not particularly bothered by the stop apart from the inconvenience, but he was concerned about how his wife was treated, which he only learned from her later that morning because he was seated in the car facing forward with his hands in the air while she was ordered to back up toward Officer Merrion and submit to cuffing.

The complainant's husband told Sergeant Roberts that AST needed to "do something" for his wife. He did not say what that something would be. When Sergeant Goeden empathized with the complainant for being scared by the incident, she appeared to take it in good grace according to the recording of their conversation, but later she accused him of being condescending. When Sergeant Goeden asked the complainant what she thought should have been done differently, she said her husband had told her the sergeant might ask that but she did not know. Later she interpreted his question as somehow illegitimate. In her letter to the ombudsman she wrote,

My conversation with Sgt. Chad Goeden - I mentioned that he was condescending with me in our conversation on the phone. He was, in his tone and the way he addressed the questions I brought up, example "What would you have us do?" was one of his answers.

What Sergeant Goeden said to the complainant about high-risk traffic stop procedures, transcribed from that conversation, is quoted below:

Complainant: I know there was a shooting [crying], he told me—

Sgt. Goeden: There was. There was a shooting on [redacted] in that area. The witness said that a male and a female left in a white car. We didn't have ages, we didn't have descriptions, and we certainly didn't have names. So running your license wouldn't have told us if you were there or not. And whether or not a person has a background doesn't mean that they were or were not just involved in a shooting.

Complainant: I understand that.

Sgt. Goeden: Okay.

Complainant: But why isn't that protocol, that you run a license just asap [as soon as possible] instead of at the end of an incident like that? I mean, I've been pulled over before and given a warning here for failing to make a complete stop out of our cul-de-sac. And, you know, he ran it asap.

Sgt. Goeden: Right. Well, at the time they're concerned about, do we have any weapons in the car, do we have everybody in the car under control in case these are the people that we're looking for? So you know, on another typical traffic stop that is certainly far less of a concern, and we do want to get people run and get them on their way as quickly as possible. In this case, where we have to assume that we're dealing with two people that may have just shot somebody, then we have to kind of reprioritize a little bit. Does that make sense to you?

Complainant: Yes, that does.

Sgt. Goeden: Okay, so let me ask you this, other than perhaps running your license sooner, which wouldn't have really changed anything, what else do you think we should have done differently?

Complainant: Oh, you know, my husband told me you were going to ask me that, and I honestly don't know. I just, I just wish it had been explained what was going on even while he was cuffing me, rather than—

Sgt. Goeden: Okay, and let me explain why we don't right away. Let's assume for a moment that you were the person that was involved in this, or your husband was and you were the driver, okay? So, if we start saying right away why we're stopping people? It gives them the chance to start making up reasons or excuses and think about stories about why it wasn't them. Does that make sense to you?

Complainant: Yes, it does. It all, I mean, I knew this was com—I mean, I knew this. I just had to talk to somebody about it.

Sgt. Goeden: That's fine, I'm glad you did. But from our point of view we have to assume that the person we're dealing with a) is armed, b) has just shot somebody, and c) he doesn't want to spend a lot of time with the police. Well, as soon as we establish that's not the case, we obviously let the person go. And it sounds like that's what happened in your case.

Complainant: I know you were, because I was stopped at that intersection [redacted], and the cops came back at me at the face of my car, you know, going toward [redacted] there. And they all flew right by, and went down, so I knew something had happened. I mean, they probably caught the guy or whatever. I guess I just needed to have it explained to me, what is protocol, what is procedure in a matter like this, because it was dark, and— [sniff]

Sgt. Goeden: And you were very upset.

Complainant: I was scared. I was scared.

Sgt. Goeden: And you understand that Trooper Zeisel still needed to get to the scene to establish, do we have any other witnesses? Any other victims? So he didn't have the time, unfortunately, that I have right now. So it sounds like he did explain it to you a little bit, and I have no problems whatsoever with you calling back to get a fuller explanation. But understand that at that time the shooting was still very much under investigation, because we had gotten the report minutes before.

Complainant: Yeah, okay. Well, I appreciate you talking to me and calming me down, because this happened like at five o'clock this morning, and I just, I kept thinking, all right, this is fine, I'll get through it. And my husband called, and I was very upset, and he said call the number on the card and just talk to somebody.

Sgt. Goeden: Sure.

Complainant: So that's what I did.

Sgt. Goeden: Let me give you a little bit more information, because I'm sure you're going to wonder about this when we get off the phone. Nobody was actually shot, not a person, but we didn't know that for sure until after we had left you, let you go.

Complainant: Uh-huh.

Sgt. Goeden: Okay? There was a shot fired at a vehicle and the people that—we know, we're pretty sure at this point we know who was doing the shooting. And we think it may be related to some of the other shootings that have been happening around town. And because of that, you're not going to read about this in the paper. Okay?

Complainant: Okay.

Sgt. Goeden: Because we don't want them to know how much we know at this point. So we're kind of keeping tight-lipped about it. And I'm telling you because I don't want you looking in the paper for the next two or three days going, those troopers lied to me, there was no shooting, because we're not telling the paper right now.

Complainant: Okay, okay.

Sgt. Goeden: Okay? So I just wanted you to be aware of that.

Complainant: Okay, I appreciate your telling me this. And your name is Gayden?
[phonetic spelling]

Sgt. Goeden: Yes Ma'am. Do you ever read the newspaper?

Complainant: I do read the—I usually just get the Sunday, cause it gives all the information throughout the week.

Sgt. Goeden: Okay. Well, I don't know if you've ever read the "Ask A Trooper" column, but I'm that guy.

Complainant: Okay. [laughs] Okay, well I appreciate your taking the time.

Sgt. Goeden: Any other questions, ma'am?

Complainant: No. That's it.

Sgt. Goeden: All right. If you think of any, feel free to give me a call.

Complainant: Okay, thank you.

