Memorandum, Motion, and Affidavit

To: Frank Murkowski, Governor
Loren Leman, Lieutenant Governor
Don Young, Congressman, U.S. House of Representatives
Ted Stevens, U.S. Senator
Lisa Murkowski, U.S. Senator
David Márquez, Attorney General
Dana Fabe, Chief Justice, Alaska Supreme Court
Warren W. Matthews, Justice, Alaska Supreme Court
Robert L. Eastaugh, Justice, Alaska Supreme Court
Alexander O. Bryner, Justice, Alaska Supreme Court
Walter L. Carpeneti, Justice, Alaska Supreme Court
Robert G. Coats, Chief Judge, Alaska Court of Appeals
David Mannheimer, Judge, Alaska Court of Appeals
David Stewart, Judge, Alaska Court of Appeals
David S. Landry, Judge, District Court Judge 3rd District, Kenai
Morgan Christen, Judge (Presiding Judge 3rd District Court)
Mark Wood, Judge (Presiding Judge 4th District Court)
Sarah Palin, Candidate for Governor
Tony Knowles, Candidate for Governor
Andrew Halcroft, Candidate for Governor
Board of Governors, Alaska Bar Association
Linda Lord-Jenkins, Ombudsman
Alaska Senators, All
Alaska House of Representatives, All
Marilyn May, Clerk, Alaska Appellate Courts
Lori Wade, Chief Deputy Clerk, Alaska Appellate Courts
Deirdre Cheek, Clerk of Court, Kenai
Margaret Murphy, Judge, Homer District Court
David Woodmancy, Magistrate, Aniak
Trooper Brett Gibbens, McGrath
Scot Leaders, Prosecutor
Roger Rom, Office of Special Prosecutions
James Fayette, Office of Special Prosecutions
Marla Greenstein, Executive Director, AK Commission on Judicial Conduct
Larry Cohn, Executive Director, Alaska Judicial Council
Michael Clements, Civil Action Group, Ltd.
Charles Clapboard, Federal Bureau of Investigation - Anchorage
Andrew Lourie, Section Acting Chief, U.S. Department of Justice
Deborah Smith, U.S. Attorneys Office
Steve Van Goor, Chief Counsel, Alaska Bar Association
Ralph Cunningham, President, Safari Club International
Alaska Professional Hunters Association
Alaska State Troopers
John Davis, KSRM, KWHQ, KKIS, KSLD Radio
David Hulen, City Editor, Anchorage Daily News
Craig Medred, Outdoors Editor, Anchorage Daily News
Tom Kizzia, Homer Bureau, Anchorage Daily News

Bill Tobin, Anchorage Times
Lori Evans, Editor/Publisher, Homer News
Stan Pitlo, Publisher, Peninsula Clarion
Fairbanks Daily News-Miner
Tyler Rhodes, Editor, Alaska Journal of Commerce
KTUU, KTBY, KYES, KAKM, KTVA, KIMO, KDMD
Friends

From: David S. Haeg

Date: 10/12/06

Re: *Memo from Judge David S. Landry – dated 9/26/06*

Esteemed Alaskans, Americans, and Friends;

I, David S. Haeg, humbly ask you consider this request for help very seriously. I am writing in regard to Judge David Landry's memorandum[1] of September 26, 2006, concerning my motion for a ruling to return my families property that is used to provide our livelihood. In his memorandum Judge Landry avoids his duty by asserting that I have been making some misguided and unauthorized attempt to challenge the single search warrant that he issued in my criminal case. In fact, in complete compliance with the Alaska Supreme Court holding in *Waiste v. State*[2] and with *Criminal Rule 37(c)*[3], I have been seeking to have my and my wife Jackie's property, which was illegally seized in violation of my criminal rights, illegally held in violation of our civil rights, illegally forfeited in violation of those same civil rights and which was the primary means for both of us to provide a livelihood for our two young daughters, to be returned immediately, as by law it had to be, on April 9, 2004 or over 2-1/2 years ago. If the court refuses to look at my claim I am left without remedy – violating numerous U.S. Supreme Court holdings.

