

Statement of Additional Grounds
Marlow Todd Eggum
COA 66554-5-I

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Prologue

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Narrative Voice

[I] have written this SAG in a **third-person narrative voice** in order to allow the context of what is being conveyed to be more clear and comprehensible by the COA. This was done purposefully.

Appendices

With only 50 pages available, the appellant had to concentrate his efforts on the 3 counts which were run consecutively [1,4,6] which accounted for an absurd 20 years sentence [totaling 26 years] on “alleged crimes” that are low-level and nonviolent in nature. Much of the other counts [argument, facts] had to be addressed within an appendix due to this constraint. Much of the caselaw is contained within these appendices.

SAG Exhibits

Any SAG exhibit which is referred to within the SAG that doesn't exist as an exhibit is because on the 26th of September 2011 Commissioner Mary Neel denied the appellant's motion to order his trial attorney to send his legal documents to him so that they could be included within the SAG as exhibit.

This also accounts for any missing transcript pages, such as SAG exhibit-C being comprised of a single page from a transcript, although **any pertinent page** is included within the exhibit: just not the entirety of the transcript.

SAG -TABLE OF CONTENTS

Topic	Page
A. Brief Overview	1-4
B. Gravamen of Complaint	5-7
C. Historical Backdrop	8-13
D. Prior Convictions – 2004	14-17
E. Prior Convictions – 2005	18-21
F. Legality Issues – AVP Movie Sales	22-24
G. Count [1] IPS – Hallmark	25-34
H. Count [3] IPS – Richey	35-36
I. Count [4] Harassment – Richey	37-41
J. Count [6] Stalking – Gray	42-46
K. Count [5] Harassment – Gray	47-47
L. Motions in Limine Errors	48-50

SAG Exhibit List

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

- A. **Defense Attorney Alan “Chalfie’s Declaration”**
Names persons within the Conspiratorial Group of persons attempting to keep Eggum incarcerated as a means to prevent his business from continuing to sell sexually explicit movies of his ex-wife, which Mr. Eggum does lawfully.
- B. **Attorney Robert “Butler’s E-mail”**
“Take your movies go to Canada and sell them and make lots of money, just leave Janice alone,” IE, this isn’t Stalking and this isn’t Harassment, and this isn’t unlawful in any manner, because the prosecutor had agreed to it.
- C. **Attorney Robert “Butler’s Statements in Open Court”**
Transcript from 23 February 2005 where DPA Richey and Judge Uhrig acknowledge that the sale of movies isn’t Stalking and isn’t Harassment and isn’t unlawful in any manner.
- D. **Judge “Uhrig’s Paris Hilton Ruling”**
Uhrig rules that Hilton’s former boyfriend has every legal right to sell his sex movies and make lots of money, just as Mr. Eggum does.
- E. **Eggum’s “Forewarning to State”**
Mr. Eggum stating he’s going to mass-market Whatcom County with 15,000 free promotional movies in order to firmly establish his legal rights to his business, and to ensure his property isn’t illegally seized again. Look to the conflict of interest issues herein.
- F. **2005 Judgment & Sentence**
Shows a release address was not required in order for Eggum to release.
- G. **Susan Lay DOC Ruling Regarding Release Address**
Susan Lay determines Eggum was not required to submit an address in order to release, and determines that Hallmark had no statute authority to require the address condition for Eggum to release.
- H. **Judge Snyder’s Retained Property Ownership / Property Split**
Shows that all the imagery that Eggum possessed on this date was awarded to him, and that everything that Gray was given that day was her share of that property. Also shows that if Eggum ignores the injunctive order that Gray’s sole remedy is to sue Eggum, there are no criminal ramifications.
- I. **Judge Uhrig’s Invalid Injunctive Order Regarding Website**
Shows that Fasano approached Judge Uhrig ex parte to get Uhrig to toss her the property that had been seized for her [unlawfully] and that Uhrig had signed an injunctive order directing Eggum to shut down his website in Canada. This shows undoubtedly that Uhrig works in tandem with both Richey and Fasano, as a group effort.
- J. **“Paul Justiano” Divorce Court Document**
Shows that a Paul Justiano holds Mr. Eggum’s business hardware and movies, and that Paul Heaven was not the “Paul” that Eggum had referred to within his letters when he stated he was going to go by Paul’s House and get his tools and go pound some nails.
- K. **Permanent Imagery Restraint Order**
Shows that the property was spilt on that date and that Gray was awarded everything downstairs that was currently in the sheriff’s department, and also shows that Eggum is restrained from disseminating images on his business of Gray from Whatcom County or from Washington State, although this order is completely invalid in Canada, which is where Eggum’s business operates from.
- L. **Richey’s 02 April 2010 Interview**
Richey admits that the prosecution had agreed to return the movies to Mr. Eggum as part of the plea entered into on February 7th 2005 and that they had breached said deal. Interview also shows that Richey knowingly set Eggum up on the charges in the 2005 case.

- M. Judge Mura's Ruling**
Judge Mura rules that it would not be proper for Judge Uhrig to preside over Mr. Eggum's trial, and that if that were to be a possibility that he would grant the change of venue request before that occurred to ensure Eggum could receive a fair trial..
- N. Eggum's Letter to Richey**
Primarily shows that Richey has no business meddling in Eggum's business affairs and that this is the focus of Eggum's motivation; not influencing any official duty Richey performs. Also shows that Eggum offered to return a sex tape depicting the senior DPA's wife.
- O. Affidavit RE: Judicial Bias of the Whatcom County Bench [2005]**
Paragraph G-I: Shows Conspiratorial Group effort between Richey, Fasano and Uhrig [and Judge Snyder].
Paragraph J: Eggum requests a NCO to keep his ex-wife away from his jobsites.
- P. Pro Se Motion for Dismissal**
Shows that Mr. Eggum was informed by DOC that the reasoning behind the address denial was that Richey had called Hallmark and the two of them did not want Eggum's business restarting. Not official duties that either of these Public Servants has.
- Q. Whatcom County Prosecutor's Response to Lawsuit**
Letter from 2008 acknowledging that Eggum had retained Hester Law Group to sue Richey, Fasano, Hallmark, Judge Uhrig and others in regard to their actions against Mr. Eggum, and shows a conflict of interest that each of these named codefendants has in charging Mr. Eggum and then not recusing themselves from the current case.
- R. Motion RE: LFOs, Statute of Limitations on Civil Lawsuit**
Uhrig acknowledges that Mr. Eggum is going to lawfully sex his sex movies of Gray to pay for the LFOs that he entered.
- S. False Allegation about DVD Movie Jackets Found**
Richey alleges that an empty DVD protective movie jacket was found and that nobody other than Eggum would have this imagery and this when Mr. Eggum has been selling these movies for over 10 years.
- T. Supplemental Brief "No Address required"**
CCO Denzer and CUS Cossette acknowledging that Eggum isn't required to submit an address in order to release on his release date.
- U. Subin's Summary Notes from Search Warrant Request**
Shows Richey perjuring himself to Uhrig to obtain an otherwise unobtainable search warrant, and shows Uhrig complicit in that because he doesn't ask Richey a single question that any reasonable person would have asked. This was because of prior ex parte communication between the parties, in chambers.
- V. Gemini Angel Motion for Return of Property**
Shows Uhrig's refusal to return Eggum's property and shows Richey had perjured himself on the stand when he stated he couldn't remember which judge had granted the unlawful search & seizure warrant, because Uhrig and Richey attended this hearing, just months before not remembering. [Short memories].
- W. Transcript November 2nd 2009 & December 8th 2009**
Judge Uhrig acknowledges that Mr. Eggum is a lawful pornographer.
- X. Motion For Evidentiary Hearing Regarding Unlawful Seizure**
Filed on February 2010 and shows that Richey and Uhrig knew that Richey had not forgotten who he had requested the unlawful search & seizure warrant from.

Appendices List

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-I

1. **Abuse of Authority Doctrine**
Addresses Public Servants using the power of their office and acting outside the scope of their authority in the furtherance of an unlawful or personal objective, and thus losing their statuses as Public Servants. Applies to probation officer, prosecutors, and judges.
2. **Count [3] IPS, Richey**
Continuation from main body of SAG.
3. **Conspiratorial Group of Persons**
Addresses the persons cited within SAG-A, and the “how and why” they exist, and their purpose.
4. **Legality of Website**
While the legality of Mr. Eggum’s website remains in Canada, some of their caselaw mirrors that of the United States, and there is important caselaw within this appendix which will show that Mr. Eggum can operate his website from Canada, or anywhere else he wishes, with arguably the exception of Washington State [and that’s arguable].
5. **Tenor of Letters**
Shows that Mr. Eggum’s intent when writing his mother was to get her intervention.
6. **Conspiracy Definitions / Joining a Conspiracy**
Shows that the persons listed within SAG-A have an unlawful purpose and that Judge Uhrig can join that Conspiracy without actually sitting down at a meeting and agreeing to join that conspiracy. He may join a conspiracy simply by knowing what the others are doing, their goals, and trying to assist them in that unlawful direction.
7. **Illegal Search & Seizure of Property**
Addresses DPA Richey and Fasano used the power of their office [prosecutors office] and coordinated their efforts with Judge Uhrig to seize property that it was not authorized to seize and then toss it from one court to the next in an effort to deprive Mr. Eggum the return of his property, and thus try denying Mr. Eggum the ability to operate his lawful business.
8. **42 U.S.C. § 1983**
While this refers to civil liability, it also addresses whether or not a Public Servant loses their status when doing unlawful acts.
9. **Count [5] Harassment Death Threat, Gray**
Continuation from main body of SAG.
10. **Assignment of Errors**
Shows errors made under the various counts, as there was not room within the SAG itself.
11. **First Amendment Freedom of Speech Violations**
Mr. Eggum was convicted primarily because the jury was tainted by hearing some of Mr. Eggum’s political beliefs which are protected under the First Amendment.
12. **Sentencing Issues [SRA guidelines]**
Shows how the SRA guidelines should have been calculated for a sentence of less than a year as opposed to 20 years.
13. **Timeline for IPS [1]**
Shows sequence of events for count [1] from the very beginning, if there is any confusion.
14. **Timeline of Events**
Shows sequence of events from the very beginning, if there is any confusion.
15. **Motions in Limine 404(b) Errors**
Continued from main body of the SAG.

BRIEF OVERVIEW OF CASE

It is the appellant's position that not only is he **not guilty** of any of the crimes being alleged, but more to the point that **no crime exists** here, and that these allegations being made are part of a **concerted effort between the parties**¹ to "keep Mr. Eggum incarcerated for as long as possible [**as a means**] to prevent him from resuming the helm of his [**lawful**] adult entertainment business" which they **morally disagree** with Mr. Eggum operating. This was about to occur in **June of 2009** when Mr. Eggum was scheduled to release from McNeil Island, and all these 2009 charges within this case "**arise out of**" that scheduled release; because Mr. Eggum was about to resume the helm of his business and the **concerted group of persons**¹ had to **prevent or delay** that from occurring. These charges accomplish that. This point **cannot be emphasized** enough.

Please note the **unlawful nature of this objective**: You cannot take away a person's freedom because they do something you **morally disagree** with [42 U.S.C. § 1983 at Appendix-8]. If this were true - as asserted - this is **not an official duty** that any of those named state employees has, and any time a state employee **misuses the power** of their office in the **furtherance** of that of that unlawful goal they are **cloaking their actions** "**under color of law**" in the furtherance of an unlawful objective. As such, their unlawful actions are **no longer deemed official duties** being performed by Public Servants and they **lose their protective status** as Public Servants because they are **pursuing purely personal motives / biases** [caselaw at Appendix-1] and **acting outside the scope of their lawful authority**. The question arises: Are these **individuals**¹ now acting as a group to incarcerate Mr. Eggum [**as a means**] to prevent him from doing **something they morally disagree** with? [As cited within SAG exhibit-A].

¹ Please note that **Richey, Hallmark**, and Eggum's ex-wife Janice **Gray** are all alleged victims within this current 2009 case – now claiming to be victims – and Judge **Uhrig** (et al) has been named part of that **conspiratorial group of persons** whose aim is to prevent Mr. Eggum from operating his business through incarceration; which is in fact an unlawful act in itself.

Looking within the 2009 trial record at the defendant's Motion to Reconsider Recusal of Judge Uhrig (entry #115, filed as exhibit-E therein) and included here for your convenience as SAG exhibit-A, page 12, paragraph 4, prior defense attorney Alan Chalfie submitted a sworn declaration to the court in 2006 which stated the following:

“Mr. **Richey** was in regular contact with Eggum's ex-wife Janice **Gray**; her divorce attorney Lisa Fasano; and Eggum's DOC probation officer Melissa **Hallmark**; in their united efforts to put the defendant back into custody [as a means] to prohibit him from continuing to sell sexually explicit pictures of Janice Gray; which they morally disagreed with.”

At this juncture the appellant has **inarguably** shown the court of appeals (COA) that both Eric **Richey** and Melissa **Hallmark** and Janice **Gray** are part of a collaborative group of persons whose primary [unlawful] purpose is to keep the defendant incarcerated [as a means] to prevent him from doing something that he does **lawfully**; and which they all **morally disagree** with. Please take special; notice that all those persons named within that conspiratorial group now claim to be victims within this case, so one has to **question the validity** of their claims and whether or not their actions and words now are in the furtherance of that unlawful objective.

With that said, please note that **Hallmark** now claims to be a victim under count [1], and that Intimidating a Public Servant (IPS) count arises out of a “**misuse of power** possessed by virtue of state law and made possible only because the **wrongdoer** was clothed with the authority of state law; and that **cloaked action** which was taken ‘**under color of**’ state law was an unlawful act because Hallmark never had the lawful **statute authority** to deprive Mr. Eggum his freedom [as a means] to prevent him from doing something [lawfully] that she **morally disagrees** with it.

Since this IPS charge accounts for 10-years of an absurd 20-year sentence, one has to pay very special attention to what transpired within this count [1]. Is **Richey** and **Hallmark** charging this IPS charge and asking for an absurd 20-year sentence a **means of achieving** their unlawful objective of keeping Mr. Eggum from resuming the helm of his lawful Canadian business for the next 20-years? This issue will be addressed in deeper detail under count [1].