Sgt. Goeden: Take care. Bye-bye.

Complainant: Bye-bye.

The complainant said during the conversation she understood Sergeant Goeden's explanation, but later she said it was evidence that he was condescending. Apparently the complainant felt this way, but after listening to the contents and tone of the taped conversation, the ombudsman does not share that interpretation. Rather, it sounds like Sergeant Goeden is patiently explaining why police do certain procedures during a high-risk traffic stop. He acknowledged that it was a frightening experience for her and invited her to call back if she had more questions.

When Sergeant Roberts—who knew nothing about any of this until the complainants walked into AST headquarters on November 2—apologized in person, the complainant left the room. When Sergeant Roberts asked the husband what they expected AST to do, he did not know. Sergeant Roberts in particular repeatedly tried to get the complainants to “articulate” what they wanted. The response he got from the husband was, in effect, I don't know but you'd better do something because “she's emotional” and “I have to live with her.” This was an unfair request to make of the AST, however understandable it might be.

In summary, the complainant asked for an apology but refused to accept one time and again. The husband asked the troopers to do “something” for his wife, apparently to offer another apology and a copy of the police report. Captain Barrick called and left a message for the complainants that they did not respond to. Later he sent a written explanation and apology that the complainants rejected outright as too little, too late.

Police stops are not social calls. At times the troopers are in a hurry. They should be professional and polite, but they are not required to engage in casual conversation when they are supposed to be responding to a report of a shooting. The complainant objected to being highlighted by the police spotlights during the stop. She told the ombudsman investigator that she had suffered trauma in the past and that this may have caused her to react especially fearfully to being pulled over and detained. This is entirely understandable.

However, it is not reasonable to expect the AST to make extreme efforts to redress the turmoil she underwent, about the reasons for which they had no knowledge and over which they had little control. The ombudsman feels considerable sympathy for the shocking and unexpected treatment the complainant was subjected to that morning, but under the circumstances the agency appears to have done about as well as anyone could reasonably expect.

Finding on Allegation 2

In summary, the evidence does not support the claim of discourtesy by AST personnel. For these reasons, the ombudsman finds Allegation 2, that AST personnel were condescending in their response to the complainant's concerns, ***not supported*** by the evidence.

Allegation 3 Analysis

Allegation 3: Performed inefficiently: Alaska State Troopers failed to respond adequately to a complaint about a high-risk vehicle stop.

Under ombudsman policy and procedure at 4040, “performed inefficiently” generally covers instances of unreasonable agency delay and ineffectual performance:

(A) The timeliness of an administrative act is sometimes an issue. An agency performed inefficiently when an administrative act exceeded:

- (a) a limit established by law (statute, regulation, or similar enacted source) or
- (b) a limit or a balance established by custom, good judgment, sound administrative practice, or decent regard for the rights or interests of the person complaining or of the general public.

...

In her February 13, 2010 letter to the ombudsman complaining that the AST failed to respond satisfactorily to her concerns about being the subject of a high risk traffic stop, the complainant criticized details of Trooper Zeisel’s police report, criticized Sergeant Goeden for knowing that she might call, and criticized Captain Barrick for not calling sooner than he did:

Officer Zeisel says he identified us by our driver’s license- he never asked my husband for his ID or registration of the car. I made mention to the officers in my letter that when he was handing me back my wallet- the officer grabbed it back and turned to the other officer asking if he had called my license in. The other officer replied “No I thought you did.” I asked ' what are you doing.'? The officer never answered me. You can see this in my letter; this was never addressed in the response letter. Also in Troopers Zeisel’s report he stated that I was picking up my husband from [redacted] and that we were on our way home. This was not the case, I told him I was taking him [redacted]and my husband told him that also.

...

The police report that I asked for finally came with this response letter dated 2/5/2010. As stated by Capt. Barrick he said that the report was not closed until November 14th 2009. We had asked for it November 4th [sic— Ombudsman Note: This should be November 10th] 2009 and it makes sense why it wasn’t available until after that date.] To finally receive it at this late date (2/11/2010) is questionable. Capt. Barrick’s assumption that everything was fine was a mistake on his part. He makes mention that he had made two attempts to call and speak with me. The only one we received is his reference to November 16th at 1135 hours. No further response is recorded on our machine. We have kept this as reference. Three weeks and 2 days after the fact is too late with no written response or follow up phone call. It isn’t until he receives a letter from his boss Col. Holloway, does he step it up and respond.

The complainants’ fault-finding is perhaps natural, but it really does not matter that Trooper Zeisel did not recall correctly whether the complainants said they were on their way to the husband’s workplace or on the way home from there. Trooper Zeisel did not investigate the complainants, they were not suspects in the crime, and there was no reason to spend time carefully taking in their every statement while more important things remained undone. Again, the failure of Trooper Zeisel to activate his recorder could easily have contributed to this error, but the error itself is not significant. As already noted, the fact that the complainants did not have criminal records or warrants out for their arrest would not have proved that they were not the suspects who fled the scene of the shooting.

Moreover, the complainant's closing comments quoted above are puzzling. The complainant acknowledges that Captain Barrick left a message on the couple's recorder on November 16, 2009. "No further response is recorded on our machine. We have kept this as reference," she wrote on February 13, 2010. It is unclear why didn't she return his call. Instead, on November 19, 2009, just three days after receiving Captain Barrick's message, she called the ombudsman to file a complaint without having given Captain Barrick a chance to answer her questions. Had she called him back, he would have had the opportunity to discuss the matter with her and provide a copy of the report the complainants had requested.

The complainant said Captain Barrick waited "three weeks and 2 days" after the traffic stop to respond. This is not accurate according to the record. Captain Barrick first learned about her concerns when Sergeant Roberts told him about the November 2, 2009 meeting and the complainants' request for the police report that the husband sent by e-mail on November 10. The police report was completed on Saturday, November 14, and Captain Barrick called the complainants on Monday, November 16. It appears it took him six days, including a weekend, to wait for the completed report, read it, and call them to discuss it. In light of this chronology, as well as the fact that the complainants did not return the Captain's call and then waited several weeks after being referred to Colonel Holloway before writing on January 18, 2010, their characterization that Captain Barrick waited until "his boss" contacted him several weeks later to "step it up" seems unfair.