Judge Landry gives the impression that since my criminal case has "already gone to judgment and is currently on appeal (though it appears that the case may have been returned to the trial court in McGrath for the limited purpose of determining issues related to

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[1] See attached copy of Judge Landry's memorandum.
[2] *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).
[3] *Criminal Rule 37(c):* "A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property…"

representation)" I have no right to seek, or have waived, the clear and absolute civil rights afforded my wife, daughters Kayla age 8, Cassie age 5, and myself by two constitutions, irrefutable case law, and rule. What Judge Landry is actively seeking to avoid is that when objects seized in conjunction with a criminal case is also property with which someone provides a livelihood for their family there are immense civil due process concerns involved. The only reason a pre-seizure hearing, that includes testimony from the person to be deprived, is not required is the fact that the property seized is alleged by law enforcement to be possible evidence of a crime. After seizure this concern then takes a back seat to civil due process concerns because the prosecution, by way of an uncontested or ex parte[4] request, is now actively depriving someone of the means of putting food in their families mouth. This is why it is mandatory there must be a post-seizure hearing "within days if not hours"[5] so that the person deprived of the means of putting food in their families mouth may contest and argue the States reasons for seizure and also contest and argue the States reason for continued seizure and thus continued deprivation of a livelihood. It is very interesting that much of what the State seized in conjunction with my case (all of Jackie's cameras with nothing but kid pictures, Jackie's bunny boots, satellite phones, headsets, GPS's, etc., etc., etc., were not evidence, were never used as evidence, and have never been returned. It is like the Troopers and the Department of Law, once they get a search warrant, get to have a free shopping spree. There must be a procedure, according to the due process clause[6]and numerous Supreme court holdings, in which a person can show the State prosecution is wrong in their actions before those actions severely harm a person's ability to put food in their families mouth. The method in which Alaska rule complies with these due process concerns is that the civil type hearing (all seizures of property and subsequent forfeiture in Alaska are governed by Civil Rules 64 and 89), which is ancillary [directly related] to the criminal proceeding,[7] must take place "within days, if not hours", and

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[4] *Ex parte*: On behalf of or involving only one party to a legal matter ... without notice to the other party.

[5] *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

[6] Is the principle that the government must respect all of a person's legal rights instead of just some or most of those legal rights when the government deprives a person of life, liberty, or property.

[7] *Civil Rule 64*. Seizure of Person or Property. "At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent

must allow the person being deprived to speak. This two-sided or non ex parte hearing must be conducted within seven (7) business days unless waived in writing. If no hearing is given or no document is signed during these seven (7) days, "voluntarily, knowingly, and intelligently waiving the constitutional right to a hearing"[8], or extending the ex parte time period, THE PROPERTY MUST BE RETURNED, regardless of any criminal evidentiary concerns. I was never notified of a hearing, I was never given a hearing, I never waived my right to a hearing and I never consented in writing to an extension of the *ex parte* seizure. My wife was never notified of a hearing, my wife was never given a hearing, my wife never waived her right to a hearing and my wife never consented in writing to an extension of the *ex parte* seizure. We were never given our property back. I WANT MY PROPERTY BACK. MY WIFE WANTS HER PROPERTY BACK. It has nothing to do with my criminal case or the subsequent appeal. It has everything to do with protecting everyone's right to provide for their family against Gestapo-like police tactics. Your property gets its very own trial, with all appropriate due process.

In addition, even if we were given the hearing the attachment of our property expired in 6 months "unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the writ was issued." No notice of readiness for trial was filed

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remedies, however designated and regardless of whether by law the remedy is ancillary to an action or must be obtained by an independent action."

[8] *Civil Rule 89(n):* Execution, Duration, and Vacation of Ex Parte Writs of Attachment. When the peace officer executes an ex parte writ of attachment, the peace officer shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order. No ex parte attachment shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the right to a pre-attachment hearing in accordance with subsection (m) (3) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte attachment, or the attachment is extended, after hearing, pursuant to section (e) of this rule. The defendant may at any time after service of the writ request an emergency hearing at which the defendant may refute the special need for the attachment and validity of the plaintiff's claim for relief in the main action. *Civil Rule 89(m)(3)*: Defendant's Waiver of Right to Pre-Attachment Hearing. The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and intelligently waiving the constitutional right to a hearing before prejudgment attachment of the property.

or judgment was entered against me within 6 months.[9] The State never even obtained a writ to seek forfeiture of property in my case – as by law they had to do.[10]

Judge Landry is mistakenly asserting, very likely intentionally, that Jackie and I waived these civil rights, or can falsely say we have had them addressed in my criminal case, so he can claim he, or any court, doesn't have to rule on the motion to give us our illegally taken property back or even to give us our constitutional right to an unconditioned opportunity for a hearing, which can only be waived in writing. In essence Judge Landry is saying that it doesn't matter that the State prosecution obtained the forfeiture illegally – he says all that matters, for him to deny Jackie or I a ruling, is that it was forfeited. This is unbelievable. The Alaska Supreme Court has ruled anyone has a right anytime to ask a court to conduct an immediate, emergency hearing if his or her property (even more so if used to provide a livelihood) is seized and held – no matter what else may be happening in the criminal case. I have found the significance of these issues in the seminal Alaskan Supreme Court case law established in *F/V American Eagle v. State*.[11]:

> "Strict construction against government. – As a general rule, forfeitures are disfavored by the law, and thus forfeiture statutes should be strictly construed against the government."
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> "Due process requirements. - The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice & an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent."