Prosecutor Eric **Richey** now claims to be a victim under counts [3] & [4] with the count [4] sentence accounting for an additional 5-year sentence being added consecutively to Hallmark's IPS sentence of 10-years (now totaling 15 years) and Mr. Eggum contends that nowhere within any of his **private writings** to his mother was there any death threat to Richey. It should be noted that the **letters** in question were **never sent to Richey**, they were sent to his mother, and the intercepted letters do not contain any death threats. Although Richey **tried to misconstrue** the meaning of what Eggum said to his mother as a death threat in order to **prevent** Mr. Eggum from getting out of prison and returning to Canada and resuming the helm of his business. The obvious question arises: Is this allegation being charged [as a means] to prohibit Mr. Eggum from resuming the helm of his **lawful** business which Richey **morally disagrees** with? Is this charge part of that **conspiratorial effort** mentioned earlier in SAG exhibit-A? This issue will be addressed in deeper detail under count [4].

Under counts [5] & [6] prosecutor Eric **Richey** now claims that Eggum's ex-wife Janice **Gray** was the victim of a Death Threat and Stalking for two years from 2007 until ²⁰⁰⁹2009 while Mr. Eggum was in prison serving an **unlawful prison sentence** ².

² At trial in 2010 **Richey** admitted under oath [RP 336-40] that he was responsible for instructing Mr. Eggum's ex-wife to repeatedly walk by Mr. Eggum's **jobsites** and purposefully have unlawful contact so that Richey could then charge Mr. Eggum with those unlawful contacts that he had **induced**. That is a criminal act and Mr. Eggum was never guilty of that alleged crime just as he had maintained during 2 years of unlawful incarceration. Was this set-up part of that conspiratorial effort to keep Eggum incarcerated so he could not continue to sell his movies?

This is a very *odd complaint* to have charged and the COA should take *special notice* that **it wasn't Janice Gray** who had *initiated* the complaint that she had been the victim of *Stalking* and/or *Death Threats*, because it would have been *utterly impossible* for Mr. Eggum to have stalked anyone (in the *normal surveillance sense* of the word), because Mr. Eggum was incarcerated during this time period. And **Gray** did not become aware of anything Mr. Eggum had *privately written* [to his mother] until after the intercepted letters were shown to her in April of 2009, just 2 months prior to Eggum's release [RP 221]. And Janice Gray only now admits to *regretting having turned down* the *proffered movie rights* [RP 217] that Mr. Eggum continues to sell -*which she now complains of*- and therefore it makes *more sense* that Gray's true concern is Mr. Eggum being released from prison and *resuming the helm* of his Canadian business which [**legally sells**] these movies she no longer wants sold [RP 251]. Therefore it follows that *these charges were brought forth* [as a means] of to prevent that from occurring, because the prosecutor's office realized that they had "no jurisdictional authority" in Canada [RP 368] and therefore Mr. Eggum's *business was about to go gangbuster*^{2b} in Whatcom County upon his release in June of 2009 - *because of their meddling* - and as such they charged anything that they could think of. Please also note: These counts [5&6] were not charged until well after the fact arrest, even though they were known about for 2 years as they were being forwarded to the PA's office from 2007-2009. These issues will be addressed in deeper detail under counts 5 & 6 because the appellant maintains that there was no Stalking of Gray, and that the *sale* of these *movies cannot be used as the requisite threat* required in order to charge a criminal complaint because the *selling of these movies* is what Mr. Eggum *does for a living*, and *lawfully* so.

^{2b} SAG-E [Forewarning to State] shows Eggum was about to start a **promotional campaign** releasing 10,000 **free promotional movies** into the marketplace because of the prosecutors **meddling** in his business affairs without lawful authority.

GRAVAMEN OF COMPLAINT

Within the AAG's **State's Trial Brief & Motions in Limine** and at [PT-RP 122, 132]^{3a} the AAG states that "...what we are here to decide and what the **jury is here to decide** is did the defendant **threaten to distribute these films "in such a way"** as to intimidate two public servants and harass Ms. Eggum [sic]." And this was the **basis** for the 3 felony counts and the **underlying motivation** behind all the charges. This is a **very odd manner** in which to make such a statement, because in actuality the AAG is charging Mr. Eggum with doing something that he does **lawfully** for a living— that Richey & the AAG **morally disagree** with it – and his **wordiness** amounts to nothing less than **deceitful sophistry** attempting to circumvent the issue at hand: You **cannot criminalize a lawful act because of moral biases** you hold against it.

Does the AAG acknowledge that Mr. Eggum is a **business entrepreneur** that runs a **lawful** adult entertainment business which [in-part] **sells movies of his ex-wife?** Looking at the AAG's Trial Brief and Motions in Limine, page 1, line 20, the AAG states "the defendant considers himself a **pornography entrepreneur**." At no time did the AAG **attack the legitimacy** of the Canadian website that sells these movies. In fact, within the AAG's Order Denying Defendant's Motions for Recusal of Judge, page 2, paragraph 2, he states "the '**legality**' of the defendant's operation of a pornographic website containing pornographic depictions of his ex-wife and/or **commercial sales** of pornographic movies of the defendant's ex-wife is **not an issue the jury will be called upon to decide**^{3a} in this case." But that statement is diametrically opposed to what he is doing, because he is charging the defendant with Stalking and two counts of IPS because of the sale of these movies.

^{3a} The 14 October 2010 pre-trial hearing is denoted at PT-RP, with there being 4 additional trial volumes denoted at RP because these pages are printed numerically, with the exception of the PT-RP below.

^{3b} At PT-RP (Nov 02, 2009) 16, Uhrig and the AAG acknowledge that Mr. Eggum **runs a lawful business**. Therefore, if a state employee **steps outside the scope of their statute authority** and attempts to delay that lawful business from restarting due to **biases**, then Mr. Eggum enjoys the right to give away promotional movies in response to that **bias**, and that's not a threat to any official duty either of those persons has.

At PT-RP 132 defense counsel Subin states “the *dissemination of videos* cannot be the *basis* for a count of intimidating a public servant, those *require a true threat*.” And while that is true, Mr. Eggum would also argue that the *dissemination of these videos* cannot be used within the *definition of threat* as defined by RCW 9A.04.110 primarily because this is what he *does* for a *living*. The state would need to *criminalize the act* of selling these types of movies before the state could charge it as a *requisite component* within an “*alleged*” criminal act. In any event, the members of the jury needed additional jury instruction that included language to the effect of: Mr. Eggum runs an *adult entertainment business* which sells these movies *lawfully* [which the PA & AAG *morally disagrees* with] and his *dissemination of promotional movies* or the selling of these swinger movies *cannot be used as a threat* as defined under RCW 9A.04.110 because the *continued sale of these movies is not unlawful*.

But at PT-RP 135 the AAG argues otherwise, stating, “the definition of threat, both in the RCW and WPIC 2.24 includes “*to expose a secret*”, whether true or false, subjecting a person to *hatred* or *contempt* or *ridicule*, that’s one way, or another way [to say it] is to reveal any information sought to be concealed by the person threatened.”

The appellant *disagrees* with that interpretation of the definition because in this particular instance the COA will learn that these movies have been lawfully marketed and sold since 1995 and that Mr. Eggum’s (then) wife *consented to the sale of those movies*, because at PT-RP 133 Subin states “then I would have no reason to show a *portion of video* where she is *holding* up a [published] *pornography magazine advertising the movies for sale on the video*”. And at PT-RP 124 Subin further states “the truth is the *videos will show* that they made these videos with every intention of sharing them, *selling* them, *trading* them, and they *operated a business selling these films* on the Internet”.

The AAG **relies** upon the **definition of threat** to include to **“expose a secret”** about another, inferring Mr. Eggum is threatening to **“embarrass Gray”** by **exposing a secret** about Gray, but Gray is a **pornography actress** and you cannot expose a secret about an actress if it relates to **the** sale of pornography movies she formerly consented to selling, and the AAG has stipulated to **the legality of the business** because he stated within his Motions in Limine [pg 1] that the defendant considered himself a **pornography entrepreneur**, and the AAG failed to **attack the legitimacy** of that business. “You cannot expose a secret about something which has already been made public.” [**Anderson*** v. Penthouse, LEXIS 23893 (1997)]. Additional caselaw cited at [**Appendix- 4**].

Within this convoluted case the COA will learn that Mr. Eggum operated his AVP website business from Canada [not Whatcom County] and the **Canadian government ruled** [RP 275] that the sales of Mr. Eggum’s movies did not violate Judge **Uhrig’s Injunction Order** which was signed 04 ^{Ward} ~~May~~ 2005 [**SAG exhibit-I**], because Canada had ruled that Whatcom County had **“no jurisdictional authority”** in Canada, and the State Supreme Court had concurred with that **“jurisdictional issue”** regarding the **invalidity of the Injunctive Order**. [Conflict of Interest].

This is a **brief summary** of the state’s **gravamen complaint**, but it is easy to see that the COA has to **closely scrutinize the historical background** between the **parties**¹ **named** herein to see how these movies play such a vital role in these charges, and scrutinize the role that each of these “players” has within the allegations. The AAG states that Eggum threatening to continue to sell these movies **constitutes harassment** as a **subcomponent to Stalking** under the **definition of threat**, chiefly because Gray **now regrets** [RP 217] having **agreed to deny** the **proffered movie marketing rights**. That’s not Stalking, not Harassment, nor a Threat. The state cannot imprison Mr. Eggum because it finds his Canadian website **morally objectionable**.

* Anderson differs from Eggum because Pamela Anderson’s movie was stolen from her house and not made for the express purpose of selling, while Eggum’s was made for this purpose: Anderson only cited for the ruling “you cannot expose a secret about something already made public”.

HISTORICAL BACKDROP

Since the **sale of these movies** is the *gravamen* of the AAG's complaint, whereas the AAG used the **sale of these movies** as the **basis of 3 of his felony counts** which total 20 years of confinement for Mr. Eggum, the COA must closely **scrutinize the historical background** of this case and everything leading up to the events of June 2009.

The appellant and his wife were married in 1992 and remained married until 2001, at which time they separated. During this period of time from 1995 through 2001 they made extramarital **sex movies** commonly known as **swinger movies**, whereas Mr. Eggum **filmed his wife** having **sexual relations** with other men. Those movies were then marketed, traded and sold on the **Internet and through numerous adult entertainment magazines** over that 7-year period [PT-RP 124-25] and Mr. Eggum's wife was consensual to those activities [PT-RP 133].

During this time Mr. Eggum's (then) wife **signed numerous contractual agreements** with Mr. Eggum [and with **various publishers**] in which she **agreed to market these movies** that **depicted her swinging** through a business (then) known as **VLJ Productions** and now known as **TMEAVP** [Todd Marlow Eggum's Amateur Video Productions] hereafter **truncated to AVP**.

When the parties separated Gray hired Lisa **Fasano** to represent her in the divorce. Ms. Fasano is **now married**^{*} to the **senior DPA** in Whatcom County [Craig Chambers], and that **marital relationship** allows her direct access to the powers of the state, more so than what other attorneys might enjoy. Since this SAG deals with the "Abuse of Powers" as cited at [Appendix-1] the COA needs to scrutinize how Fasano is able to **manipulate the power** of the prosecutor's office to her advantage, **albeit unlawfully**.

* That marriage was the result of **newlywed** Mrs. Fasano-Levitt **sexually bribing** DPA Chambers to obtain an **illegal seizure warrant** to get the movies previously declined. Mrs. Fasano-Levitt was got pregnant from that **illicit liaison** and Dr. Levitt then divorced her, with DPA Chambers later marrying her. Within this brief [RP 329, 332] you will learn that Richey agreed to illegally-seize those movies and toss them to Fasano.

Upon separation Fasano **advised** Gray to employ a no-contact order (NCO) in order to **gain** full custody of the parties' daughter, a common [unethical] tactic used by divorce attorneys. Gray raised a concern in doing this [NCO] because she needed to speak with her estranged husband because Mr. Eggum held **contractual agreements** which allowed him to continue operating his **adult entertainment business** [AVP] which sold movies that depicted her having sexual relations with other men, and she [probably] preferred **starting life anew** without those extramarital movies being actively marketed. [Kind of an important thing to get back if you plan on going down the road and starting life over?].

Gray complained that she needed to speak with her estranged husband to get Mr. Eggum to agree to **discontinue selling those movies** on AVP once the parties divorce was finalized, but attorney Fasano **advised** Gray that she did not have to worry about having to speak [NCO] with her husband about this issue because Fasano advised Gray that it would be illegal for Mr. Eggum to continue selling these movies once the divorce was finalized. [This is faulty legal advice].

Based off that [faulty legal] advice Gray willingly gave up her **opportunity to speak** with Mr. Eggum [in order to gain full custody (NCO)] and have those movies taken off the market, and those movies remained on the market being sold throughout the 2 year [plus] separation.

It is extremely important to note that during this 2 year [plus] period Mr. Eggum **offered his** (then) wife the "**movies and the proprietary marketing rights**" to those movies numerous times, and **all those offers were repeatedly denied** by Gray and Fasano [RP 218] with them incorrectly thinking that Mr. Eggum couldn't continue to sell the movies. Additionally: it should be noted that Mr. Eggum openly advised attorney Fasano that she was **incorrect** as to her beliefs about the **legality** of Mr. Eggum not being able to continue marketing the movies on AVP. So this **wasn't a concealed act** by Mr. Eggum pulling a fast one over on Gray or Fasano.

Mr. Eggum cited **Paris Hilton's sex movie** which was then currently in the news whereas Paris **Hilton's former boyfriend** sold his sex movie of them against her wishes; with Eggum also citing **Pamela Lee Anderson's** sex movie; and citing Olympic ice-skater **Tonya Harding's** honeymoon night sex movie that her ex-husband continues to sell even though they are now divorced. These cases will be examined more closely within this SAG and at **appendix-4**.