As already discussed earlier in this report, the complainant expressed dissatisfaction regarding her conversation with Sergeant Goeden on October 14, 2009. In the recording of the conversation, Sergeant Goeden sounds calm and helpful, and tries to help the complainant work through her distress during the phone call. She was sobbing on the phone, and Sergeant Goeden said the kinds of things people say to calm a person who sounds distraught. She thanked him for talking with her, she said it helped, and she sounded much calmer at the end of the call than she did when the call began. Sergeant Goeden invited her to call back if she had further questions. She did not call him back. It appears that she continued to have questions she wanted someone to answer, but Sergeant Goeden made a reasonable effort to do so.

When the couple discussed the October 24 incident with Sergeant Roberts on November 2, 2009, Sergeant Roberts was polite and tried to answer their questions. He listened to their concerns and tried to explain what it is like for the law enforcement officer searching for the suspect in a violent crime. He described how he once stopped the wrong car himself—it was the same type and color of vehicle he was searching for—and had to rush off to apprehend the suspect who drove past just as Sergeant Roberts was talking to the first driver. He told the complainants he left in such a hurry to chase the suspect that he didn't have time to explain or apologize to or even identify the person he stopped first.

Sergeant Roberts listened carefully to the complainants' comments, which consisted mainly of repeated accusations that Trooper Zeisel had not followed procedure and that "somebody back there was overzealous." This accusation appears to have been based on the assumption that the officers should not have conducted a high-risk vehicle stop on their car. What appeared to the complainants as excessive was standard procedure for such a stop.

The person who called 911 reported a shooting in a neighboring apartment and a man and a woman getting into a silver or white, four-door vehicle and driving away in an unknown direction. It was early in the morning and dark, and that was the best information the caller had.

It turned out that a car in the apartment parking lot had been hit by seventeen 12-gauge shotgun pellets that did almost \$5,000 worth of damage. The complainants were a man and a woman in a white, four-door sedan driving near the crime scene within a minute of this report. They appeared in front of Trooper Zeisel a little over 30 seconds after the report was relayed by dispatch. Under these circumstances, it was entirely reasonable for him to stop their car to check for the suspects.

FPD Officer Merrion saw Trooper Zeisel pull them over and radioed FPD dispatch that he was stopping to assist. FPD Sergeant Jeromey Lindhag also stopped to assist and parked further back in case he was needed. Trooper Zeisel called in the license plate number when he pulled up behind the complainants' vehicle, dispatch ran it and relayed who the car was registered to, which matched with the names the complainants gave him. There was no need to examine the paper registration slip to confirm this. The dispatch recording contains the trooper's voice reading the two driver's license numbers a few seconds apart and dispatch reading back the NCIC database information to him.

The couple said that police should check the driver's license before handcuffing someone. That is not standard procedure. The first thing an officer is supposed to do is control the situation, get the driver out from behind the wheel and handcuff him or her, then approach the passenger from the rear, checking to see if anyone is in the back seat as the officer gets close enough to see. The officer is supposed to give commands in a loud voice and is not supposed to answer questions or be distracted from the task of safely controlling the occupants of the vehicle. The officer is supposed to stay focused on the task at hand and be ready to react appropriately if the vehicle's occupants respond violently, act in a deceptive manner, or attempt to escape.

The officers did not search the complainants' car because they decided the complainants were not who they were looking for, and there were no warrants out for either of them. Had they been arrested, they would have been read their Miranda rights, their car would have been searched, and the registration would have been verified. Since they were not charged with a crime, there was no practical need to do these things and neither law nor policy appears to require it. The fact that neither of them had a criminal record was irrelevant to determining whether they might be the suspects. All criminals commit a first crime before they have such a record.

The complainant said she was humiliated by being handcuffed where the public could see her. At 5 a.m. on a Saturday morning there could not have been many cars traveling by the parking lot in which they were stopped. Nonetheless, it no doubt it felt embarrassing, but it is unlikely anyone saw her well enough or took sufficient interest in the matter to recognize her later. The ombudsman investigator has been stopped several times by police officers over the past 48 years, including once when he was incorrectly accused of not wearing a seatbelt, so it is easy to imagine the complainant's chagrin at being pulled over, ordered out of her vehicle, commanded to do things, and handcuffed, when she had absolutely no idea what was going on. It is natural, too, at such times to ask, "What's going on?" Unfortunately, standard procedure for a high-risk vehicle stop is for the officer to ignore questions and focus on getting complete control of the scene before engaging in conversation with occupants of the stopped vehicle. In that context, questions are a distraction—quite possibly a dangerous one.

The complainant asked why she was not told her rights and that she was under arrest. In fact, she was not arrested and there was no need to tell her Miranda rights. She was handcuffed in a standard procedure to immobilize one of two occupants of a vehicle in a high-risk traffic stop

while the officer contacted the other occupant of the vehicle. Trooper Zeisel quickly decided that the complainants were not the suspects they were searching for, and Officer Merrion released the complainant from the cuffs. The dispatch log shows both of the complainants' driver's licenses were run. Had either of them been wanted on an outstanding warrant, they would not have been released. They were detained for about four minutes.

The complainant comments on how long it took various people to do things, but it appears that some of the delay was the responsibility of the complainant. For instance, after Ms. Ritchey referred her to Colonel Holloway on December 7, 2009, she waited until January 17, 2010 to write. When Captain Barrick wrote to her at Colonel Holloway's request and apologized to her, she rejected this apology as "too late." Had she written earlier, she might have gotten an earlier response.