This is backed up by rulings by the U.S. Supreme Court, 9th Circuit U.S. Court, and further Alaska Supreme Court holdings:

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[9] *Civil Rule 89(p):* Duration and Vacation of Writs of Attachment Issued Pursuant to Hearing**.** A writ of attachment issued pursuant to a hearing provided for in section (c) of this rule shall unless sooner released or discharged, cease to be of any force or effect and the property attached shall be released from the operation of the writ at the expiration of six (6) months from the date of the issuance of the writ unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the writ was issued, in which case the writ shall continue in effect until released or vacated after judgment as provided in these rules.

[10] *Civil Rule 89(m)(4):* Ex Parte Attachments. The court may issue a writ of attachment in an ex parte proceeding based upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations: *The Government as Plaintiff.* The court may issue an ex parte writ of attachment when the motion for such writ is made by a government agency (state or federal), provided the government-plaintiff demonstrates that such ex parte writ is necessary to protect an important governmental or general public interest.

[11] *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

> "[A] judgment entered without notice or service is constitutionally infirm... Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.'"[12]

I would like to point out that I would have no doubt even prevailed upon the merits - and the obvious reason for the intentional deprivation of the hearing was the fact that all the search warrants were based upon intentionally misleading perjury, that this would have been exposed during a hearing, and that this would have ended any criminal prosecution.

Trooper Gibbens testified on the search warrant affidavits, under penalty of perjury, that the suspicious sites he investigated were in Unit 19C, and that our lodge, that we "use for guiding", was in 19C (leading everyone, including the judge issuing the search warrants, to believe it was a big game guiding violation and had nothing to do with the Wolf Control Program). In fact all the sites that Trooper Gibbens investigated were in Unit 19D, the unit which the Wolf Control Program was being conducted and where I have never hunted, guided, or ever been licensed to guide. Trooper Gibbens and Prosecutor Scot Leaders taped me telling them this during the interview I gave them for the Rule 11 Plea Agreement. Then, after Prosecutor Leaders broke the agreement and forced me to trial on big game guiding charges rather than some Wolf Control Program violation (a conviction of which could not affect our guide business), he asked for and accepted sworn testimony, from Trooper Gibbens in front of my judge and jury that sites he investigated were in GMU 19C. Then Judge Murphy uses this continued perjury to justify my unbelievably harsh sentence of taking our business away for 6 years and our business property forever, saying it was because, "the majority if not all the wolves were taken in 19C ... where you were hunting." Even more unbelievable is when I filed a complaint of this continuous perjury that harmed my family unbelievably, with the entire Trooper chain of command from the Governor on down; they had the Department of Law do the "investigation". Roger Rom and James Fayette, ruled: "to convict Trooper Gibbens of perjury, a jury would have to believe that you were truthful when you told him where you thought the kill sites were located." (Roger Rom is the one representing the State against me in my appeal and Trooper Gibbens is his main witness) After this response I tried for a long time to get anyone in

[12] *Coe v Armour Fertilizer Works*, 237 U.S. 413 (1915). *Peralta v Heights Medical Center, Inc.,* 485 U.S. 80 (1988).

authority to confirm my statements that were recorded by Trooper Gibbens and finally asked Lieutenant Steve Bear of the Soldotna detachment of the Alaska State Troopers to determine in which GMU all the GPS coordinates were located that Trooper Gibbens himself recorded. Lieutenant Bear subsequently received a memo from Trooper Gibbens himself that ALL the sites he investigated were in game management unit 19D. I would like to commend Lieutenant Bear for his help when no one else was willing.

If State prosecutors, to convict Trooper Gibbens of perjury, need to convince a jury that I believed I was truthful when I told Trooper Gibbens the sites were in Unit 19D don't you think that a memo from Trooper Gibbens himself, confirming this, and directly contradicting his sworn search warrant affidavits and his sworn testimony before my judge and jury, which led to a illegal conviction along with a draconian sentence, would suffice? Would anyone agree that the reason for the Rom and Fayette's reluctance to prosecute Trooper Gibbens for a Class B felony is this would not only make the Troopers and State prosecution look bad but my conviction and sentence would have to be reversed? Several people who witnessed these crimes even called the prosecution and they were never called back during this entire "investigation" by Rom and Fayette.