On July 8th 2003 a **divorce settlement conference** was scheduled and Mr. Eggum had sent his **proposed** settlement papers to Fasano 9 days earlier as **required** by Court Rule. Fasano violated CR when she attempted to deliver her **proposed settlement papers** at the conference [sight unseen]. Mr. Eggum did not want to proceed until after he had the opportunity to read **the** proposed papers to ensure there was nothing hidden within them [which there was]. Court Commissioner Martha Gross coerced Mr. Eggum into proceeding with the hearing one page at a time, rather than giving Mr. Eggum the 9 days to review the papers as required by CR.

During the settlement conference Mr. Eggum **offered** Gray [with Fasano at her side] the **"movies and the proprietary marketing rights"** to those movies one last time, and after Gray and Fasano conferred that **final offer was rejected** in front of the Commissioner. Please note that these **repeated offers and their subsequent denials** were recorded by Mr. Eggum by filing them under the divorce record [02-3-00216-1] just two weeks prior to the settlement conference. **These repeated offers / denials** are acknowledged by Gray at RP 218.

Two years prior [2-19-02] to the settlement conference Mr. Eggum had purchased the marital home and **underlying mortgage**, and Gray was **paid in full** and removed from the deed. Fasano had slipped a **proposed order** into the paperwork that required Mr. Eggum to refinance the home within a year or it would be **ordered sold** and the **net proceeds given to her client**, even though her client had already received her equity [and the mortgage had been purchased by Eggum].

Under the proposed order; if Eggum *did not refinance* his home within a year it would be sold and *Mr. Eggum's equity* would be given to Gray [as a punishment?]. This turned out to be a *considerable* amount [\$280,000-\$79,000=**\$201,000 equity**]. Mr. Eggum complained about the proposed order, because he had *purchased the underlying mortgage* when he had made the purchase of the home -and *could not refinance* it - and therefore this order would cause him to lose his home and equity [if signed]. Mr. Eggum warned the Commissioner [and Fasano & Gray] that if this order were ever exercised that he would *recoup any loss through movie sales*. The order was *entered* against Mr. Eggum's wishes with this *understanding in place*.

The important aspect to remember at this juncture is that the *marketing rights* to those movies were *repeatedly offered* to Gray and she *declined those offers repeatedly*. Because if Gray *consented to the marketing* of those movies and now complains that her privacy is being invaded, then she is a *complainant to something that she consented to* – the *consent to deny the marketing rights* – because she had the opportunity to remove them from the marketplace. Two months after the divorce was finalized [9-10-2003] Gray and Fasano learned that Mr. Eggum had been *correct in his assertion* that he could *continue to legally sell* those movies, *contrary to the faulty legal advice* Fasano had given. This occurred at the Lynden Municipal Court hearing. The COA needs to refer to [SAG exhibit-B] which shows Mr. Eggum *received an email* from his defense attorney [Robert Butler] that stated:

“Here is the deal. It's too good to pass up. You get to close out all your pending court matters, **go and sell your movies and make lots of money**, just do not contact Janice and you will do fine. I assume we can make this **Alford plea** because it is too good to pass up.” [SAG-B]

Upon learning this, it is *reasonable to assume* that Gray *probably regretted* having been *foolish enough* to have *turned down the proprietary marketing rights* to those movies. At RP 216-17 Gray *admits regretting that decision* and stated how she now wanted those movies back.

At RP 217 Gray admits that Fasano informed her that she would help get the movies back; movies that she had previously denied, and a reasonable person might assume this was to correct her blunder. Since Fasano has **access to the power** of the prosecutor's office [being married to the senior prosecutor] and is **able to abuse the power** of the state, this is an important factor to realize within this case as Fasano [thru Richey] will do exactly that. [Admittedly]

At RP 206-07 Gray states that she [and Fasano] spoke with Richey about having Richey get those movies back. At RP 218 Subin asks Gray did anyone ever promise you they could get those movies back for you, and Gray answers: "Nobody said **'for sure'** that they could get them back." But a **problem exists** because at RP 332 Richey **openly admits** that he doesn't have the **statute authority** to seize those movies, primarily because **no crime**⁴ is being committed by Mr. Eggum continuing to sell them. But he seizes them anyway simply through the power of being a prosecutor. The question arises: Did Richey [and Fasano] promise Gray that they'd **attempt to seize** those movies, **illegally**? How is Richey going to get a warrant to search for and seize these movies [for Fasano] if he **doesn't have the statute authority** to do so? Is he willing to violate the **4th Amendment Protections** against unreasonable search & seizure? Use the power of his office "**under color of law**" to do something unlawful? This is exactly what he admits to. This is a big factor within this case because the Hallmark IPS count [1] centers on that same fact, based off that same **underlying ulterior motive**. The illegal seizure is made through Richey asking **Uhrig** to grant him a search & seizure warrant. The request is blatantly fraudulent.

⁴ Mr. Eggum continuing to sell his movies on his adult entertainment website is **legal** and therefore **no crime** is being committed. It certainly is not Stalking, because it was established at SAG exhibit-B that the prosecutor had agreed to Eggum going **up the road to sell his movies and make lots of money**. Therefore selling the movies is not harassment, nor stalking, nor a component of IPS.

Please note: **Uhrig** is the **presiding judge** in this matter and also a **primary participant** in the **Conspiratorial Group Effort** to incarcerate Mr. Eggum [as a means] to prevent him from continuing to operate his **lawful business** shown at **SAG-A [id. at 1]**. At RP 332 Richey **admits** to **not having statute authority to seize** the property that Fasano wanted seized, and **admits** to trying to **toss it** to Fasano, softening it as “let the civil side handle it,” and that **cannot occur** **without a judge’s complicity** in that Conspiracy. Is there a Conspiracy between the parties¹ towards that end? Subin questions Richey about the **unlawful nature** of the seizure at RP 318–19 because the warrant authorized him to seize far more than just protective video jackets: “Do you remember **appearing before Judge Uhrig** with Detective Ray Oaks to request that warrant?” Richey deceitfully replied: “I **do not remember which judge** I went before.” This is an amazing answer. Just a couple months earlier **Richey appeared before Uhrig [with Eggum]** discussing the illegal nature of the seizures that Richey had made with Uhrig’s assistance. [See **Illegal Seizure Motion** at **SAG-R** filed in May 2010, pgs 4-7, & **SAG-E, Forewarning to State**]. Would both **Richey & Uhrig** have you believe they both forget what transpired weeks earlier?

To Summarize, it has been established that:

1. Eggum filmed his (then) wife having **extramarital sex** and **sold** those swinger movies with Gray’s consent.
2. Eggum **repeatedly offered** those movies and their **associated marketing rights** to Gray & Fasano.
3. Fasano had given **faulty legal advice**, and Gray **repeatedly denied** those offers based off that advice.
4. Gray **now regrets** consenting to the **denial of the proffered marketing rights**, but only after learning **Mr. Eggum** could in fact continue to **legally sell** those movies.
5. Richey agreed to attempt to seize those movies through an illegal seizure to remedy Fasano’s error.
6. Richey admits he had **no statute authority to seize** the movies or to **retain possession** thereof.
7. Richey admits to **trying to toss** the illegally-seized property to Fasano [and Gray].
8. Richey **deceitfully lied** about not knowing Judge **Uhrig** was the judge who had granted the illegal seizure warrant, because it was Judge **Uhrig** who subsequently **tossed it to the civil side** [March 4 & 18, 2005].
9. Was the **perjury committed** so Uhrig would not have to **recuse himself** for conflicted involvement?
10. The **Conspiratorial Group** effort to incarcerate Eggum [as a means] to keep the movies off the market was **born out of their necessity** to correct the error they had made to Gray. [SAG-A].

PRIOR CONVICTIONS

At this juncture the appellant is going to give the COA the **historical background** on the appellant's **prior convictions** (currently before the COA at PRP 67183-9-I and PRP 67185-5-I respectively) because these **faulty convictions** were used [**as a means**] to convict Mr. Eggum during the trial when the AAG [in-essence] stated to the jury, "...if Mr. Eggum was guilty of **Stalking & Harassment** then, he must be guilty now, because he hasn't stopped." That's improper argument. Those **faulty convictions were used** to (1) obtain a conviction through that **improper closing argument**, and (2) to **enhance** the sentence to an **absurd level**. Those two prior convictions are **faulty** and **no crime exists** there [as will be shown].

2004 STALKING CONVICTION / RENEGED PLEA

We discussed [id. 11] the Lynden Municipal Stalking case whereas Eggum was emailed the offer "**go and sell your movies and make lots of money**, just leave Janice alone and you will do fine." Upon realizing that Mr. Eggum could in fact [legally] continue to sell these movies **contrary to their legal advice**, Fasano approached Richey through her soon to be husband [DPA Chambers] and Richey charged Eggum with Stalking (following) Gray, and that occurred on 15 April 2004. Richey relied on **8 "Todd Sightings"** over a 4 month period, two sightings per month, an **acceptable rate** given that Gray lives less than a mile from Mr. Eggum. This was a **bogus charge**. Eggum **pled not guilty** and paid Butler a \$6,000 retainer which was paid through movie sales. Several months after the arrest [09 Nov. 2004] the defendant was re-arrested because Gray alleged that **several DVD movie jackets** * were found at the Nuthouse Bar in Lynden, with Richey alleging Eggum had followed her there and left them, hence the Stalking.

* [SAG-S, pg 4, para 8d] shows that Richey asserts the **commercial movie jackets** were found empty [huh?] after Eggum stalked Gray to the restaurant. Eggum asserts the movies were **purchased online** by Gray/Fasano [DVD disk then removed] and the complaint made as an **excuse to obtain** an otherwise unobtainable **search warrant** to get the movies previously denied. Richey admits his warrant **overstepped the breadth** of what he was entitled. The **Stalking** emanates from the **act of following**, not the **sales of movies**.

Richey seeks a **search warrant** based off those [empty] jackets being found. Richey's excuse for a warrant is alleging that Eggum must have "followed" Gray there [i.e. stalked] and left the movie jackets lying there. This is **untrue**. These commercial movies [and their jackets] were **sold** over the **Internet** and more than likely purchased by either Gray or Fasano or Richey as an **excuse** to get into Eggum's residence and attempt to seize the movies he sold through the AVP website; which they **morally disagreed** with him being able to do.

Attorney Butler approaches Mr. Eggum about the possibility of a **plea deal being offered** by Richey, and Eggum **refuses to plea** to a crime he is not guilty of. Mr. Eggum asserts Richey is charging the **bogus case as retaliation** over the website; hence the unlawful seizure of movies unrelated to the charged stalking case; as the movies are unrelated to the crime of stalking as **this** crime was charged as "**8 Todd sightings**" followed by Eggum allegedly leaving movie jackets lying about. Eggum informs Butler: "If Richey agrees to **acknowledge the legality** of my website movie sales by returning the swinger movies he **morally disagrees** with me selling, then I'll agree to plea guilty to the bogus charge". Attorney Butler informs Mr. Eggum that he and Richey had spoken and Richey agreed to return the movies in exchange for the plea. Mr. Eggum was surprised if not shocked.

At sentencing on 07 February 2005 Mr. Eggum made an **Alford plea in exchange** for the **movies being returned**, and in that act being performed by Richey the **legality** of his website was acknowledged by Gray (et al). But after the plea was made Richey **renege**d on the deal and refused to return the movies as promised. As the COA is well aware, any time an **plea agreement** is agreed to and the **prosecutor breaches** that agreement, the presiding judge [in this case Uhrig] is obligated to (1) return the defendant to a not-guilty status, or (2) enforce specific performance and make the prosecution fulfill the promise. Uhrig did neither.

Did Richey **breach this agreement**? Was this **faulty conviction** used against Mr. Eggum within the 2009 case; both in felony points used to score the “alleged” offenses; as well as the current charges **riding the coattails** of the priors? At [SAG exhibit-L] trial attorney Subin interviewed Richey and had asked him about the 2004 agreement to **return the movies** in exchange for the plea, and Richey **admits** to having told Butler that the movies would be returned in exchange for the plea. This is also substantiated at RP 328 when Richey tried implying that he had only learned of this after the fact. But that is **untruthful & misleading**. Looking at [SAG-L] you will see that at soon as the **prosecution breached** the deal that Mr. Eggum and Eggum’s mother started “bellowing” as Richey calls it. A person doesn’t bellow without good cause. At RP 335 Richey asserts “It’s still a good conviction.” A breached agreement is still a good conviction? Mr. Eggum disagrees: when a plea agreement is breached by the prosecution the presiding judge is **obligated** by law to either (1) return the defendant to a **not guilty status**, or enforce **specific performance** (return the movies). This judge erred and **did** neither. This appeal is currently before the COA as pending PRP. But it is clear that no Stalking had occurred here and that this plea agreement was breached.

Please take special note of [SAG exhibit-C]. After this reneged plea attorney Butler spoke to the court on the return of property issue and he states to the court [Richey & Uhrig]:

“Mr. Eggum does enjoy a property interest in the [adult] videotapes and images and can sell them, has sold them, and will continue to sell them. It is not illegal.”

If there was ever a time for Richey to disagree and say his selling of these movies constitutes Stalking, this would have been the time to speak up, but the record shows that he **did** not. More importantly the court should note Uhrig’s ruling on the matter upon hearing some of the caselaw on the subject that Butler had presented.

Under Subin's Motion to Reconsider Order Denying Motion for Recusal of Trial Court Judge [entry 70-C] and herein offered as [SAG exhibit-D], pg. 2, para 4, Judge Uhrig stated:

“From a **legal perspective**, I think some of the analyses are very similar to that. The former boyfriend of Paris Hilton sits back and makes **lots of money** off those [sex] tapes and **he has every legal right** to do so.” [Just the same as Mr. Eggum]

At this juncture in the brief it should be noted that: whether morally right or wrong, from a **legal perspective** [as Uhrig puts it / and that's all Eggum cares about], what Mr. Eggum does for a living **cannot be misconstrued to be unlawful** because Uhrig observed that Mr. Eggum has **every legal right** to do what he does [for a living], even more so [superseding] than Hilton's former boyfriend [like an ex-husband?] because Mr. Eggum's movies were made with the **express purpose** of marketing them to the public while Hilton's was not. Please note that Judge Uhrig would later rule [AAG's Motions in Limine] that the jury wouldn't be allowed to hear **this** ruling because it would **unduly prejudice the jury** into finding that Mr. Eggum was not guilty because he had every legal right to continue selling those movies, and that would kill the AAG's chances of getting a conviction. And this goes to the **core of the issue**, because the AAG / PA / Judge have a **moral bias** against Mr. Eggum having **every legal right** to do that, and that's the **gravamen** of their complaint. [Goes to trial error / conflict of interest / moral bias / denying defendant his defense (ability to take the stand)].