The complainant described in her letter the fright she felt at hearing a "vicious dog" barking throughout the traffic stop. Curiously, she did not mention this to Sergeant Goeden later that morning. The dog was a K-9 in Trooper Zeisel's back seat kennel. Its barking can be heard on the dispatch tape. Both of the complainants made a point of telling the troopers that the complainant's husband had extensive experience training police dogs and that he had accompanied law enforcement officers on their rounds. It is quite likely that the dog's barking added to the complainant's distress and confusion, but she certainly knew what a K-9 unit was.

During their discussion with Sergeant Roberts on November 2, 2009, when Sergeant Roberts apologized to the complainant, she angrily left the room. The following discussion between Sergeant Roberts and the complainant's husband is instructive. The husband said the stop did not bother him, and he thought Trooper Zeisel was polite and professional. However, he said, his wife needed the Troopers to do "something" for her. Sergeant Roberts asked what he meant:

Complainant's husband: She needs an apology from somebody, cause she's not going to let it rest. I can guarantee you she will not let it rest till something is done to make her feel better.

Sgt. Roberts: What is it that she, I mean—

Complainant's husband: I mean, I can't tell you. . . .

Sgt. Roberts: Well, write something up about it all, and I'll bounce it to Captain Barrick.

Complainant's husband: I mean, she needs something better than what's happened. And I think for her to rest on it, it's gonna have to happen. If not, we're both [inaudible]. Okay?

Sgt. Roberts: Well, I think—

Complainant's husband: That's the thing. I have to live with her.

Sgt. Roberts: Well, I understand, and I understand that she's emotional.

Complainant's husband: She's emotional.

Sgt. Roberts: She just has to find out exactly what it is that she wants and be able to articulate that so we can try to help her with that.

Complainant's husband: Well, the thing is, I think it's how it came down, and what happened to her. Okay? I think that's where it's gonna come down to.

Sgt. Roberts: Um-hum.

Complainant's husband: Cause I mean, I'm fine. I didn't have a problem, I mean, nothing really happened to me, but I'm just sitting there waiting.

Sgt. Roberts: Well, you're being a good husband now, that what you're supposed—you know?

...

*

The exchange quoted above conveys some important points about this complaint. In the first place, it seems clear that the complainant's husband shared the troopers' confusion about just what the complainant wanted. She was obviously furious about what happened, felt mistreated and demeaned, and wanted formal acknowledgement that she was in effect manhandled during the incident. Her anger is evident throughout her correspondence and surfaced almost immediately when the complainants met with Sergeant Roberts after waiting by her account (in her letter to Colonel Holloway) "almost half an hour" to request a copy of the incident report. Sergeant Roberts spent some of this time reviewing the available information about the reason for the stop. When he said he understood that a "silver" car had fled the scene, the complainants acted incredulous, and the complainant in particular was very angry, as this excerpt from the first part of the meeting shows:

Sgt. Roberts: [name redacted]? Hi, Sgt. Roberts. What can I do for you?

Complainant: [indistinct] I requested a report of the accident . . . the incident . . . [sobs]

Complainant's husband: We want to file [a complaint?] about [indistinct], and what we want is a report the officer wrote of the incident that happened to us.

Sgt. Roberts: Okay, so what's the complaint? What happened?

Complainant's husband: The complaint—she talked to a supervisor that day. She called and it wasn't very satisfactory. I was in the car, too. It was how it was handled.

Sgt. Roberts: Okay, so what—

Complainant: Do you know what happened?

Sgt. Roberts: I know that they responded to a shots fired call. I just read all the computer documentation on it. I know that they responded to a shots fired call with a silver four-door car—

Complainant's husband: Silver? [simultaneous response with complainant]

Complainant: Silver?

Sgt. Roberts: Yeah, well, sometimes—

Complainant's husband: Just, go ahead, you can say what—

Complainant: [angry] We're really upset right now— [overlapping talk]

Sgt. Roberts: Okay, I just got told that somebody needed to talk to the supervisor, so here I am.

[both complainants talk]

Complainant: No, no, I just want a request form.

Complainant's husband: We want to request the report on it, that's all we came here for.

Sgt. Roberts: Okay, you just need a form to fill out for public records?

Complainant: Right, right, we want a copy of what happened. That is a public record, we found that out, so I would like a copy of it.

Sgt. Roberts: Okay.

Complainant: I was handcuffed.

Sgt. Roberts: I understand.

Complainant: I am really angry right now.

Sgt. Roberts: I understand.

Complainant: I was very upset at the time.

Sgt. Roberts: Let me—

Complainant: And I don't need to be explained to any more.

Sgt. Roberts: Okay.

Complainant: What happened was ridiculous! If they had ran the plates, if they had ran our licenses at the time, this never would have happened. But they did not. They did not run my license till the very end of the conversation, and he hands me back my wallet and he kind of has his hand on it like this, and he goes, "Well, wait a minute, did you run the license?" "No, I thought you did." And then he hands—and then he takes it and runs it. It's not okay. And up in Alaska not anything goes, I'm sorry.

Sgt. Roberts: [starts to respond]

Complainant: I'm sorry. I'm a taxpayer, I work in this community, we do everything by the book, and we are treated like common criminals. [Roberts attempts to respond, but the complainant's husband talks over him—both are indistinct in the recording.] I had guns drawn on me.

Sgt. Roberts: Okay, I understand, you don't want to hear—you don't want to hear our side?

Complainant: I heard it, I heard it. From a supervisor.

Sgt. Roberts: I don't know who you talked to. I know—alright, if you don't want to hear it from me, that's okay, I have—

Complainant's husband: That's not going to change anything of how—

Sgt. Roberts: No, but at least it would help you understand where we're coming from.

Complainant's husband: Well—

Complainant: It was ridiculous overkill! There were five—there were two white cars that went by while we were standing there. While we were standing there, nobody went over there—

Sgt. Roberts: I, I—

Complainant: —went after them.

Sgt. Roberts: Okay.