> *Lewis v. State*, 9 P.3d 1028. (Ak.,2000). "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made."
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> *Gustafson v. State*, 854 P.2d 751, (Ak.,1993). "Prosecutors and police officers applying for a warrant owe a duty of candor to the court; they may neither attempt to mislead the magistrate nor recklessly misrepresent facts material to the magistrate's decision to issue the warrant."
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> *Cruse v. State*, 584 P.2d 1141, (Ak.,1978). "Constitutional protection against warrantless invasions of privacy is endangered by concealment of relevant facts from district court issuing search warrant, as search warrants issue ex parte, & issuing court must rely upon trustworthiness of affidavit before it."
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> *State v. Davenport*, 510 P.2d 78, (Ak.,1973). "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful."
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> *State v. Faust*, 265 Neb. 845, 660 N.W.2d 844 (2003). "An error in admitting or excluding evidence in a criminal trial, whether of a constitutional magnitude or otherwise, is

> prejudicial unless it can be said that the error was harmless beyond a reasonable doubt."[13]
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> U.S. Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Only 'wip[ing] the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."
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> U.S. Supreme Court in *Sniadach v. Family Finance Corp*., 395 U.S. 337 (1969). "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged [defendant] before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court [U.S. Supreme Court]."
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> U.S. Supreme Court in *Wiren v Eide*, 542 F2d 757 (9th Cir. 1976)."Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief, either by vacating the default judgment, or by allowing a collateral suit."
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> Alaska Supreme Court in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972. "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing ... this prejudgment garnishment procedure violates the fundamental principles of due process."

In essence Judge Landry is suspiciously and very conveniently choosing to ignore the fact that when property, used to provide a livelihood, is seized in a criminal investigation, powerful civil rights in the form of due process activate to ensure that the very means to put food in a families mouth is not taken away and held for extended periods of time unnecessarily. The first and biggest guarantee is that an "unconditioned opportunity to contest the States reasons for seizure will be held within days if not hours."[14] To put teeth into observance of the procedure, which the prosecution would no doubt try to avoid, the State of Alaska has law, which states the property cannot be held if a hearing is not given within 7 business days of seizure or if the hearing is not waived in writing in that same time. It is very clear. It makes no difference if the person is guilty of the crime in which the property was used or was seized in conjunction with. Before the State deprives you of business property for more than seven (7) business days you get

[13] See also *McLaughlin v. State*, 818 P.2d 683, (Ak.,1991). *Stavenjord v. State*, 2003 WL1589519, (Ak.,2003). *U.S. v. Hunt*, 496 F.2d 888, C.A.5.Tex.,1974. *U.S. v. Markey*, 131 F.Supp.2d 316, D.Conn.,2001, *State v. Malkin*, 722 P.2d 943 (Ak. 1986), *People v. Reagan*, 235 N.W.2d 581, 587 (Mich. S.Ct. 1975), *U.S. v. Thomas,* 489 F.2d 664 (1973), and the Seminal U.S. Supreme Court case, *Mapp v. Ohio*, 367 U.S. 643 (1961) [held that all evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a State court].

[14] *Civil Rule 64.*

a hearing or the State must obtain a written waiver from you. If neither of these things happens you get your property back.

Please, for the sake of my family's future, read *Civil Rules 64 and 89,* which are the only rules and authorities in Alaska on attachment and forfeiture and then compare this with the case law established in F/V American Eagle, the sworn affidavits from my wife and I, and *Criminal Rule 37(c)*. Jackie and I have an irrefutable right by law to immediately have our property back. In addition, we still have an absolute right to an unconditioned emergency hearing in Kenai, Alaska.[15] We want it and need it now. If you want to see the size of the teeth these laws have, or to fully understand how important this case will no doubt become, please read my motion for summary judgment that was sent to Judge Landry already.

If I just wanted to challenge the single search warrant issued by Judge Landry, instead of the much bigger constitutional violation involving all of them, I believe I would have pointed out that "on evidence that has been corroborated" by the Alaska Judicial Council that Kenai District Court Judge David S. Landry is guilty of "inappropriate delegating judicial authority by handing out blank pre-signed orders to prosecutors."[16] I would then have pointed out that the search warrant issued by Judge Landry, except for the signature, appears to have been entirely filled out by Trooper Todd Mountain[17] - who has previously been found liable for other search warrant violations against Frank, Alex, and Zahary Martushev. I would have noted that in the section: "An affidavit having been sworn to before me by Trooper Todd Mountain" the words "before me" have been scratched out. Also, that no judge or magistrate was designated for return to be made to as required by *Rule 37(a)(3)(D*): "The search warrant shall designate the judge or the magistrate to whom it shall be returned". No judge or magistrate ever signed for the return. I believe this is clear evidence this search warrant is one of the blank pre-signed orders Judge Landry handed out to prosecutors. As such it isn't worth the paper it is written on. Where is the constitutional protection Judge Landry is supposed to provide against unreasonable search and seizures?