This is where **Hallmark** enters the picture because now Mr. Eggum is a convicted felon under DOC probation, **wrongly convicted** of a **breached plea** agreement.

2005 STALKING CONVICTION

Shortly after the prosecution breached plea deal, in which they believe that had [illegally] seized all of Mr. Eggum's movies in an effort to shut down AVP, the court orders Mr. Eggum to get a "regular job," and in order to comply Mr. Eggum starts working for Leigh's Construction building homes in Lynden. But AVP is still actively selling movies regardless of the seizure of movies and the refusal to return them, and this bothers **Richey** and the **parties**¹. This 2004 plea was breached in February 2005 and immediately following that (March-May 2005) Mr. Eggum's ex-wife purposefully started walking by Mr. Eggum's worksites [within NCO's 500'] on a **[repeated] daily basis** and calling 911 each time, and remained in the area until the Lynden Police Department (LPD) arrived on scene. This went on for 3 months. The LPD advised Mr. Eggum that they could not arrest Gray unless Eggum obtained a NCO of his own, and the LPD refused to arrest Eggum for a NCO violation because they ascertained this was Eggum's jobsite.

Mr. Eggum notably does two things: (1) He motions the court for a NCO as the LPD advised, and looking to [SAG exhibit-O, pg. 4, Paragraph-J] that is evidenced. And (2) looking back to [SAG-A] page 12, para 5, the defendant **wrote several letters** to **Richey** complaining that Gray was now showing up at his jobsites. Eggum even gave Richey a list of the dates & times that Gray had been sighted at his jobsites. Question arises: Are these the actions of a guilty man who is covertly Stalking his wife? [At his jobsites? That's nonsensical]

Please note at [SAG-A, para 5] when asked if he was the one responsible for these contacts that Richey **declined to answer**. Why? Covering something up? This has **relevance** because in 2010 he (only) now **admits** to being the person **responsible for** these **unlawful contacts** that he charged Mr. Eggum with. Was Mr. Eggum innocent of these charges as he had maintained while incarcerated on a 6-year sentence at McNeil Island?

Looking to [RP 336-40] Richey admits to being the one responsible for instructing Gray to continue to make unlawful contact at Eggum's jobsites and to keep a log of those contacts; and admits that it **'wasn't only him'** that was instructing Gray to have these unlawful contacts and he tries **shirking responsibility** [RP 337] onto a DV advocate [Pauline Rose] in his office; and at RP 338 Richey states "We wanted more incidents of them having unlawful contact so we could build a stronger case against Mr. Eggum." When asked about the **validity** of doing such a thing, Richey replied, **"That's what we do"**. When asked if Mr. Eggum ever called or wrote him regarding these contacts Richey now admits that he now remembers [RP 339], where he had **previously declined to answer** until after he had a conviction. At RP 336 Richey implies that he was unaware that these jobsites was where Mr. Eggum worked, but that flies in the face of common sense because Richey had a 3 month period to have this verified, and the LPD verified that fact on the very first contact [or Eggum would have been arrested], and Eggum's letters stated as much. Is this to say Richey did not exercise **due diligence** in contacting the LPD and having them **verify** that Eggum worked there? This is a sly attempt by Richey to cover-up a criminal act he performed? [Please note: The LPD never arrested Eggum for these contacts]. That's telling. Is this a **valid conviction**? Or the prosecutor performing a criminal act? Or a prosecutor **abusing the power** of his office?

Additionally it should be noted that DOC probation officer **Hallmark** was also a part of this. During this time she contacts Mr. Eggum about these unlawful contacts at his jobsites. Eggum complains Gray is **repeatedly showing** up at his jobsites (calling 911) and Hallmark is working with Gray as a victim: and she allows Gray to continue walking by Eggum's jobsites because Gray would have informed her that she was being instructed to do so by Richey [id].

Please refer back to [SAG-A, pg. 12, para 4] and you will see that **Hallmark** was part of **that conspiratorial group** working in concert to incarcerate Mr. Eggum [as a means] to prevent him from selling his movies which they **morally disagreed** with. The LPD never arrested Mr. Eggum for Stalking, as it **flies in the face of common sense**. It was **Hallmark** who arrested Eggum at the request of Richey, and Richey eventually charged the case. And both of these individuals were responsible for these repeated contacts: because to argue otherwise would be to say they had 3 months to advise Gray to change her walking path and did not and that appears at RP 340.

Richey may try to **misdirect** the COA's attention away from the **seriousness** of these allegations by arguing [misdirecting] that these '**jobsite-contacts**' weren't the only evidence of Stalking because Eggum had copious **notes** in his car about Gray's whereabouts and therefore the Stalking conviction would still be **valid regardless**. But those notes don't constitute Stalking because those notes were obtained through a Private Investigator (PI) and that is exempt under the Stalking RCW. Please note: Both **Eggum and Gray had both hired PIs**. Richey tries claiming at trial [RP 340] this was the first time that he ever heard anything about Mr. Eggum having a PI, but that again is a **deceitful misdirection from the truth**. Looking at [RP 687] Gray admits that she was aware that Eggum had hired a PI to follow her in response to her having hired a PI. It should also be noted that Mr. Eggum advised Richey of the PIs in the letters that Richey now admits to receiving.

The primary complaint within the 2005 Stalking complaint was the unlawful contacts that Eggum had at his jobsites and those contacts must **stand on their own**. And in this case it has just been **proven beyond a doubt** that Mr. Eggum was the victim of Richey inducing a crime which Richey would later charge. In the 2005 case Richey double charged the Stalking.

At RP 341 Subin asks Richey if he was **also responsible** for inducing count [2] and sending Gray's coworker [Hemple] to accompany her as a witness (etc.) and the AAG then objects to Richey answering because Richey is **hanging himself**. The question arises: Why then did Mr. Eggum apparently agree to plea out? Several reasons: (1) Richey refused to provide Mr. Eggum with the **exculpatory letters** that Eggum had written to Richey [as required by CR], because those letters would have **exonerated** Eggum of any guilt. He only now admits his role in that occurring. (2) At trial in 2009 Richey admitted to **dog-piling** 15 felony charges [RP350] against Mr. Eggum in 2005 and threatening him with a 50-year sentence **in order to coerce a plea out** of him on his original 2 Stalking counts that he had induced, and previously addressed [id.] this is **Richey's Modus Operandi** ⁵.

This 2005 case as well as the preceding 2004 case have been appealed to the COA [PRPs] and are currently awaiting consideration, and the appellant had motioned the COA to appoint **legal counsel** to Mr. Eggum to have these **faulty convictions** properly reversed, and then have those reversals used in defense of this current case because the AAG **rode the coattails** ⁶ of these faulty convictions in order to obtain a conviction in the 2009 case.

At this juncture it is inarguably established that these 2 priors are faulty convictions and that **Richey & Hallmark** were instrumental in that occurring; and it has been inarguably **established** that **Richey & Hallmark** were part of a concerted group of persons whose [unlawful] goal was to keep Mr. Eggum incarcerated **[as a means]** to prohibit Eggum from continuing to sell sexually explicit movies of his ex-wife; which he does legally; and which they morally disagree with.

⁵ When Eggum refers to this as Richey's MO, the **dog-piling of charges to coerce a plea** out of defendants, this isn't Eggum speaking only from his personal experience with Richey; but Eggum witnessing Richey doing this case after case [2 yrs worth] with other defendants awaiting trial who had Richey as a prosecutor. A review of his charging sheet and final disposition of cases would reflect this.

⁶ At trial the AAG told the jury "if Eggum was guilty of Harassment and Stalking then; then he must be guilty now because he hasn't stopped. That's improper argument and leads the jury to believe that simply because Eggum had prior convictions for Stalking and Harassment that he must be guilty of these new charges.

LEGALITY ISSUES REGARDING ADULT ENTERTAINMENT BUSINESS

Before getting into the **legality of this website** which sells these movies, Mr. Eggum points out to the COA that the **sole determiner** of the **legality** of that websites **lies within Canada**, not Whatcom County. And Canada has made a **legal determination** that the website [AVP] that sells these movies is lawful [and Canada was aware of the Imagery Restraining Order and that Eggum's ex-wife was depicted in the movies sold on AVP].

The AAG states that Mr. Eggum threatening to **restart his adult entertainment business** and giving away promotional movies is the *gravamen* of his complaint because Gray now **regrets** having turned down the **marketing/sales rights** to these movies [RP 218,251]. And because she no longer wants to see these movies marketed [RP 251] this somehow constitutes repeated harassment which constitutes Stalking. In the AAG's argument he **relies** on the **definition of threat** which includes threatening to "**reveal a secret**" about someone who doesn't want that secret revealed, but as established under Pamela Anderson [id at 7] it is impossible to reveal a secret which has already been made public. In essence: a former [pornography] actress can have no secrets about the porno movies she made previously even if she now wishes to get out of the business and wishes she could somehow have her movies taken off the market in order to start a new way of life; or **withdraw** from **contractual agreements** that allows others to sell those movies. At RP 17 Subin states: "But I think there is a real **difference of opinion** about the **nature of the charges** in this case," which is in fact pointing out that what Mr. Eggum is doing is **not an unlawful** act. The AAG is trying to criminalize it through **improper jury instruction** as to the definition of threat. Before continuing I would like to **review the prior rulings** on the **legality** of this website, because the AAG states that he isn't going to ask the jury to make a determination about that - but that's exactly what he did.

In [SAG-B] attorney Butler emails Eggum and says: “Here’s the deal you get to close out all your pending legal matters and go up the road and **sell your movies and make lots of money**, just leave Gray alone and you will do fine”. In that agreement the **prosecutor admits** that selling these movies did not constitute Harassment or Stalking or he could not have made that particular deal because a **prosecutor cannot agree to do something which is unlawful**.

In [SAG-C] attorney Butler informs the Richey & Uhrig “Eggum **can sell them, has sold them, and will sell them. That’s not illegal.**” And Richey & Uhrig do not contest the issue because it is true. In fact Butler argues the Paris Hilton example at [SAG-D] and Judge Uhrig replies: “From a **legal perspective** I think a lot of the analyses are very similar to that. The former boyfriend of Paris Hilton sits back and makes a lot of money off those tapes and has **every legal right** to do so.” [Just the same as Eggum?]

And looking to [RP 274, 275, 368] the **Canadian Legal Determination** is continually referenced throughout trial whereas Canada even went as far as ruling that I could operate and sell my movies in/from **St. John’s, Newfoundland**, which happens to be where Mr. Eggum informed **Hallmark** that he was going to give away a 1,000 free promotional movies due to her **biases & meddling in his business affairs**. [Both not official duties she has under statute].

At RP 368 Subin asks Richey: “**Do you have any authority in Canada to regulate his activity, whatsoever?**” And Richey replies accordingly that he **does not**. This now goes full circle because you are about to learn in the 2009 Hallmark IPS charge that Mr. Eggum was about to release from prison [brought about by Richey & Hallmark (at his jobsites)] they were aware that Mr. Eggum was free to continue selling his movies in Canada, and because of that concerted group effort to prohibit Mr. Eggum from selling his movies, Richey & Hallmark (et al) had to **do** something in order to prevent that from occurring.

Looking to [**Lewis v. LeGrow**, 258 Mich. App. 175 (2003)] the court ruled as follows regarding **invasion of privacy claims** relating to sex movies that the plaintiffs had previously consented to making: “The **scope of waiver or consent** [of privacy invasion claims] will be a question of fact for the jury, **unless reasonable minds cannot disagree** that the plaintiffs **consented to the very activity about which they now complain** (videotaping sex).” [Agreeing to market sex tapes?] [Agreeing to deny marketing rights?] [See **Appendix-4**, pg 5].

In this matter Gray not only **consented to the marketing of the sex movies**, but she also **“consented to denying the proffered marketing rights” multiple times** throughout the divorce proceedings at the behest of the prosecutor’s office who had given **faulty legal advice**, therefore it follows: **“Does Gray now complain about something she previously gave consent?”** That being consent to deny the sales rights? That is the **basis of the gravamen complaint**.

And that **faulty legal advice emanates** from the fact that **Fasano & Richey** worked together to get a **invalid injunctive court-order** [SAG-I] attempting to shut down Mr. Eggum’s website sales [in Canada?] and it was **signed by Judge Uhrig**; who disagreed with the morality of an ex-husband being able to continue selling movies of his ex-wife. However...

In this segment at least **7 officers of the court*** have acknowledged that what Mr. Eggum **does for a living isn’t unlawful**, and whether they **“morally agree”** with it is beside the point. But note that **Richey & Uhrig** have a vested interest in the outcome of this case because of the legal representations made to Gray [through prosecutor’s offices / bench] and **Richey** prosecuted this case while **Uhrig** presided over it while **Refusing to Recuse** himself and ruling against the defendant repeatedly in regard to these issues. The balance of this Legality segment is continued at **Appendix-4**, but remember: Canada is the sole determiner of the legality issue.

* 2003 Lynden Prosecutor, Butler, Subin, Lind, AAG, Richey & Judge Uhrig (et al) (Canada).

COUNT [1]

HALLMARK'S INTIMIDATING A PUBLIC SERVANT

Prior to examining the specifics of count [1] the court needs to recognize that probation officer Melissa **Hallmark** is part of a Concerted Group of Persons whose main purpose is to keep Mr. Eggum **incarcerated [as a means] of preventing** him from continuing to operate a **[lawful] business** selling sexually explicit movies of his ex-wife, which they **morally disagree** with him doing. This is well established throughout this brief and at **SAG-A**. That is an **unlawful** objective, and any time a **Public Servant "Abuses the Power"** of the state towards that end they are no longer considered Public Servants acting in an Official Capacity. [Abuse of Authority Doctrine & Public Servant Acting Outside Scope of Authority at **Appendix-1**].