Complainant: I mean, I'm in pajamas, for God's sake, with slippers and bare feet!

Thus, even while she understood on some level that the incident was a random instance of bad luck—driving past a crime scene moments after a shooting had been reported—and that law enforcement officers had good reason to stop her car, the complainant was quite angry about what happened.

In the second part of the meeting, the topic of the escape vehicle's color came up again:

Complainant's husband: And uh, it's interesting you come out and say a "silver" car. We were told a white car. That's what I was told.

Sgt. Roberts: Well, our computer—our computer says a silver or white car left the area, cause people can't tell sometimes at night what color, so—

Complainant's husband: Well, that's the first time I ever heard silver. We were told white.

Sgt. Roberts: What kind of car were you guys in?

Complainant's husband: A white. A white car, but you know, that's all I ever heard was white. Okay? Well, okay, we're in a white car.

Sergeant Roberts' explanation that white and silver cars look similar in the dark makes sense. It was dark at 5 a.m. on October 24, 2009. According to the Alaska Climate Research Center at the University of Alaska Fairbanks, sunrise on that date in Fairbanks was at 9:13 am, more than four hours later.

The complainants' insistence that (in the husband's words) "procedure was not real good" rings a bit hollow when it appears they do not understand basic law enforcement information, such as when Miranda rights are given to a suspect taken into custody. The notion that if their records were clean, the police would not have stopped them and/or would not have handcuffed the driver is simply mistaken. Their car and its occupants fit the description of the fleeing suspects. It was coincidence and the trooper quickly realized this and released them. The complainant had a right to feel scared and roughly treated, but it was not discourteous for Trooper Zeisel to ignore her questions while he was still in the process of controlling the occupants of the suspect vehicle.

On the other hand, the troopers could have handled this complaint better than they did. Perhaps it was a case of the left hand not knowing what the right hand was doing, but after both Sergeant Goeden and Sergeant Roberts had talked with the complainant, it should have been clear to "D" Detachment that she was very upset by the incident and wanted more information about it. In particular, the husband was very clear that he expected Trooper Zeisel's report on the incident to describe the stop and list the other law enforcement officers at the scene. The husband was under the impression that one of these other officers had treated his wife improperly.

In fact, it was FPD Officer Merrion who handcuffed the complainant and suggested she sit on his front bumper. And it was likely Officer Merrion who asked the complainant where they were coming from. That would account in part for Trooper Zeisel not fully understanding that she was

driving the husband to work. The complainant's account of the mix-up over running the drivers licenses described what would have been a fairly natural exchange after Trooper Zeisel discontinued the felony stop procedure. He had just been shouting out orders to the car's occupants, checking for weapons and hidden passengers, and talking to the husband. He had already called in the license plate number and was now wrapping up the stop by making sure the drivers licenses had been run. Officer Merrion had been dealing with a sobbing woman in handcuffs, pajamas, and slippers. The two officers worked for different departments, and a brief exchange over whether the drivers licenses had been run yet would be a normal point for them to discuss. Trooper Zeisel then called in both licenses. This was an example of thoroughness, not a lapse in procedure.

Whether anything improper actually happened, however, is irrelevant to the question about who was present at the scene. That should have been easy to find out. Captain Barrick had no trouble contacting Officer Merrion five months later to get his supplemental statement. Presumably someone could have asked him for this statement much closer to the time the complainants were communicating their concerns. This was an opportunity for the troopers to find out quickly who else was at the stop and obtain information from them.

The fact that Trooper Zeisel did not record the stop should have made this all the more desirable to find out. By the time the complainants spoke to Sergeant Roberts, Officer Merion's video recording of the incident would probably have been deleted, but the incident would have been fresh in memory, and Officer Merrion could have given a contemporaneous account of the stop from his perspective. It is too bad that "D" Detachment waited five months to ask him about it. Further discussion of this point will be found under Allegation 4 below.

Finding on Allegation 3

Taken as a whole, the evidence shows that AST made reasonable efforts to respond to the complainants' questions and concerns, and it shows also that the complainants' misunderstanding of police procedure made it difficult for them to fully comprehend or believe what AST told them. There is no doubt that the complainant was angry about what she regarded as mistreatment. Her vivid description of the incident from her point of view makes clear that she felt humiliated to be treated as a suspect in a crime and effectively made to feel as if she had been put on display for all the world to see.

Under these circumstances, it is natural that she would focus on whether the officers had followed correct procedures when their actions made her feel so vulnerable. It is natural, too, that getting an explanation for these procedures might not erase the sense of being violated that the experience appears to have made her feel. There is often a rationality underlying intense emotion that others may find difficult to understand. It is not unreasonable that the complainant felt the way she did, and no feeling person would dismiss that emotion as unworthy of respect.

However, as set out above under allegations 1 and 2, Trooper Zeisel was executing a forceful procedure in a circumstance that called for it, and it was just bad luck that the complainants happened to drive by the scene of the reported shooting seconds after the shooter was described as fleeing the scene in a "white or silver 4 door sedan."

For these reasons, the ombudsman finds Allegation 3, that AST failed to respond adequately to a complaint about a high-risk vehicle stop, not supported by the evidence.

Allegation 4 Analysis

Allegation 4: Contrary to law: Alaska State Troopers failed to comply with a public records request within the time limits prescribed by 2 AAC 96.

Under ombudsman policy and procedure at 4040, “contrary to law” means:

- (A) failure to comply with statutory or regulatory requirements;
- (B) misinterpretation or misapplication of a statute, regulation or comparable requirement;
- (C) failure to follow common law doctrines;
- (D) failure to comply with valid court or administrative orders;
- (E) individual misconduct in which a state employee:
 - (a) performed for an illegal or improper purpose, or
 - (b) performed in an illegal manner (see AS 11.56.850, AS 11.56.860, or the Executive or Legislative Ethics Acts).