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[15] Criminal Rule 37(c) and Civil Rule 89(n).
[16] See *Anchorage Daily News: "Panel Comes Down Hard Against Judge"*
[17] See enclosed copy of search warrant.

Since, at the time Judge Landry issued this single search warrant in my case, he had yet to be declared guilty of issuing pre-signed orders to prosecutors, this search warrant has all the indications of such a pre-signed order, and it failed to meet the requirements of *Rule 37* I think I would definitely have addressed this if I just wanted to challenge the issuance of this single search warrant. I then would have added that the State prosecutor who deliberately, knowingly, and intelligently violated my rights to due process and many other constitutional rights during my case, Scot Leaders, now is one of the prosecutors in Kenai to whom Judge Landry likely issued blank pre-signed orders and granted access that other attorneys did not have – conveying "the impression that the prosecution was in a special position to influence the judge."

I have a constitutional right for Judge Landry to address the part of this that is even more blatantly illegal. That the primary means of how both my wife and I earn a livelihood was taken away with absolutely no input from us, when we both were guaranteed, by the most powerful laws in Alaska and the United States, to be given an "unconditioned opportunity" "within days, if not hours" for a hearing that, if not given, could only be waived in writing. If I did not get a hearing within 7 business days of seizure, and if I did not waive this hearing in writing within 7 business days, I get my property back. It is the same law for Jackie. Anyone, including the State, who denies or obstructs the return of our property, used to provide a livelihood for our family, after we did not get a hearing within 7 business days of seizure and did not waive the hearing during that same time, can and will be sued for damages. This is how the U.S. Supreme Court ruled is the proper way to force States to religiously observe and obey a person's constitutional rights. Judge Landry, by refusing to rule on my request, is obstructing our absolute right to the return of our property.

Rom has claimed, in his "opposition", that since my attorney made a tactical decision to not seek suppression of evidence (not property) before trial that waives my right to seek suppression of evidence – absent a claim of incompetence (which I claim and can prove), plain error (which I claim and can prove), or a showing of good cause (which I claim and can prove).[18] How can Rom possibly claim that my getting an attorney after the seven (7) business days since seizure "waives" my constitutional right to the mandatory hearing within those same seven (7)

days? In other words, if you get an attorney all of your constitutional rights go out the window? It's also interesting that when I asked Brent Cole (our first attorney), while he was sworn under oath in official Alaska Bar Association proceedings, he testified the prosecution never gave him notice or an "uncontested opportunity" to a hearing. I have yet to find the rule Rom refers to that if you at any time hire an attorney your right to a hearing in "days if not hours", contesting the prosecutions reason for seizing and holding your property, evaporates.

The issue that Judge Landry has refused to address, and which is his duty to address, is that we are entitled by law to have our property (separate from the issue of evidence) back because we have been intentionally, knowingly, and maliciously denied our absolute civil rights according to two (2) constitutions and established Alaska Supreme Court case law to the return of my and my wife's property which we used to use to put food in our 2 daughters mouths. Not only do we want our property back but we also request the constitutionally guaranteed unconditioned hearing which we are absolutely entitled to have. I would like to point out it is now October 11, 2006 or 923 days past the 7 business days in which I, and my wife Jackie, were constitutionally guaranteed a hearing, after seizure of our property, unless we waived it in writing. We have been illegally deprived of our property, used to provide a livelihood for our family, for 923 days or 2 years, 6 months, 10 days. The simple fact the State prosecution calls our property, used to put food in our kids' mouths, "evidence", makes absolutely no difference. Judge Murphy, who illegally forfeited our property under the guise it was "only evidence", had lost any and every jurisdiction to do so over 18 months earlier. The fact that the property was forfeited makes absolutely no difference. The U.S. Supreme Court is exceeding clear in this regard. In fact the U.S. Supreme Court holds that if a State is allowed to maintain possession of illegally obtained property it will only reinforce the false belief that constitutions, and the rights guaranteed by them, do not apply to the State prosecution. To live in Alaska will be no better or safer than to have been a Jew living in Nazi Germany.

I, and my wife Jackie, demand our property back or to have a certified copy of the forged waiver of the hearing to which we both were constitutionally guaranteed. We are guaranteed, by

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[18] See *Beltz v. State,* 895 P.2d 513.

established rule and case law, backed up by two constitutions, for this to happen immediately. This was to happen before we ever hired an attorney.