At RP 460 Hallmark admits that The **Department of Corrections (DOC)** has **no lawful business meddling in the affairs of Mr. Eggum's adult entertainment business**, and since her authority is derived from DOC's authority, it is therefore firmly established that Hallmark had **no business meddling** in Mr. Eggum's **business affairs** by denying his address in an attempt to delay his business from restarting. Therefore, Hallmark had no statute authority to do what she did and she was **acting outside the scope of her authority** because of her association with that collaborative **Concerted Group of Persons** ¹ mentioned in **SAG-A**. Depriving Mr. Eggum his freedom as a means of preventing him from doing something is an unlawful objective.

CHRONOLOGY OF EVENTS

The events leading up to this letter being written started on 15 **December** 2008, just six months prior to Eggum's release in **June** 2009. At RP 359 Richey admits "...people were coming up to me and saying he is going to be released soon [and **start selling his movies** again], if you are going to do something [to stop it] you had better do it now." Where did that emanate from? Was Richey getting an earful from that **Conspiratorial Group of Persons** he's a part of?

On 15 **December** 2008, six months prior to releasing from prison on an [**unlawful**] 6-year sentence that [**Richey & Hallmark & Gray**] had set up Eggum on. [id. at priors] Mr. Eggum had a telephonic divorce court hearing from McNeil Island. At that hearing Gray was represented by her attorney Fasano, and Mr. Eggum **offered his ex-wife ½ of the monies** that he received through his **movie sales at AVP** because Judge Snyder had previously ruled [on 06 May 2005] that Mr. Eggum had a fiduciary **responsibility to share with her ½ of those monies** received. Mr. Eggum also **offered his ex-wife ½ of the movies** that he owns so Gray would not later claim to have not received her share of those. **Both offers were denied** by Gray. Please take note: Gray has therefore **relinquished any future right to complain** about not receiving her ½ share of those monies **due to her own refusal**. This has relevance within this 2009 case because this cause emanates from the fact that Gray **now regrets** having turned down the proprietary **marketing rights** that Mr. Eggum had **repeatedly offered** her from 2001 to 2003 as previously cited id. Therefore: Gray now complains that seeing the movies continuing to be marketed is bothersome and harassive, but yet Gray was the person that turned down the marketing rights to these movies [?]. [Do not complain about something that you created or caused to occur – this is known as the **Common Sense Doctrine**] and will be cited within the enclosed caselaw.

At that hearing where ½ **the monies was rejected** by Gray, attorney Fasano complained to Judge Snyder that Mr. Eggum was going to release from prison very soon [June '09] and she was alarmed that Mr. Eggum was "...just going to walk out of prison and **walk across the border into Canada and resume selling** his movies once again," which is where AVP operates from, contrary to what the Whatcom County order dated 06 May 2005 [Imagery Retraining Order]. Fasano complained that there was nothing she nor anyone else would be able to do about that once Mr. Eggum released, and that is correct because the of Canadian ruling cited id.

Please take note that Fasano is married to the senior most prosecutor in Whatcom County [Craig Chambers] having been a prosecutor there for 26-years. Also please note that Fasano is named as a **part of that concerted group of individuals** working to keep Eggum incarcerated **[as a means]** to prevent him from returning to **Canada and rebooting AVP** with himself at the helm, instead of his current webmaster. [Please also note: This is an **unlawful objective** as discussed in detail in [Appendix-1], and should any Public Servant **abuse the power** of their office towards that end, that is an unlawful act]. And that will occur within this IPS count.

This **observation was quite true** as Mr. Eggum [upon release, whenever that occurs] has every intention of returning to Canada and resuming the helm of his lawful business that operates from there. This is what Mr. Eggum **does for a living**. Within an **hour** of that hearing Mr. Eggum was thrown in segregation [the hole] by DOC for reasons unspecified. This goes to show the **collective power these individuals within that group wield**. Mr. Eggum was held in the hole for 2 months and then released without a reason ever having been given. Mr. Eggum was released 60 days later on 15 **February** 2009, and upon release DOC [i.e. Hallmark] notified Mr. Eggum that a “**release address condition**” had been placed upon his releasing from prison. Without an “**approvable address**” Mr. Eggum’s release could be delayed [8 months]. This release address condition was **foisted** upon Mr. Eggum because Eggum had argued that count [3] of his consecutive sentence was a monetary commitment [only] that did not carry community service. If the COA looks to [SAG exhibit-F, pg 2, sub para 2.3] the court will see that there is no community custody requirement just as Mr. Eggum had maintained. Mr. Eggum knew this.

Mr. Eggum was **anxious to release** from prison and **resume operations of AVP** and rather than **waste precious time** arguing with DOC, Mr. Eggum complied with the foisted address submission, albeit reluctantly. This was submitted in February just after getting out of the hole.

At [RP 391] Hallmark admits that she received the **submitted address** that she had **foisted** upon Mr. Eggum in **February** 2009. A DOC chronological report ⁷ dated **10 February 2009** shows that DOC [i.e. Hallmark] was phoned by the **PA** [i.e. Richey] and they **collaborated** about delaying Mr. Eggum's release. At trial Richey denies any involvement in that decision making process, but the Chrono proves him deceitful and shows his underlying motivation.

At RP 456 Hallmark admits she **personally denied** Mr. Eggum's submitted address that had been **foisted** upon him on 27 **March** 2009. Was the reasoning behind this action an **official duty** of hers as sanctioned by statute authority? Or was that **foisted condition** and **subsequent denial** part of her collaborative effort within that group [SAG-A] to deny Mr. Eggum his freedom [**as a means**] to his prevent him from resuming the helm of his [lawful] adult entertainment company? [Because of biases] [This would not be an official duty of hers].

Shortly after submitting the address in **February** Mr. Eggum was notified by his DOC counselor [Ryan Denzer] that his address had been denied. Mr. Eggum maintained that an address was not needed in order to release. But Mr. Eggum was curious as to the **reasoning** behind the **denial**, because the address submitted was a valid [non-deniable] address. Mr. Eggum suspected a group effort to deny him his freedom to keep his website off the air.

At [SAG exhibit-P, pg 2, para 6] it shows that CCO Denzer's reasoning behind the denial **had** been: "The prosecutor's office [Richey] contacted CCO Hallmark and requested Hallmark deny the address because they [had **moral biases**] didn't want to see your adult entertainment business starting up again." This is **not an official duty** that either prosecutor Richey or **Hallmark** has, **as** cited herein at Appendix-1. SAG-P is a pro se dismissal motion under this cause & admissible.

⁷ Not available as exhibit. Mr. Eggum's trial attorney [Subin] has this Chrono report [evidence], and Mr. Eggum petitioned the COA for an order directing Subin to deliver it so that it would be inclusive within this SAG, but in early October [2011] Commissioner Mary Neel denied this petition, so this report verifying the prosecutor's furtive involvement is not available, although it exists. (Sept 26, 2011) Ruling)

At this juncture Mr. Eggum has a pretty good idea **what has occurred** because he was thrown into the hole immediately after the Fasano hearing in December. Fasano realized that the **injunction** she had entered by the court was **worthless** to prevent Mr. Eggum from continuing to operate his business from Canada, and the concerted group of persons would lose the ability to control Mr. Eggum's business activity because they had **no lawful authority** in Canada as admitted by Richey at [RP 368]. It was at this time in December-February that Richey admits [RP 359] that people were approaching and saying "...he is going to release soon and start up his business again, and if you are going to do something you had better do it now." This seems to collaborate the chronological report that stated Richey & Hallmark had spoken in February in an effort to delay Mr. Eggum's business from restarting.

Upon hearing the **underlying reasoning** for the denied address Mr. Eggum **notably** does 2 things: (1) He writes a letter to Susan Lay in the DOC Records [McNeil Island] and requests her to make an official determination about the address condition being **foisted** upon him, because Mr. Eggum **knows** he is not required to submit one; and (2) Mr. Eggum writes Hallmark a somewhat abrasive letter because he doesn't want Hallmark **meddling** in his [adult] business affairs.

Please note that Mr. Eggum makes no attempt to prevent Hallmark from doing any of her official duties that she might normally perform, only to stop **meddling** in his business affairs due to her **personal biases** she has against Eggum's business.

In an official DOC response letter dated 06 **May** 2009 Susan Lay answers [SAG exhibit-G] that "... you **do not need an approved address** in order to release." Just as Mr. Eggum had maintained from the very start. Therefore there was **never** any **decision-making-ability** from which to influence [component of IPS] and the only attempt Mr. Eggum made was to stop her from **meddling in his business affairs**. Not an official duty as admitted by Hallmark.

Mr. Eggum's letter to Hallmark [trial exhibit 25] appears at RP 396-98. In examining the **context** of the letter the COA needs to determine Mr. Eggum's *mens rea* [his intent], making a determination on whether Mr. Eggum is attempting to **influence** an **official duty** that Hallmark performs, or whether he's trying to **influence** her to **cease meddling in his business affairs** because of her **biases**. If the latter applies because Hallmark stepped **outside the scope** of her authority, then that component (within the IPS def.) doesn't exist. Mr. Eggum opens his letter:

"My unit supervisor [Denzer] recently informed me that you had personally turned down my release address because of what he loosely termed 'victim concerns' which amounts to you trying to delay my adult entertainment business from starting up again. The **Department of Corrections** has no lawful business in my business affairs when they are legal. As such, you are taking it upon yourself to step outside of what the state has authorized you to do. Denying my address is an attempt to delay my business from going online and is an unlawful action, an action which entitles me to be able to file a lawsuit against you, personally. I can assure you, upon release you will be served a summons." [SAG-P]

Mr. Eggum [correctly] states that the Department of Corrections has **no lawful authority meddling** within his **business affairs**; nor any authority to delay his release [**as a means**] to delay his business restarting. At RP 460 Hallmark admits she had **no lawful authority** to do what she had done, for the reasons cited within [SAG-A]. It is **inarguable** that the **only focus** of this paragraph is Mr. Eggum's complaint about her **meddling in business affairs**, not in performing any official function she has. Mr. Eggum continues:

"There are always consequences to one's actions, and that will certainly apply to you in attempting to **delay my business from restarting** just because my wife doesn't want it to restart. As a result of you [unlawful] actions, taken on behalf of my wife [i.e., group within SAG-A because of your biases], I have decided to release 1,000 free promotional movies in my birthplace, which is St. John's, Newfoundland, Canada. St. John's also just happens to be where my wife was born & raised, too."

It is clear within this paragraph that Mr. Eggum's **focus** is on Hallmark's **meddling**, and her **personal biases**, and then he does the very thing that she finds so morally objectionable, he throws a thousand free promotional movies into the marketplace. [Lawfully so] [Redress].

Nowhere in that second paragraph did Mr. Eggum ever attempt to influence any lawful duty that Hallmark performs [delaying lawful businesses from restarting is not a lawful duty]. In conclusion of that paragraph Mr. Eggum states:

“Because of what you have done, that is going to be a **nonnegotiable** consequence of your [unlawful] actions. So that is going to happen and **you cannot mitigate** it.”

This is perhaps the most important aspect of the entire letter [*mens rea*]. Mr. Eggum is stating “...even if you were to attempt to make things right at this point, and admit you have no authority to require an address, this is going to happen regardless.” Please note: Nowhere in the letter does Eggum ask Hallmark to change her decision. At RP 463 Subin asks Hallmark the meaning of this [**nonnegotiable-cannot mitigate**] passage.

Hallmark replies: “**I guess he’s saying it’s too late**” to **change my decision**, he wouldn’t give me the chance even if I had had the authority. Then Mr. Eggum says something that may be difficult for the **jury members** to understand as not trying to influence her decision:

“Now, if my release date is delayed with for any reason, there are going to be additional consequences, because I can continue to “**up the ante**” for you. For every month my release address is delayed past my Earned Release Date [ERD] I am going to release an additional 1,000 free promotional movies into the St. John’s market.”

What Mr. Eggum is actually saying here is that if Hallmark continues to insist that she has the lawful statute authority to require an address when she does not, [**as a means**] to prevent my business from restarting, then for every additional month she acts **outside the scope** of her statute authority in the **furtherance of an unlawful objective**, that Mr. Eggum is going to throw out even more free promotional movies into the marketplace. Again, that “**up the ante**” comment is not an attempt to influence a future official action; but an unlawful action. Meddling in Eggum’s business affairs is not an officially sanctioned duty that she has.

SAG-G indicates that DOC ruled that Hallmark had no lawful authority to require the “approvable address” in order to release. In the next paragraph Eggum mentions the possibility of his mother dying while he’s being unlawfully detained in prison, and states to Hallmark that he’ll hold her personally responsible for that. This goes to the **lawsuit** that Mr. Eggum filed against Hallmark, which [SAG exhibit-Q] indicates was underway, with **Richey, Uhrig, (et al)**, being named as co-defendants within that active lawsuit. Goes to **conflict of interest** across the board. In the next paragraph Mr. Eggum states that in the future his property is going to be booby-trapped & protected using deadly force - to discourage thievery - and Eggum warns Hallmark so that she nor anyone else gets themselves hurt, needlessly. [Seizing business assets] is not an official duty she has. These two paragraphs were not contemplated by the jury within the IPS claim.

At RP 398: In Mr. Eggum’s **closing sentence he summarizes** the [*mens rea*] of his entire letter when he signs off by saying: “**Again, you need to stay out of my business affairs.**” At no juncture within that letter does Mr. Eggum **deviate from the focus** of his letter, and that is to get Hallmark to stop meddling in his business affairs because of her **biases** that she holds against that lawful business operating, whether morally right or wrong.

Why did Mr. Eggum specifically mention **St. John’s, Newfoundland, Canada** [?] as opposed to anywhere else in the world to release these promos? Mr. Eggum could have designated **Timbuktu**. This was to **emphasize** with Hallmark [(et al) within SAG-A] that: (1) Mr. Eggum was born in Canada and as such was a **dual citizen** and free to return to Canada; and (2) the **Legal Determination** from **Canada** enabled him to continue marketing his movies [there or anywhere else on the Internet], and that as a Canadian citizen Hallmark (et al) were powerless to stop that from occurring. That situation exists today.