There was undoubtedly a long delay in getting a copy of Trooper Zeisel’s report to the complainants. They requested it on November 10, 2009, and did not receive a copy until Captain Barrick wrote to them on February 5, 2010. The evidence suggests that this delay may have resulted from simple miscommunication.

When the complainants met with AST Sergeant Roberts on November 2, 2009, they repeatedly requested a copy of the police report on the stop of their vehicle. During this meeting, Sergeant Roberts told them the police report on the shooting incident had not been completed and Trooper Zeisel was out of town on leave. He advised them there would be some delay before a report would be ready. The couple appears to have accepted that at face value. Sergeant Roberts suggested during this meeting that they could fill out the records request and send it in by e-mail if that would be convenient for them.

He also attempted to explain to them that a typical report would not necessarily address some of the information they said they were seeking: for example, which law enforcement officers were on the scene during the traffic stop, and information about a traffic stop of a vehicle not involved in the crime investigation.

Sergeant Roberts and the husband had the following exchange:

Sgt. Roberts: What is it that she, I mean—

Complainant’s husband: I mean, I can’t tell you. She wants to see the report. Okay?
So—

[crosstalk in following exchange]

Sgt. Roberts: Why? I can—

Complainant’s husband: —so get a report—

Sgt. Roberts: —almost guarantee that what the report’s going to say is, they responded to this call—

Complainant’s husband: Sure, but it will list the officer’s names on it, who—

Sgt. Roberts: Possibly.

Complainant's husband: —took the suspect into cuffs, or—

Sgt. Roberts: Well—

Complainant's husband: —you know? “I apprehended,” you know, I mean [inaudible] it's got names there somewhere, generally—

Sgt. Roberts: Sometimes it's like when we did this big DV where I was saying the guy was shooting with guns, and we wanted to pull over the wrong truck—

Complainant's husband: Sure.

Sgt. Roberts: —you know, I never ID'd that guy, 'cause the other guy came out now. He's the one with the guns. I don't know who this guy is. He was driving a '96 blue Ford truck. You know, “Hey, sorry man, it's over here.” And we left, and he—he does, you know—we talk about stopping a blue truck, but there's not much other mention in it.

Complainant's husband: Well, I don't know, but I'm sure all the officers that had to respond should be somewhere on that report. And you know, maybe Zeisel will know. I don't know.

Sgt. Roberts: Okay.

It is clear that the complainants wanted very much to know who besides Trooper Zeisel was at the traffic stop because the husband, at least, understood that it was probably another officer who handcuffed the complainant. Certainly he knew she was detained by another officer while Trooper Zeisel was talking to him. No one who listens to this recording can mistake that the complainants wanted this information in particular. They also expected to read in the report about the stopping of their car. However, the complainants were not suspects in the crime, did not have information about the crime, and were not in fact part of that case. Troopers do not write up every traffic stop they make.

On November 10, 2009, the complainants sent a records request to Sergeant Roberts by e-mail. The sergeant forwarded the message to Captain Barrick. According to Captain Barrick's chronology, Sergeant Goeden told him the report was ready on November 14. Captain Barrick wrote that Trooper Zeisel initially reported on the shooting incident and the crime scene interviews and did not mention the traffic stop:

I noticed that the police report was not complete and that there was no mention of the traffic contact between Trp. Zeisel and [the complainants]. Instead it focused on the original call and the suspects in the shooting. I asked someone, probably Trp. Zeisel, to include a paragraph about the traffic stop with [the complainants] in the police report [report number redacted by ombudsman]. Trp. Zeisel added a paragraph about the contact with [the complainants] (again, this was not part of the original police report and was not required to be part of the report but in an effort to give [the complainants] something, we added the part about their traffic contact to the police report).

Despite this effort, “D” Detachment waited a long time to provide a copy of the requested incident report. The couple requested it on November 10, and the report was ready by November 16, 2009, when Captain Barrick called and left a message on the complainants' recorder. Yet the

troopers did not give the complainants a copy of the report until Captain Barrick wrote to them on February 5, 2010.

While some of the delay may be attributable to how long it took the complainants to write to Colonel Holloway, Captain Barrick knew that the complainants had requested a copy of the report. Under state law, a state agency has 10 business days to respond to a public records request. 2 AAC 96.325. In failing to provide the requested record within the limit prescribed by law, to explain why there will be a delay in providing the record, or to deny the request the Troopers appear to have violated state law and may have unwittingly prolonged the dispute.

On the other hand, the complainants' failure to return Captain Barrick's November 16 call gave him the impression they were no longer interested in the matter. This was not an unreasonable conclusion to reach. Sergeant Goeden and Sergeant Roberts had listened to concerns the complainants raised and had attempted to explain police procedure to them. Captain Barrick had expedited the completion of the report, which was delayed while Trooper Zeisel was out of state, and instructed him to include information about stopping the complainants' car. He called the complainants to discuss their concerns and to arrange to give them a copy of the report.

When they did not respond, Captain Barrick assumed the two sergeants had satisfied the complainants' need for more information. Then again, the complainants sent their public records request by e-mail, and it would not have been difficult to scan the documents to them or at least to tell them by e-mail or in a phone message to stop by AST headquarters to pick them up.

On a related note, Captain Barrick wrote to the ombudsman investigator,

The fact [the complainants] waited several months to make their complaint to your office has hampered my search for information as logs for information dropped off by the general public at the front counter are destroyed a month or so after the requests have been filled. There are no logs that go back to November 2009 now.

If this is so, then "D" Detachment is out of compliance with state law on Public Records Requests. 2 AAC 96.320(b):

(b) The log of requests for public records is a public record. It must be preserved, included as a separate item on the public agency's record retention schedules, and provided upon request in accordance with this chapter.

AST records retention policy that extends only a month or a few months would not appear to satisfy the regulation.