This is entirely separate from my criminal case or its subsequent appeal. This is, by law, to be filed and addressed in the 3rd district, regardless of whether any search warrants were issued from the 3rd district. The law says, "A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property..."[19] Much of our property, including our airplane, was seized in the 3rd judicial district and Judge Landry is a judge in this same district. My wife has every right to file for the same property to be returned – since she used and owned the same property that was seized to provide for her families livelihood. Judge Landry, by refusing to rule on any of my motions, is deliberately denying our absolute constitutional right to ask for the return of our property that Jackie and I used to put food in our daughters mouths. If he at least made a ruling against us we could then appeal it to the Alaska Court of Appeals. But if he makes no ruling we are essentially denied any normal remedy for the constitutional violations against us.

My wife, at this time, is working on filing a duplicate of the motion I filed – since she was as much a part of the same business that owned the property, that was used to provide a livelihood for our family, as I was. Will Judge Landry, to again avoid making a ruling, actually claim that her ability to the constitutional rights that protect her property, used to provide a livelihood for her family, cannot be asserted because her property was seized as "evidence" in my criminal case? Or will Judge Landry try to claim her property, that she owns and used to provide a livelihood for her family, is to be taken away without any input from, or a notice to, her as is guaranteed by constitution? I think everyone of you would be wise to carefully read my motion for summary judgment[20], filed with Judge Landry, before your response to Judge Landry's memorandum is sent. You should at the very least look at the case law established in these matters by the Supreme Courts of Alaska and the United States before responding to Judge

[19] Criminal Rule 37(c).

[20] *Summary Judgment*: A summary judgment is based upon a motion by one of the parties that contends that all necessary factual issues are settled or so one-sided they need not be tried.

Landry's request for you to "advise" him. It is with some interest I note that Judge Landry requests "advice" only from clerks and subordinate judges. Why doesn't Judge Landry ask direction from Judge Christen, his superior, and the presiding judge of the 3rd Judicial District, the judges of the Court of Appeals, or the justices of the Supreme Court of Alaska? It is interesting how prosecutors get blank pre-signed orders from Judge Landry and he will not even make rulings for me or grant clear constitutional guarantees for me when asked for in strict compliance with law. It is interesting that my first motion was never ruled on in a month it was sent to the 4th Judicial District to handle even though the law said it was to be handled in the 3rd Judicial District and my second, duplicate motion filed with a motion for expedited consideration, has not been ruled on for almost another 2 months. This does not comply with *Rule 42*: "All motions shall be ruled on promptly." (We sent motions to both districts as property was seized in both districts. But Judge Landry, to avoid ruling on the motion in his district, sent it to the 3rd district. Magistrate Woodmancy who received it from him stated he did not have to rule on it or the one that was sent directly to him because Judge Murphy had "forfeited" it.)

I will be filing a complaint with the Alaska State Troopers that my property, used to provide a livelihood for my family, including my airplane, has been stolen. I will ask a Trooper accompany me to retrieve my property. The district attorney who will likely look at my complaint will be Scot Leaders, who is the very prosecutor who has intentionally denied me and my wife our constitutional rights to due process in the first place. Not only was Prosecutor Leaders the one who never gave us a hearing, never gave us notice of an unconditioned opportunity for a hearing, even intentionally, knowingly and intelligently denied a hearing when asked, but also promised me a Rule 11 Plea Agreement if I gave him a 5-hour taped interview and Jackie & I gave up guiding for an entire year. After Jackie and I had given up this and even more (flying in witnesses from as far away as Illinois) for the same Rule 11 Plea Agreement Scot Leaders refused to honor it. This is another massive violation of our due process rights, otherwise known as your guarantee to fundamentally fair proceedings. To put the shoe on the other foot – how would the State like it if I promised them I would give up guiding forever, give them all my guiding property, including my lodge if they would give me all the evidence in my case. After they give me all the evidence I then "change my mind" yet keep and destroy all the

evidence. Is this fundamentally fair? Could I get away with it? No. What Scot Leaders did by conspiring with my attorneys to tell me this was legal and "how it is", is illegally strip us not only of our property in violation of due process, but illegally strip me and Jackie, by making promises not kept, of our due process right to even operate our business at all, even without the property that had already been taken illegally. They even used an edited and twisted version of my statements that were given for the Rule 11 Plea Agreement to crucify me in the media in direct and complete violation of my constitutional right against self-incrimination and Alaska Rule of Evidence 410, which specifically demands that no statements made during plea negotiations may be used against you for anything at all if the plea negotiation fails for any reason whatsoever. The edited and twisted statements were also used as the only basis for most of the charges filed which were never agreed to in the Rule 11 Plea negotiations – which again is a massive violation of Evidence Rule 410 and due process. It also made it impossible to get the fair trial I had a constitutional right to.