Upon release Mr. Eggum's business [AVP] will be **piggybacked** with a **new website** business address known as [**Newfoundland-Swinger.com**] with an unlimited quantity of free downloads and free promotional DVDs available to the general public through this Internet site. Given the AAG's complaint, if you side with his argument, the Mr. Eggum has just committed the crimes of IPS and Stalking. And that simply is not the case. The **Common Sense Doctrine** rails against such a conclusion as it leads to an absurdity of law. What Mr. Eggum does lawfully in Canada cannot be misconstrued to be a component within a crime in Washington.

What was said within this letter cannot be **misconstrued** as an attempt to influence any **official duty** that this Public Servant [Hallmark] has, it was, and remains, nothing more than Mr. Eggum **tugging back** [responsively] on the very same exact rope that the prosecution [persons within SAG-A] started tugging on in this "**tug-of-war**" they started when they attempted to **illegally-seize** business assets belonging to Mr. Eggum: which they **morally disagreed** with him owning/selling. It is a "**tug-of-war**" that the opposition is **predestined to lose** and Mr. Eggum would direct your attention to the **entirety** of "**Forewarning to the State**" [SAG exhibit-E], specifically to page 3, where on [26 April 2009] just after the address denial, Mr. Eggum addressed **Richey & Judge Uhrig** and stated "...because of your illegal seizures of my property and your continued **refusal to return** it, I consider that you **vying for dominion & control** of my business through the illegal seizures [RP 332] of my assets, and as such am going to firmly establish my legal right to operate AVP by '**shoving my website movies up the state's ass**.'" The obvious question that comes to mind is: If count [1] herein was IPS, why wasn't this charged as IPS? The obvious answer is that it's not IPS, because the grievant has **every legal right** to governmental redress, more so when he is the victim of unlawful seizures by the state.

The last component within the IPS definition is to “**use a threat**” in order to influence a Public Servant’s decision. In this case **no threat was made**. Mr. Eggum has **every legal right** to sell his movies and will continue to do so. The fact that Hallmark finds that “*bothersome*” does not meet the *criteria for threat*, and the assertion that Eggum’s “*threatening to reveal a secret*” about Gray being a pornography actress is an **absurdity of law**^{7b}. In order to convict on this IPS count **three legs have to exist**: (1a) A Public Servant must *not be using their powers in the furtherance of a personal interest or bias*, or they are no longer deemed Public Servants; and (1b) they must be **performing an official duty** not associated with any personal biases; with (2) a **true threat** being made in an effort to (3) get her to **change her decision**. And the COA need only affirm that one leg not exist, although **none of the three legs exists**. If the “lay-jury” had been given **jury instruction** regarding acting “**outside the scope of authority**” and given instruction stating that Eggum’s marketing of his movies could not be used as the requisite threat because it is a **lawful activity**, and the jury be allowed to hear about the prior bad acts of the prosecution’s witnesses [SAG-A] then the jury would have found that none of the legs existed [Motions in Limine]. Hypothetically speaking: What would the sentence have been if an inmate wrote his CCO saying “...if you give me a urinalysis [official duty] and throw me in jail again, I’ll bust your teeth out,” what would the sentence have been? Perhaps 3 months? Maybe six? And here we have 20-years?!! Perhaps that requested sentence indicates that “*they*” [SAG-A] **are** trying to keep AVP off the market for 20-years? In closing: I would direct the COA’s attention to **Appendix-1** which defines what occurs when a Public Servant acts outside the scope of their official duties in the furtherance of an unlawful objective as cited within [SAG-A].

^{7b} That’s **akin** to Mr. Eggum threatening to reveal a secret about Marilyn Chambers [well known 70s porno actress] simply because Marilyn didn’t want to see her movies being sold any longer. The mere fact the COA knows who Marilyn Chambers is affirms you cannot reveal a secret about Marilyn Chambers being an ex-pornography actress - same as Gray.

COUNT [3]

RICHEY'S INTIMIDATING A PUBLIC SERVANT

Hypothetical scenario: Suppose Mr. Eggum owned a [sex tape] of **Judge Uhrig's wife** with someone else, and Judge Uhrig was the trial court judge presiding over Mr. Eggum's case, would a **reasonable mind conclude** that Mr. Eggum could receive a **fair & impartial trial** in front of Judge Uhrig? The answer is obvious. This hypothetical has relevance as cited below.

At trial exhibit-26, RP 273-76 and included here as [page 3 of **SAG exhibit-N**] Mr. Eggum writes Richey and states "I'll **agree to return the Lisa Fasano Fuck Tape** that I own... then we part ways... nothing to lose here... it's time to end this, enough is enough." Who is Lisa Fasano? In Dana Lind Nelson's opening brief [page 14] she refers to Lisa Fasano as Janice Gray's divorce attorney [RP 200], and while this is true, it **trivializes the importance** who Fasano actually is, not drawing attention to a **serious conflict of interest** that exists. At RP 315 Richey states that Lisa Fasano is senior deputy prosecuting attorney (DPA) Craig Chambers's wife, with Chambers having **26-years' tenure** at the Whatcom County Courthouse, working on a daily basis with Judge Ira **Uhrig** (for how many years?). Within this count [3] Mr. Eggum in essence says: Return to me the movies that you illegally-seized [RP 332] and I'll agree to return the Fasano Fuck Tape that I own and let's part ways, no harm - no foul. That **magnanimous gesture cannot be misconstrued** as a threat under **any stretch of the imagination**. So where does the threat exist at?

Prior to addressing that please note that with DPA Chambers having worked in the Whatcom County Courthouse for 26-years, it's highly likely that he owns the place, or should [hyperbole]. He should be running the place by now. **Any reasonable mind** would not deny that Chambers has probably spoken to the judge presiding over Eggum's case. [Goes to **Conflict of Interest & Change of Venue** issues].

In this **hypothetical** scenario referenced earlier at the opening of this count [3] there is no difference between Mr. Eggum owning a sex movie of senior DPA Chambers's wife as opposed to owning one of Judge Uhrig's wife. Not with the close **symbiotic relationship** that Uhrig & Chambers share. And offering to return that movie and parting ways is not a threat, and that was not the *threat* that the AAG & Richey relied on. At RP 566 the AAG states "Mr. Eggum tells Richey, change your decision or I will **continue to harass** Janice [Gray] by continuing to threaten to distribute these movies by **resuming his business** and **embarrassing** her through these sales," which she (only) now doesn't want published, contrary to her **prior consent** and her **contractual agreements** that presently exist."

This is not IPS and stating that you are going to continue to **operate your lawful business** is not a threat as defined under RCW. At RP 620 Subin states to the jury in closing argument, "Saying you are **going to do something legal is not a threat**. So if he says I am going to Canada and **start up my business again**, that's **not a threat**. He is **legally entitled** to go to Canada to start up his business again, and Canada has ruled as much". Regarding giving away promotional movies in Newfoundland [count (1)IPS], at RP 615 Subin points out that these movies were not a secret, being sold on the Internet, at Canadian sites, and that they had been sold in Newfoundland in the past and they would be sold in Newfoundland in the future. And that fact could not be considered a threat because that was a matter for Canada to decide, and they had.

This count [3] is an important count because what was said in that letter to Richey goes to prove that there was no intent IPS under count [1]. Plus no crime exists here and the count needs to be dismissed. But since this count [3] amounts to a "time-served sentence", as opposed to counts [1,4,6] being ran consecutively for a total of 20-years, the balance of this **truncated** analysis of count [3] will be at [**Appendix-2**] in order to allow space to address these counts.

FELONY DEATH THREAT - RICHEY - COUNT [4]

This charge emanates from a series of letters [written to Mr. Eggum's mother] over a very lengthy 2½ year period. **None of the letters were ever sent to Richey.** The AAG clipped and pasted parts of different letters together, much the same as using **Microsoft's Clip & Paste** function, stringing them together and building his **own eclectic collage.** He then misrepresented what was said and frightened the jury by mixing Mr. Eggum's political ideology with his writings.

It is well established [*id.*] that Richey is part of a **Conspiratorial Group of Persons** whose **express purpose** is to keep Mr. Eggum incarcerated [**as a means**] to prevent him from resuming control of his business, which they all **morally disagree** with. That objective is unlawful as cited. The COA will have to discern whether the **personal letters** Mr. Eggum wrote his mother **supports a conclusion** that a death threat was made, or whether this **charge is feigned** in the **furtherance of that unlawful ulterior motive.** Bear in mind, none of these letters were ever sent to Richey.

The AAG alleges that a crime occurred sometime from June 2007 to July 2009 [**overly broad unconstitutional charging period?**]. Jury instruction [19] states that all the jury members must **agree that at least one threat** was made within that time frame, but not designate which one it is. How is the appellant supposed to appeal from an alleged crime where it is not designated? The AAG's primary complaint is cited at RP 132, 289, 292-93 and at RP 295 Richey identifies this passage as the primary threat used to convict [although one still has to speculate]:

"My attorney said, and I'll quote him, most guys would have snapped by now, grabbed a gun and killed someone, but you haven't, **so why not?** He explains later, you haven't [snapped] because you have got something that other people don't, and that's your **movies.** You can hit back, **legally,** and get back everything that was stolen from you, **without killing anyone,** simply by selling your movies." [RP 132]

This passage is not a death threat, and in **actuality it's the opposite** of a death threat. It's a **guarantee that no one can get hurt**. It states the **movies act** as some sort of **safety net** because of Mr. Eggum's **historical pattern** of always hitting back **nonviolently** through movie sales [to equalize abuses against him]. No death threat exists there. Eggum continues reiterating his attorney's observations, written to his mother:

"If you didn't have those movies, you would end up grabbing a gun and taking the law into your own hands, snapping like the rest of them. So he points out it's a good thing you have taken the **time to ensure they are safe**." [RP 132] [All Eggum's hard copies are backed up, see footnote]⁸ [SAG exhibit-H, pg 16 line 5, pg 23 line 8]

This passage contains no death threat, only an attorney's **analytical observation** that Eggum was **smart enough** to have **Safeguarded his Master Copies**, or he hypothesized Mr. Eggum might have snapped. The letter continues:

"When pushed my attorney predicted, when you get out of prison you will do one of **two things**, you will either (number one) go and **sell your movies**, or (two) if you don't have them for any reason, say you lose them, you will end up in prison for having killed someone. Pretty strong statement to be making, don't you think? But also very, very wise, and well thought out. You should listen. Pay attention."
[RP 133]

There is **no death threat** within that passage. In closing argument at RP 581 the AAG **purposefully misquotes** what was said, **intentionally scaring the jury members**: "Some past lawyer said when you get out of prison you are going to kill someone." Eggum's former attorney never said that, as cited. That's not what the attorney had **predicted** either. He said do one of two things would happen, and Mr. Eggum **always hit back nonviolently** through the movies.

⁸ When a movie is produced, the **8mm Master Copy** is **immediately duplicated** into several other 8mm hard copies, those being **2nd and 3rd Generation 8mm Master Copies**. And those 8mm copies are then separated to ensure that if a particular property burns that at least two other Masters exist, hence the name **Fire Insurance**. Prior to 2003 all the older 8mm analog tapes were transferred into a digital DVD format and those **75+ Master Copies were transported to Canada**. Therefore, looking to SAG-H cited above, it is impossible for anyone to seize all of Mr. Eggum's business imagery. This has relevance as this analysis continues. Because Richey's fear emanated from the fact he believes he has all Eggum's movies.

This was **improper closing argument** because while stating it the AAG was **waving around** an **8x10 photo of a hunting rifle** that Eggum's mother had stored at a neighbor's house and **frightening the jury** into a **passion verdict**. Eggum's letter [to his mother] continues:

“So I got to ask you mom, given that astute observation, **how smart is it** that Richey takes a movie out of my hand and puts a gun there instead? Pretty fucking **shortsighted**, don't you think? I am not a gambling man, but if doing something creates a 95% chance of getting killed, then I don't want to be the person who stands to get killed.” [RP 133, 292-93]

At RP 295 Richey identifies this passage as where a death threat exists. But this passage is nothing more than a **Hypothetical Analysis of Richey's Rationale**. [Mr. Eggum **thinks** and speaks **analytically**]. This passage is akin to saying: Richey has a **safety net**, but yet he's taking a knife to it – attempting to cut it away - how rational is that? Richey hearing [hypothetically] that he's cutting down his own safety net may be **disconcerting to Richey**, but it certainly isn't a death threat by any stretch of the imagination.

The AAG [RP 295] believes Richey has **seized all** of Eggum's **Master Hard Copies** of his films he produced [RP 143, 587, 590], therefore when Mr. Eggum releases from prison he has **no** viable [means to hit back] other than hitting back violently by hurting someone [i.e. killing]. That's not true and calls for **hypothetical speculation** on the jury's part. Looking to SAG exhibit-H & footnote-8 it is clear that Mr. Eggum has the means to reproduce any of the movies he sells through his Safeguarded DVD Master Copies stored in Canada. Does the evidence show Mr. Eggum's plans are to (1) go and **sell his movies**, as his prior attorney testified there was a **historical pattern** of, or (2) kill someone? Eggum writes at RP 112, 294:

“My **plans for the future** are simple, I'm going to give away 10,000 free promotional movies in Lynden & Bellingham to bring this **matter to a head**. [See SAG exhibit-E, Forewarning to State]. As soon as I get out I am going to hit back, and hit hard, and hit relentlessly, until I have **accomplished what I set out to do**.” [RP 112, 294]

This “**hit hard, hit relentlessly**” language is **not a death threat**. Eggum is expressing his **plans on giving away promotional movies** to end this matter, not kill someone as espoused. Looking to SAG-E it is clear that **Richey & Uhrig** collaborated to **vie for dominion and control** of Eggum’s business by [illegally-seizing] assets belonging to Mr. Eggum, and **responsively** to that unlawful action, Mr. Eggum intends upon **mass-marketing** Whatcom County with 15,000 **free promotional movies** to firmly establish his legal rights to those movies. [Goes to Conflict of Interest / Recusal Issues]. The obvious question arises: If the Hallmark count was charged as IPS, then why wasn’t this **charged as IPS**? [Please note: This **Forewarning to the State** was re-filed by Eggum under the 2009 case on 20 May 2009]. Answer: It focuses the jury’s attention **on who the players are** and whether their actions are lawful or unlawful, including Richey’s and Uhrig’s. And **Uhrig** would have had to **Recuse** if this had been charged. And the prosecution needed their **Ringer on the Bench**. Richey’s true fear isn’t dying by Mr. Eggum’s hands, but rather Mr. Eggum **mass marketing** Whatcom County during this **property “tug-of-war”** that Richey & Uhrig initiated – and are destined to lose eventually.