Finding on Allegation 4

The evidence shows that the complainants may share some of the responsibility for the delay in AST providing a copy of the police report. And in fact, the police report did not contain some of the information the complainants hoped to learn, though it did demonstrate that the stop was made in response to a 911 call about a shooting near the place where they were pulled over. AST should have done a better job of following through on the public records request, particularly in light of their responsibility under 2 AAC 96.325 to respond within 10 working days.

True, the complainants' failure to return Captain Barrick's call, which they saved as "evidence" of the date he called, makes this seem a matter of interrupted communications rather than willful withholding of information. Nevertheless, the onus was on the agency to respond to the request

either by producing the record or by documenting that it did not exist or was not open for inspection. In addition, the AST public records request retention policy seems to be out of compliance with 2 AAC 96.320(b).

The ombudsman finds Allegation 4, that AST failed to comply with a public records request within the time limits prescribed by law, justified by the evidence.

FINDINGS

The ombudsman finds Allegations 1, 2, and 3 *not supported* by the evidence, and finds Allegation 4 *justified*. Under 21 AAC 20.210, investigation of a complaint with multiple allegations that results in some allegations being found justified and some not supported or indeterminate results in a finding of partially justified for the complaint taken as a whole. Thus, this complaint taken as a whole is *partially justified*.

RECOMMENDATIONS

Recommendation 1

AST should consider adding a brief training component to the Public Safety Academy on the spectrum of public response to the exercise of law enforcement authority.

On April 2, 2010, Captain Barrick wrote to the ombudsman investigator:

6. I think I understand what you mean by the term “Spectrum of Public Response to the Exercise of Law Enforcement Authority,” but I suspect this topic is not covered in our training, at least as you may understand the term. Where did you see this term in print? What do you understand the term to mean? Who teaches this?

The ombudsman investigator responded to these questions on April 7, 2010:

The phrase “Spectrum of Public Response to the Exercise of Law Enforcement Authority” (your caps, not mine) is something I made up to describe how people react to contacts by officers. If your people get through the academy without considering how they are viewed by the public in different situations, I would say off-hand that the academy training is incomplete. People react to uniforms and guns, and it’s not hard to imagine a range of responses depending on the circumstances and people’s past experience.

The general public reacts to flashing lights, uniforms, batons, handcuffs, firearms, and authoritative commands in ways that law enforcement officers may not fully comprehend. A routine traffic stop for the officer may be a significant event in the life of a motorist. Often a few appropriate words can defuse negative feelings, help build respect, and contribute to the maintenance of good relations between the agency and the community. Most community policing agencies acknowledge the importance of maintaining good relations with the community they serve.

While no department can prevent some citizens from feeling that some police procedures are unnecessary or illegitimate, it remains true that complaints travel farther and faster than positive comments. DPS should consider giving its personnel the communication skills not only to order immediate compliance by a suspect, but also to soften the impact of the interaction with a showing of genuine concern and respect for innocent persons caught up in a search for suspects.

This would help ensure cooperation and support for law enforcement in the community as a whole.

This recommendation is in line with Sergeant Roberts' comment to the husband that he would communicate with the other supervisors and the troopers to be sure to make an effort to reassure innocent persons subjected to a high-risk stop before departing the scene. If the urgency of the search makes this impractical, AST should make a point of contacting the person(s) within a day or two to apologize for the inconvenience and for treating them roughly when they had done nothing wrong.

In this case, the complainant called the troopers and discussed the stop with Sergeant Goeden just four hours after the stop. Captain Barrick commented that this contact occurred much sooner than it likely would have under the proactive policy proposed by the ombudsman. While this may be true, the effectiveness of that contact was later questioned by the complainants. Objectively, the ombudsman agrees that Sergeant Goeden handled the call skillfully. However, the dynamic that led the complainant to feel afterwards that Sergeant Goeden's efforts had "made things worse" should not be dismissed lightly. Despite her misunderstanding of police procedure, the complainant had a right to be angry, as Sergeant Roberts conceded at their meeting.

In short, AST should understand that an innocent subject of a high-risk vehicle stop may have issues beyond the basic facts leading to the stop. Captain Barrick's statement to the ombudsman investigator, that this was the first time in 20 years as a trooper that he recalled someone complaining about a high-risk vehicle stop, seems an unreliable measure of the potential harm that could result for AST-community relations from failing to extend *proactively* to the innocent person the courtesy of some kind of well-being check following a high-risk stop.

The complainants are not the first people to complain to the ombudsman about how they were treated during a high-risk stop, and the others also complained about traumatic effects similar to those expressed by the complainant. The other complainants were both men; one was an Army veteran, and the other was a smoke-jumper. Both complained of difficulty sleeping after the incident, both said they understood why they were stopped and the reasons for the procedure, and both experienced long-lasting anger at the fright they were made to feel when they were ordered out of their car at gunpoint and cuffed from behind. Both had the same kinds of questions the complainants had about the propriety of the high-risk stop procedure.

In that case the ombudsman had access to audio and video recordings of the stop. It was a case of mistaken identity. After the two men were uncuffed and the officer explained why he stopped them, the two men chatted amiably with the officer and said they understood. Only later, as the traumatic effects of the event sunk in, did the two men understand how deeply it had affected them. The ombudsman believes that DPS should take this into account in devising a policy to proactively contact innocent persons under these circumstances. DPS should be open to the possibility that it might take innocent subjects of a high-risk stop a while to process their feelings about the event. The symptoms the complainant and the two men described resemble those widely observed in cases of post-traumatic stress disorder (PTSD) and should not be dismissed lightly as merely "emotional" reactions. Strong emotions often have a rational basis.

A first step toward dealing with that reality might be to train officers to keep this in mind, to check on the person within a day or two of the stop, and to call the person back within a week of that contact to see if any of their questions remain unanswered. That would seem like common

courtesy, as well as good public relations. If dealing with the aftermath of a high-risk stop becomes emotionally fraught, it might be wise for AST to have access to the services of an experienced counselor to help resolve the issues in a professional and responsible manner.

Recommendation 2

AST should ensure that troopers record interactions with the public.