Even more unbelievable than this is what transpired for my sentencing. Prosecutor Scot Leaders, required by law to disclose anything that could mitigate my sentence, stated I broke the Rule 11 Plea Agreement by not going through with pleading guilty to the charges that he changed in violation of the Rule 11 Plea Agreement. Scot Leaders, in violation of the Rule 11 Plea Agreement, filed charges that could revoke my guide license forever and required a mandatory punishment not acceptable. He then accepted sworn testimony from Trooper Gibbens that "we don't know why David Haeg did not guide for a whole year." They said this after they had required Jackie and I had given up an entire years guiding, which is virtually everything we both make in a year, for the Rule 11 Plea Agreement they later broke. And they intentionally waited until after the year of guiding Jackie and I had given up was already past before breaking the Rule 11 Plea Agreement.

After sentencing my second attorney, Chuck Robinson, tells me he KNEW Brent Cole (my first attorney) was not going to appear in response to the subpoena and airline ticket I sent him (so he could explain to the judge the immense amount that I had done for the prosecution with nothing in return but broken promises), "because his testimony wasn't relevant to your guilt." I was unbelieving and furious when I told Robinson "I had already been found guilty – I

subpoenaed him to my sentencing and it [all that he had Jackie and I do for the prosecution before they broke the Rule 11 Plea Agreement] would have been relevant to my sentence and you know it." No arrest warrant for failing to appear in response to the subpoena was issued for Cole. I know realize that Cole's career is over if it is ever made public how he sold me out to the prosecution. Also interesting is how Cole perjured himself 17 times while under oath at official Alaska Bar Association proceedings while trying to explain his actions and then much of the "official record" of these proceedings comes up blank. (The perjury was proved by tapes I secretly made of Cole, while he was still our attorney, telling Jackie and I to do more and more for the prosecution with absolutely nothing to be gained or given in return)

It is unbelievable but I was sentenced without the judge ever knowing anything at all of what Jackie and I had already given up for the Rule 11 Plea Agreement that the State had broken. We had given up nearly $750,000 along with giving the State prosecution a five (5) hour interview. I had absolutely demanded this be brought out front and center at my sentencing but Robinson never even asked any of the 3 other witnesses I had flown in to describe all I had done for the Rule 11 Plea Agreement even though I had Jackie type up these questions for him to specifically ask. I didn't realize at the time this was happening because of the stress of being sentenced at midnight after being awake for nearly 24 hours straight. Robinson recommended to me at the time: "things are going so well you shouldn't testify." Before my sentencing Tony Zellers, my "accomplice", who prosecutor Leaders called "equally culpable", got a 6-month active guide license suspension and forfeited nothing because of "all the cooperation you gave the State". Tony later testified the only reason he cooperated is because I had already done so. I, who have a family, no criminal record, and depend almost entirely on guiding (Zellers doesn't have a family, has a DWI, and has income other than guiding), got a 6-year license revocation (which is not allowed by law and which means I will have to go through the entire apprenticeship to become a guide again). It seams pretty clear to me that the sellout of me by Brent Cole to prosecutor Leaders and the masterful cover-up of this by Chuck Robinson had just a little effect on me and my family – BY AT LEAST A FACTOR OF 10. And the really sick and twisted part of this is even Tony Zellers was convicted of guiding offenses, something he should

never have been convicted of had it not been for Trooper Gibbens perjury and prosecutor Leaders knowing acceptance and encouragement of it.

We are having our tenth annual fall party on Veterans Day, November 11, 2006, at our hanger/house and beach on Brown's Lake. This year I am also inviting everyone receiving this document, all my senators and representatives, both State and U.S., along with the public and media to the festivities. During this party it has been agreed the witnesses who have attended and testified at my trial, sentencing, formal Alaska Bar Association proceedings and numerous other legal hearings, explain the unbelievable actions of the State prosecution and judicial system in my case. It has also been agreed that we need to explain in detail how, after the State illegally forfeits hundreds of thousands of dollars of someone's property and illegally convicts them, the doors of the court houses are then barred against them so they cannot ever obtain justice. It has been agreed that it must be explained in exacting detail how the courts and judges, in order to help the State prosecution maintain an illegal conviction and illegal forfeiture, refuse to obey the law by refusing to rule on constitutionally guaranteed opportunities to protest and expose the injustice. It has been agreed that it must be made very clear that the way in which the State illegally took my and Jackie's business and property away can, and most definitely will, continue to be used against anyone and everyone. No one is safe unless these constitutional violations, used to put huge sums in the States pocket illegally, are exposed, stopped, and punished.