Regarding Eggum’s plans: When Eggum said his plans are to go by “**Paul’s House**” and “**pick up his tools**” and go “**pound some nails,**” he’s referring to going by “**Paul Justiano’s**” house to pick up his “**Internet Tools**” and going to “**sell some movies.**” The AAG asked Gray to **speculate who** she thought Paul was, but Gray has **no idea** how many **Paul[s]** Mr. Eggum currently knows, they’ve been separated for 8 years. She guesses Paul Heaven, a next-door neighbor that lives with his mother [RP 135]. But the **apostrophe** after the name Paul **denotes ownership** of something, and this Paul doesn’t own a house. This is the wrong Paul ⁹.

⁹ Paul Heaven’s mother **Garnet Heaven** has lived in her house since 1960, and as such Mr. Eggum would have never referred to **Garnet’s house** as being **Paul’s house**, big difference, as Paul is only a boarder there. And Mr. Eggum and Paul Heaven are only acquaintances, not friends as inferred by the AAG. And Mr. Eggum never asked Paul Heaven to hold a rifle for him [nor movies, not tools, etc].

Looking to **SAG exhibit-J** [divorce case 02-3-00216-1] it is clear that the **Paul** that Mr. Eggum was referring to was “**Paul Justiano**”, as that legal; document filed in 2003 shows this Paul holds Mr. Eggum’s **Tools & Nails** [Website Hardware & Movies].

In closing argument the AAG does the unimaginable, he incites the jury’s fears and passions that Eggum is going to kill someone if they don’t keep him in prison, because Eggum is going to go to **Paul Heaven’s House** to pick up the rifle that Garnet Heaven holds for Eggum’s mother. And while he’s stating that he’s **waving the rifle photo**. That’s **improper argument** and shifts the burden upon the defendant and **frightens the jury into an impassioned verdict**.

None of these discourses [**written to his mother**] are death threats, but at RP 309 Richey states “...**when it’s taken together as a whole it’s a threat to kill.**” Nothing could be further from the truth. But this statement goes to show that the **charging period [over two years]** is **unconstitutionally overly broad**. Where exactly was the death threat? Which statement was the statement the jury used to convict? There is **no evidence to support a death threat conclusion**. Is Richey truly frightened that his life is in danger [**as he feigns**] or is he really worried that Mr. Eggum is about to **resume the helm of his business** and start selling movies again, giving away **thousands of promotional movies** in town in **response to his actions**, that being contrary to the **unlawful objective** of the Concerted Group of Persons in SAG-A whose express purpose is to keep Mr. Eggum incarcerated [**as a means**] to prevent him from operating his business?

The appellant petitions the COA to overturn this conviction for the reasons cited herein. No crime exists here.

STALKING COUNT [6]

It should be noted that at RP 234 Gray admits that “she **never has received any letters and never received any phone calls** from Mr. Eggum, **whatsoever**.” [Threatening or otherwise]. So the alleged Stalking count doesn’t emanate from those acts as one might rationally assume. Nor could Mr. Eggum have surveiled [Stalked] Gray in the normal sense of the word because Mr. Eggum was imprisoned at McNeil Island on false charges [id.] So where does the Stalking claim arise? At RP 637 the AAG clarifies his charge:

“He knows what he’s doing when he **writes these things** to his mother. It’s what he does. It’s what he has been doing, and this is just the **latest manifestation** of that, during the time that he was writing [his mother] letters from 2007 to 2009, he was continuing to **Stalk Gray** by **engaging in this type of conduct writing** this type of stuff [To his mother?].” [Stating he’s going to restart his (lawful) business?]

So the Stalking claim is defined by the AAG as Mr. Eggum continuing to write to his mother [82 letters from 2007-2009] **writing “this type of stuff”** which Gray finds bothersome. But Gray admits at RP 234 that she has **never received any letters** from Eggum, whatsoever. So the claim that Eggum is **Stalking is mind-boggling**, because the “frightened or harassed” claim comes from Gray learning that Mr. Eggum has every intention of resuming the helm of his business [AVP] and continuing to sell his movies, which he is going to eventually do, and do lawfully.

Gray stated at RP 251 that she didn’t want to see the movies published anymore. But Gray’s feigned “frightened & harassed” state of mind comes from the **realization** that Mr. Eggum was about to release from prison on an **unlawful** sentence that she had played a significant role in, setting him up for Richey; and learning that Mr. Eggum had **every legal right** to continue operating AVP and continuing to sell his movies from/in Canada [RP 368] and that **Richey & Hallmark** (et al) had **no authority to regulate** Mr. Eggum’s lawful business. At RP 368 Richey states “I have no authority to regulate Mr. Eggum’s business in Canada, whatsoever.”

The AAG asserts it's a threat amounting to Stalking because it's a threat to further embarrass her [RP 370] because it's a threat to reveal a secret which she (now) wishes to keep secret. But at RP 620 Subin addresses the court:

“Saying [to your mother] you are **going to do something legal** is not a threat. So if he says I am going to **Canada to start my business again**, that's not a threat. He is **legally entitled** to go to Canada to **start his business again**.”

At RP 621-22 Subin addresses the court & jury:

“Since that day he **hasn't written** her a letter, ever. He **hasn't made a phone call** to her, ever. He **hasn't contacted her** in any way. He kept her promise to leave her alone. He is **not guilty of repeatedly harassing Gray**.”

But at RP 569 & RP 368 the AAG argues:

“His threat to '**expose a secret**' about Gray, basically, that she is depicted in these sex tapes that he claims to still have access to” and “that he's going to Canada to resume selling them and we have no statute authority to stop, that is Stalking.”

Please note at RP 367 Subin has Richey read a portion of Eggum's letter to him, where Eggum is telling Richey: “So you are aware, Fasano [Gray's atty] was **provided a copy** of the **Canadian ruling** and **offered the opportunity to renegotiate** her position, if she had any concerns [about her blunder] and she declined [yet again?].” Subin asks Richey “... is that paragraph threatening?” And Richey replies “No”. I thought he said saying that was Stalking?

But more to the point, Fasano & Gray previously **blundered** turning down the marketing rights to these swinger movies that Mr. Eggum marketed and sold, and here they are with a **Canadian ruling in their hand** knowing Mr. Eggum has **every legal right** to continue selling those movies on AVP, and they have an opportunity to correct their error if they so wish, and yet Gray and Fasano turn down the marketing rights again? That's telling. So their harassment is due to their own actions? Do they now complain about something they had an opportunity to stop, yet didn't? Their **harassment emanates** from their own **thoughtlessness**.

At RP 519-20 Subin States:

“In order for this [Stalking] statute to be *applied constitutionally* in this case, that bracketed language ‘or to do any other act that is intended to harm substantially the person threatened with regard to...personal relationships’ that portion has to be *removed from the [jury] instruction* in order to *withstand scrutiny* under the first amendment. If it is allowed, our *supreme court* has ruled that the *statute is overbroad* and *unconstitutional*.”

And this goes to the *definition of threat as defined* by RCW 9A.04.110 (27)(E)(J) that states:

“To do any other act which is intended to harm substantially the person threatened or another with respect to his/her personal relationships,” and/or “to *expose a secret* or publicize an asserted fact tending to subject any person to hatred, contempt or ridicule.” But in this particular matter the *threat to market a movie* cannot be considered because the *movies have been marketed* for *over 10 years* and are *not considered secrets*, and Mr. Eggum has *every legal right* to continue marketing them.

Subin advises the court at RP 508: “There is an *underlying difference of opinion* about what the law is on this issue [between Subin & the AAG].” Mr. Eggum would direct the COA’s attention back to [SAG-D, paragraph 4] where Judge Uhrig rules:

“From a *legal perspective* Hilton’s former boyfriend sits back and *sells those movies* and makes lots of money, and he has *every legal right* to do so.”

In a *juxtaposition analysis*: Hilton doesn’t want to see her movie sold, but she made it, it’s out there now, and she now *regrets* it, same as Gray. But the *primary difference* between Gray and Hilton is that *Gray made these movies to be marketed*, whereas Hilton argues she did not. And *Gray signed numerous contractual agreements* over 7 years, whereas Hilton did not. And therefore it follows Mr. Eggum’s *legal right to sell his movies would supersede* Hilton’s ex-boyfriend’s legal right. So *Judge Uhrig has acknowledged* that Mr. Eggum has *every legal right* to continue selling those movies – from a *purely legal perspective*, as he puts it.

At [Amburn v. Daly, 81 Wn.2d] the courts have repeatedly held: No **construction** should be given to a **statute** which leads to a **gross injustice** or an **absurdity**.” And ruling that Stalking occurred here would be exactly that, an **absurdity**. The jury should have been given additional jury instruction [as argued by Subin] to the effect that: Mr. Eggum stating that he is going to resume selling his movies in Canada ‘cannot be considered a threat’ or ‘harassment’ under the definition of threat because Mr. Eggum has every legal right to do that. Had this jury instruction been given – or the matter clarified for them, instead of having been left ambiguous – then Mr. Eggum would have been found not guilty on all the charges, because the continued selling of movies was the gravamen complaint underlying the charges as admitted by the AAG.

At [State v. Simmons, 2008 Wn. App. LEXIS 849] the courts have repeatedly held:

“Jury instructions are sufficient if supported by substantial evidence; if they **allow both parties to argue their case theories**; and when **read as a whole**, properly inform the jury of the applicable law. Jury **instruction misstating the law** amounts to an **error of constitutional magnitude** and is **presumed prejudicial**. Even if presumed prejudicial, an erroneous jury instruction that misstates the law is subject to harmless error analysis. An erroneous instruction is harmless when it appears beyond a reasonable doubt that the error did not contribute to the ultimate verdict. “[Simmons, 2008 Wn. App. LEXIS 849]

In this particular case the defendant was not allowed to present his defense or argue his theories because the judge ruled [Motions in Limine] that the jury wouldn’t be allowed to see any portion of the movies showing Gray’s consent, hear the **“how or why”** the movies were made [intent], nor be allowed to hear Gray questioned about her **contractual agreements** she had signed with Eggum, and the judge denied the subpoena request to obtain those contracts [See Motions in Limine section], and this case basically centers around the AAG’s argument that Mr. Eggum is threatening to **“reveal a secret”** about Gray because she **regretted** having **denied the movie rights** and no longer wants the movies published because she now finds those movies embarrassing, and therefore **additional jury instructional** was needed.

This **harmless error rule does not apply** because it is **irrefutable** that this **erroneous jury instruction** ultimately lead to the conviction of Mr. Eggum. At RP 597 the AAG states: “Does the evidence prove that the defendant **repeatedly harassed** Gray during this period of time? By writing these things that he wrote in these letters [to his mother?].” Please recall, these letters [to his mother] went through **5 sets of hands** before being presented to Gray for her perusal. And Gray admits that she has **never** received one letter or call from Eggum since they separated, therefore the **claim of Stalking is absurd on its face**. Mr. Eggum would be the first person convicted of Stalking in the United States who **hadn’t surveiled anyone** and who had **left his wife alone**. Under RCW 10.14.020. Definitions. Harassment is defined as:

(1) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which **serves no legitimate or lawful purpose**. The course of conduct shall be such as would cause a **reasonable person** to suffer substantial emotional distress, and shall actually cause substantial emotional distress to **the** petitioner.

In this particular matter, the defendant **operates a business which is lawful [AVP]**; therefore it is a **legitimate purpose** whether you **morally agree with it or not**. Mr. Eggum is an adult movie producer and Canada has ruled that his **website is a legitimate lawful purpose**. And you **cannot “reveal a secret”** about a pornography actress which embarrasses her, especially if **that** secret is related to the pornographic movies she previously agree to market & sell.

In closing I would draw the court’s attention back to Mr. Subin's closing argument at RP 519 about the statute definitions and how if these “jury instructions and definitions” were used to convict in this matter, that our supreme court has ruled that the statute would be **overbroad and unconstitutional**. Mr. Eggum herein petitions the COA to dismiss this count as **no crime exists here**. Mr. Eggum hasn’t contacted his ex-wife since 2001.

FELONY DEATH THREAT – GRAY - COUNT [5]

There is **no death-threat** within any of the letters Eggum wrote [to anyone]. At RP 234 Gray stated she has **never received any threatening calls or letters** from Eggum, **whatsoever**. The **alleged** death threat occurs in a letter Eggum wrote [to his pastor] complaining about Gray and her coworker friend [Jerry Hemple] **repeatedly walking by** Eggum's jobsites and **brandishing a 357 handgun in a threatening manner**. At RP 111 Gray reads a letter Mr. Eggum wrote to his pastor asking him to **intervene before someone got hurt**:

“...so maybe now you can see why I am concerned about this member of our church congregation running around and **threatening me with a gun**. In short Hemple needs to **stay away from me**, stay away from my wife, and mind his own business, as I have **absolutely no qualms about pulling out my Glock and protecting myself** from any person threatening me. So again I would hope that you would **mediate a solution** [to this behavior]”. [RP 111]

This cannot be **misconstrued as a death threat**. Mr. Eggum has **every legal right** to defend his life, if his life is threatened. Was Gray threatening Mr. Eggum by **brandishing a handgun** while **repeatedly walking by** Mr. Eggum's **jobsites**, as Eggum claims?¹⁰ At RP 226-27 Subin queries Gray:

Subin: “Eggum claims he was **threatened at his work with a 357 handgun**, was that true?”
Gray replies: “**Jerry had a handgun**. He **carried it** with him while we were walking.”
Subin asks: “So is it true that Hemple threatened Mr. Eggum with a handgun.”
Gray **elusively** replies: “**Depends** on how you are **defining ‘threatened’**.”
Subin: “Pulled the gun out... showed it to him?”
Gray: “To my knowledge he didn't do that, but you'd have to ask Jerry, I guess.”