This complaint could have been resolved quickly and definitively had the trooper activated his recorder prior to engaging with the occupants of the complainant's vehicle. Law enforcement officers should understand better than most people how common it is for people to remember events incorrectly. Nothing restores reality to a dispute over "who said what" faster than an authoritative recording of the interaction. In this case the trooper's failure to activate his recorder led to the expenditure of many hours of state employee time to sort out what happened. Moreover, had the occupants of the car been the suspects he was searching for, there would be no record of what they said when apprehended. The AST should take steps to ensure that this does not happen again.

Recommendation 3

AST should inform the public that other sources of information may be available regarding interactions between law enforcement officers and the public when units from other agencies assist AST personnel at crime scenes and suspect searches.

The trooper in this incident failed to activate his recorder. However, the Fairbanks Police officer who assisted in the traffic stop video-recorded the entire incident from the time the complainant exited her vehicle until the time she and her passenger were released. Because there did not appear to be any reason to archive this recording, it was routinely deleted approximately one week after the incident.

The complainant had no idea this record existed because she did not know after the incident which local police officers had assisted at the stop. Sergeant Goeden may have been in the best position to suspect that such information might exist and could prove useful in responding to the complainant's distress, but he likely did not know about this at the time he spoke to the complainant the morning of the incident, and she did not mention it to him. When she did not call him back with further questions, he justifiably assumed he had answered her questions.

When the complainants discussed the incident with Sergeant Roberts, however, there was no question that they believed one of the assisting officers, perhaps a Fairbanks police officer, had played some role in the actions they criticized. They made this point repeatedly. This was the sergeant's first exposure to the incident, but it would have been good policy to have taken proactive steps to help defuse this complaint when it came to his attention by doing what Captain Barrick eventually did months later: find out who assisted at the stop. This is not to fault Sergeant Roberts, who did the best he could to deal with the conflict in a reasonable way, but to suggest a supervisory "course correction" of the sort he told the complainants is occasionally necessary in any well-run organization.

Again, in this case the complainant and her husband explicitly asked which other officers took part in detaining them the morning of October 24, 2009. The AST failed to answer this question until the ombudsman called to ask about the incident. That part of the complaint's questions about the stop could have been addressed with little effort.

Recommendation 4

AST Detachment “D” should ensure that troopers adhere to procedures taught at the Sitka Alaska Law Enforcement Training Academy on announcing the reason for a high-risk vehicle stop.

It appears that Trooper Zeisel did not state why he stopped the complainants. Sergeant Goeden later explained that troopers do not announce that to avoid giving suspects an opportunity to fabricate misleading stories.

However, the Alaska Law Enforcement Training Academy trains officers to state the reason for the stop: “Identify yourself, state reason for the stop, and give a warning: *“This is the Alaska State Troopers. You are suspects in an armed robbery. Do exactly as I say and you will not be hurt.”*”

The Washington State Criminal Justice Training Commission presentation contains a similar directive: “Challenge the occupants and announce, ‘This is the Police. You are suspects of an armed robbery. Put your hands where I can see them.’”

This gap between theory and practice suggests that Detachment “D” officers may need refresher training on this point.

On the other hand, if AST believes that Sergeant Goeden’s position is correct, it should inform ALETA of this fact so that this training module can be modified accordingly.

Recommendation 5

AST should request its Attorney General to review the practices of AST Detachment “D” and then all AST detachments and posts to determine if their practices concerning logging of public records requests adhere to 2 AAC 96.320(b).

Ombudsman Review of this complaint revealed that Detachment D did not maintain its public records logs for more than 30 days. This runs contrary to regulations implementing the Alaska Public Records Act. AST should take steps to ensure it conforms with state law.

AGENCY RESPONSE

In accordance with AS 24.55.180, the ombudsman sent the Preliminary Investigative Report to the Alaska State Troopers by U. S. Mail on July 19, 2013, asking them to comment on the report and its proposed findings and recommendations. However, for reasons that are unclear the agency did not receive this report. When this was discovered, the ombudsman sent the preliminary report a second time on September 4.

On September 11, 2013, AST director Colonel Keith Mallard responded to the ombudsman report. Col. Mallard, who became director December 13, 2010, accepted the proposed findings and recommendations, but stated that in the time that had elapsed between the incident giving rise to the complainant’s complaint and AST’s receipt of the ombudsman’s investigative report, he had already acted in ways that addressed the ombudsman’s concerns:

The first change is the development of a specialized unit charged with specifically investigating all allegations against DPS employees. This office is the Office of Professional Standards (OPS), which answers directly to the highest level within the Commissioner's Office at the Department of Public Safety. OPS affords us the

opportunity, anytime we receive a complaint no matter how small or egregious, to look into the totality of the event thoroughly and in a timely manner. These investigations give us the ability to take swift and decisive steps in determining the proper course of action; ensuring that we are providing the best services to the citizens of Alaska. In the future, Alaskans may be better served if when you receive complaints regarding DPS Employees that those complainants and/or your office communicate directly with OPS.

The second change to note is my appointment as the Director of the AST in December of 2010. Since my appointment we have identified and instituted policies that address all of the recommendations you suggested in your written product. Unfortunately, due to the untimeliness of your investigation and report, we did not have the benefit of your office's work in developing these policies but appear to have addressed all your concerns.

In addition to addressing the issues you outline. I believe it is important to note that within the next year it is our hope to complete a full Public Safety Academy curriculum review. The intent behind this effort is to ensure all the officers attending the Sitka academy have the benefit of receiving the most up to date training, addressing a number emerging issues, to include issues similar to those outlined in your investigation.

FINDINGS OF RECORD

The ombudsman agrees that the steps taken by AST under Col. Mallard's direction address the concerns set out in the ombudsman's proposed recommendations.

Based on the agency's response, the finding of record will be that this complaint was *partially justified* and that it was *fully rectified* by agency corrective action.