If, after we are through exhausting every possible State remedy to rectify the violations of our State and Federal constitutional rights, along with carefully documenting the people responsible, we still have not been afforded justice, the firm directing our efforts in this endeavor, Civil Action Group, Ltd., will file a lawsuit in Federal Court naming the State and those individuals responsible. We will then see what a jury, any of whom could be next, thinks of the State and Judicial actions in my case.

We are including a brochure of what the State has taken from our family so you may realize the stakes involved. This will explain why we have no option but to systematically and completely dismantle the corruption that has attacked our family's livelihood. This is virtually the only livelihood we have. Jackie and I have put everything we have made in life into this business. The people that have taken this away through perjury and denial of our constitutional

rights apparently have no idea of what we are prepared to do to ensure a livelihood for our family. Suffice it to say we have just begun.

In closing we suggest you consider your options wisely. Our advisors agree that if no writ, order, ruling or other suitable satisfaction is obtained beforehand, that on Friday, November 17, 2006 we will travel to Anchorage from Soldotna to effect recovery of our property. We will arrive at the Alaska State Troopers (5700 E. Tudor Road) at 1:00 p.m. After we obtain our property illegally held there we will travel to the Alaska State Trooper maintenance facility on Lake Hood (4827 Aircraft Drive) to effect possession of our airplane that is illegally being held there. Jackie and I have every intention of returning home with the property that is legally ours and which we use to provide a livelihood for our daughters, ages 5 and 8.

We respectfully ask the Alaska State Troopers, Alaska Department of Law, and/or the judicial officers needed to have all necessary legal paperwork ready. This is <u>again</u> a formal plea/motion/affidavit, which must immediately be ruled on according to constitution and rule, for our property to be returned. It is uncontestable that we are legally entitled to immediately have our property back. We formally request the Alaska State Troopers have our Piper PA-12 airplane, N4011M, ready and in the same <u>exact</u> condition as when it was seized; in annual inspection; prop, electronics, and headsets installed; and full of fuel and oil. We will be bringing wheels and tires from Soldotna, along with a licensed airframe and power plant mechanic, so there will be no need for the Troopers to reinstall the skis.

I hope to see all of you at our party, north side of Browns Lake, on Saturday, November 11, 2006 at 1:00 p.m. and later at the Alaska State Troopers, 5700 E. Tudor Road, on Friday, November 17, 2006 at 1:00 p.m. Jackie and I will be driving a maroon Ford truck under Alaska and U.S. flags.

Sincerely,

David & Jackie Haeg

P.O. Box 123
Soldotna, AK 99669

P.S. Please RSVP at 907-262-9249 or haeg@alaska.net for directions and approximate head count and please forward this to anyone interested in a party and/or preserving their constitutional rights to their property and to a fundamentally fair trial.

I, David S. Haeg, having personal knowledge of facts related to the above issue, swear under penalty of perjury the forgoing is true to the best of my knowledge and belief and I hereby certify that a copy of the foregoing was served on the above parties via email or first class mail on 10/13/06.

_____
David S. Haeg

I, Jackie Haeg, having personal knowledge of facts related to the above issue, swear under penalty of perjury the forgoing is true to the best of my knowledge and belief.

_____
Jackie Haeg

SUBSCRIBED AND SWORN on this _____ day of _____, 2006 in Browns Lake, Alaska. A notary public or other official empowered to administer oaths is unavailable & thus I am certifying this document in accordance with *AS 09.63.020* which authorizes that a matter required or authorized to be supported or proven by the sworn statement, oath, or affidavit, in writing of the person making it may be supported or proven by the person certifying in writing "under penalty of perjury" that the matter is true.

> "Our people may tolerate many mistakes of both intent and performance, but, with unerring instinct, they know that when any person is intentionally deprived of his constitutional rights those responsible have committed no ordinary offense. A crime of this nature, if subtly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism." J. Edgar Hoover, Director, Federal Bureau of Investigation.
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> "Unless a man is honest we have no right to keep him in public life, it matters not how brilliant his capacity, it hardly matters how great his power of doing good service on certain lines may be... No man who is corrupt, no man who condones corruption in others, can possibly do his duty by the community." - Theodore Roosevelt.
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> *U.S. v. Olmstead*, 277 U.S. 438 (1928). "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." - US Supreme Justice Louis D. Brandeis.
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> *U.S. v. Jannotti,* 673 F.2d 578, 614 (3d Cir. 1982). "There is no crueler tyranny than that which is exercised under cover of law, and with the colors of justice..."