This **alleged crime does not exist**, but since this count [5] is a concurrent sentence [time-served] the balance of this appeal to the conviction is cited at Appendix-9.

¹⁰ It should be noted that at **RP 337-41 Richey admits** that he was **responsible for instructing Gray to repeatedly walk by** Eggum's jobsites to promote unlawful contact; contacts which he would later charge Mr. Eggum with. [See SAG prior convictions - 2005]. When questioned [RP 341] about whether or not Richey was **also responsible** for instructing Hemple to accompany Gray and brandish the handgun against Mr. Eggum – as Eggum complained – the AAG objected to the line of questioning and Judge Uhrig allowed Richey to not answer the question.

DEFENDANT DENIED ABILITY TO PRESENT DEFENSE
MOTIONS IN LIMINE, 404(B) ERRORS

At the AAG's Motions in Limine [pg 1] the AAG admits "the defendant considers himself a **pornography entrepreneur**" operating a **lawful** website which **sells sex movies of his ex-wife**, and at [pg 2, para 2] the AAG **admits the lawful nature** of the website sales:

"The **legality** of the defendant's operation of a pornographic website containing pornographic **depictions of his ex-wife** and/or **sales of commercial pornographic movies** of the defendant's ex-wife is **not an issue the jury will be called upon to decide.**"

Is there any ambiguity to this? Because the AAG is alleging that Mr. Eggum is threatening to **'reveal a secret'** about Gray, and this somehow constitutes a crime, and yet he simultaneously agreeing that Mr. Eggum operates a website which sells these movies. At **SAG-W**, page 16, or at [RP (02 Nov. 09) 16] **Judge Uhrig acknowledges this legality** issue:

"He is a **businessman**, and as he said in the past, he's a **pornographer**. And that's **not an issue**. It's up to the state to somehow convince the jury that the state doesn't have any interest in his right to distribute these videos that he sells." [02 Nov 2009]

At [RP (02 Nov. 09) 6] the state admits that it is a **non-issue**, therefore, the state will have **no** complaint in the future when Eggum releases from prison and his movies are actively promoted again. But that's **incongruent** with what the AAG says later within the Motions in Limine.

"However, the images themselves and/or testimony about the details of the images or the **testimony** about **'how and why'** the films were made is **irrelevant [huh?]** and **must be excluded because it is unduly prejudicial** to the case in chief." [pg 13]

This is known a **doublespeak**. In one breath he is stating it's a **non-issue** and admits the sales are **lawful**, and in the next breath is stating that he's charging the defendant with threatening to **give away promotional movies** in the marketplace **in response to** Public Servants unlawfully interjecting themselves into Mr. Eggum's business concerns, which they admit are lawful.

Within the AAG's Motions in Limine granted by Uhrig, the judge had granted the following adverse rulings: (1) That attorney Subin could not publish to the jury a segment of film showing

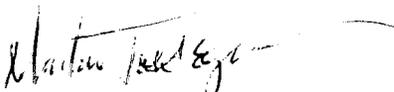
Gray [clothed] holding up a published porno magazine advertisement which showed the movies offered for sale [PT-RP 124-25,133]; nor (2) would Uhrig allow Subin to question Gray about her **contractual agreements** placing these films into the marketplace through Eggum's company [AVP] or through other vendors; nor (3) would Subin be granted a **subpoena** which would have shown the jury the **actual contracts**, nor (4) would Subin be allowed to question Mr. Eggum in regard to any of these issues; nor (5) question Gray about declining these marketing rights even though these facts are not confidential attorney-client information because they are well documented as part of the public record (court file). These **numerous biased rulings** within the Motions in Limine **in effect denied** Mr. Eggum the **ability to take the stand** and present his defense, as this was his defense, and the jury would not be allowed to hear any of it.

But simultaneously, while **admitting the website sales are legal**, and while **denying** Eggum his **ability to present his defense**, at RP 246 Uhrig allows the AAG to ask Gray to read to the jury the [**invalid**] Injunctive Imagery Restraint Order that **Uhrig had signed** [SAG-I, SAG-K]. That led the jury to believe Mr. Eggum was "restrained from displaying, selling, distributing, or disseminating any images of Gray on the Internet" and therefore doing anything contrary to that might be construed as criminal. And that's exactly how the jury interpreted it. This goes to the **heart of the matter**, because at SAG-B, SAG-D, SAG-W, Judge **Uhrig** and/or the **AAG** had admitted that the **sales were legal**. The **jury needed additional instruction**. Looking to SAG-K, page 5, para 1, the court will note that if Mr. Eggum chooses to ignore the order [in Wash.] the remedy would be that Gray could **file a lawsuit** against Eggum, the **remedy would be civil**, not criminal, and Mr. Eggum was perfectly content with that remedy because Gray would have to sue in Canada, and that matter had been **resolved in his favor**. Please note the **invalid nature** of the Restraint Order, because it's valid only in the Washington, not Canada.

Looking to SAG-H, page 23, the judge that signed the permanent order acknowledged the **Order** did not affect Mr. Eggum's **business partners or webmaster** from continuing to operate his business, selling those movies; although he mentioned they could be *sued* as a possible remedy for Gray. Bear in mind, Gray [thru Richey's faulty advice] has **repeatedly turned down** any interest in **receiving any revenue** from those sales [id. at 26]. The reason for repeatedly turning down those generous offers is obvious: **Richey and others**¹ intend upon incarcerating Mr. Eggum indefinitely, therefore there is no need to accept the offer; and hence the **absurdity** of the sentence, when the appellant insists that **no crime exist here**. Within SAG-A, an officer of the court testified that a **Group of Persons** existed who **Conspired** to keep Eggum incarcerated **[as a means]** to prevent him from selling his movies, and yet all these current charges **stem from** that very purpose and involve those movies. Therefore: is the prosecution doing the very thing testified to in SAG-A? At RP 520 Subin states that if the **current definition of threat** is used without additional instruction clarifying for the jury that the threat to sell movies cannot be used as the requisite threat, then the **statute definition[s]** would be **overly broad & unconstitutional**.

The appellant herein motions the court to dismiss every count and immediately release Mr. Eggum, as **no crime exists here**; or in lieu of that occurring, remand for resentencing within the SRA guidelines to "time served" so Mr. Eggum may return to Canada to resume his life, as was his intention in June of 2009 when he was scheduled to release from McNeil Island; or remand for re-trial in another county before a fair & impartial judge whereas the defendant will be allowed to take the stand [and present his own defense].

Herein submitted on this 20th day of November, 2011.



Marlow Todd Eggum, Appellant.

Appendix-1

“Abuse of Authority Doctrine”

Public Servant Acting Outside Scope of Statute Authority In the Furtherance of an Unlawful Objective

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

It is firmly established within this brief at SAG-A that both **Hallmark & Richey** [et al, incl. **Judge Uhrig**] acted in concert as part of a group, either separately and/or together, to keep **Mr. Eggum** continually incarcerated [as a means] to prohibit him from doing something that they **morally disagreed** with, that being selling his movies through his [lawful] business.

That is **not an official duty** which they have **statute authority** to perform. You cannot take a person’s freedom because they do something you morally disagree with. Therefore, anytime either of those Public Servants uses the power of the state in the **furtherance of that objective** they are **cloaking their actions under color of law** in the **furtherance of an unlawful objective**, and as such, the caselaw cited below supports that their actions are no longer considered official actions and they are **no longer deemed Public Servants** because they are pursuing **purely personal motives (i.e. biases)**.

In the following caselaw citations [as it appears in LEXIS] the [appellant’s analysis] will follow at the bottom of the case being cited.

The courts had repeatedly held:

JAMES MONROE et al., Petitioners, vs. FRANK PAPE et al.
365 US 167, 5 L Ed 2d 492, 81 S Ct 473
Argued November 8, 1960.
Decided February 20, 1961.
SUMMARY

Held: “**Misuse of power**, possessed by virtue of state law and made possible only because the **wrongdoer** is clothed with the authority of state law, is action taken “**under color**” of state law, within the meaning of Rev Stat 1979 (42 USC § 1983), which gives a right of action against a person who, under color of state law, subjects another to the deprivation of any rights, privileges, or immunities secured by the Federal Constitution.”

Appellant’s Analysis: Within the context of this repeated ruling; it is indefensible to argue that statute authority given to a Public Servant empowers them in any way to deny a man his freedom [as a means] of preventing him from doing something that that Public Servant finds morally objectionable. State law does not authorize that. Any time a Public Servant uses the power of the state to that end they are acting outside the scope of their authority and their actions are no longer considered official duties; nor are they considered Public Servants when that act is performed.

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WILLIAM TARPLEY, Defendant-Appellant
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
945 F.2d 806;1991 U.S. App. LEXIS 23512
No. 91-1043
October 8, 1991

OVERVIEW: Appellant sheriff assaulted his wife's former lover. Appellant was convicted of conspiracy to injure and oppress an individual in the exercise of his constitutional rights, and willfully subjecting the individual to a deprivation of his constitutional rights, in violation of 18 U.S.C.S. 241 and 242. He argued that the jury's finding that he acted under color of law was not supported by the evidence. The court affirmed and found that sufficient evidence existed. He claimed that he could not be convicted on the conspiracy count after his alleged co-conspirator was acquitted in the same proceeding. His claim was rejected because there was a third potential co-conspirator not acquitted. One could be convicted of conspiring with unnamed individuals as long as the indictment referred to them and the evidence supported their complicity. Appellant argued that the district court erred in its investigation of juror misconduct by failing to allow him to question the jurors or by failing to conduct voir dire. The court disagreed; the trial court investigated the asserted impropriety and found that no extrinsic factual matter was disclosed to the jury.

OUTCOME: The court affirmed the order of the district court that convicted appellant sheriff of conspiracy to injure and oppress an individual in the exercise of his constitutional rights, and of willfully subjecting the individual to a deprivation of his constitutional rights. Sufficient evidence indicated that he acted under color of state law and the trial court adequately investigated alleged jury impropriety.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken under color of state law. "Under color of law" means "under pretense of law". The court also observes that acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. However, acts of officers in the ambit of their personal pursuits are plainly excluded."

"Whether a police officer is acting under color of law does not depend on duty status at the time of the alleged violation. If officials act for purely personal reasons, they do not necessarily fail to act under color of law. Individuals pursuing private aims and not acting by virtue of state authority are not acting under color of law purely because they are state officers."

Summation of Events:

"This is what happened, in the light most favorable to the government. In 1988, William Tarpley, deputy, Collingsworth County Sheriff's police force, learned of a past affair of his wife, Kathryn and Kerry Lee Vestal. Tarpley devised a plan to lure Vestal to the Tarpley home for the purpose of assaulting him.

"Sheriff Tarpley had his wife call Vestal and tell him that she had separated from her husband {945 F.2d 808} and that she wanted him to come pick her up. On the day that Vestal was to arrive, Tarpley and another deputy, Michael Pena, made a pair of "sap gloves" in his office at the sheriff's station. These are gloves with rubber hosing filled with metal or lead shot attached to the fingers. Tarpley told Pena that he planned to have his wife call her boyfriend over and then use the sap gloves on him."

"Tarpley parked his patrol car behind the house of another deputy so as not to alert Vestal that he was at home. When Vestal arrived at the Tarpley residence, Mrs. Tarpley opened the door and pulled him into the house. Mr. Tarpley immediately tackled Vestal and hit him repeatedly in the head. He also inserted his service pistol in Vestal's mouth. He told Vestal that he was a sergeant on the police department, that he would and should kill Vestal, and that he could get away with it because he was a cop."

"He repeated "I'll kill you. I'm a cop. I can." As he continued to beat and threaten Vestal, Mrs. Tarpley may have been taking pictures of the encounter. Tarpley then had his wife telephone the sheriff's station and ask Pena to come to their house. She did, and when Pena arrived, Tarpley introduced him to Vestal as a fellow sergeant from the police department. Pena confirmed Tarpley's claims that Tarpley had shot people in the past."

Appellant's Analysis: In this particular case Hallmark's actions mimic that of Sheriff Tarpley. The sheriff beats up his wife's former boyfriend / lover and claims that because he is a law enforcement officer that he has the power to do that. In Hallmark denying Mr. Eggum his freedom, she is conspiring to injure and oppress an individual in the exercise of his constitutional rights, the same as Tarpley had. The fact that she is a probation officer, like Tarpley claiming special privilege as a sheriff, has nothing to do with her biases and/or ulterior motives. DOC counselor Ryan Denzer had clearly stated to Mr. Eggum the reason his freedom was being denied [release address approval] was because Hallmark had received a call from Richey [both Public Servants] and they did not want Mr. Eggum's adult entertainment business restarting with him at the helm. Therefore it follows, Hallmark's actions parallel that of Tarpley and therefore her actions are not considered official duties, and she is not considered a Public Servant at that time. Therefore, under this caselaw, counts [1 & 3] fails in so much as two components are missing from the definition if IPS.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff relatives of decedent challenged the judgment of the United States District Court for the District of Puerto Rico, which granted summary judgment for defendant police officers in plaintiffs action under 42 U.S.C.S. § 1983, seeking damages allegedly suffered when one defendant shot and killed decedent during a fight at a bar. The district court held that defendant, who shot decedent, was not acting under color of state law. Summary judgment for police officer in decedent's relatives' civil rights case after decedent was killed by officer during fight was affirmed because officer who was on medical leave, but was required to carry gun, was not acting under color of law.

OVERVIEW: Decedent was drinking at a bar with others. Defendant police officer who was on medical leave from the police force and was not wearing a uniform arrived at the bar with other defendant police officers. Police department policy stated that police officers were on duty 24 hours and required defendants to carry identification and a service revolver at all times. Thereafter, one defendant exchanged words and threatening glances with decedent's group. Defendant told decedent that he was an officer and decedent challenged him to go outside and fight it out without his gun. Thereafter, defendant fired six shots and killed decedent. Plaintiff relatives of decedent filed a complaint under 42 U.S.C.S. § 1983. The district court granted defendants' summary judgment. The court affirmed and held that defendant's statements that he was entitled to a special privilege because of his official status as a police officer did not constitute action under color or pretense of state law because the asserted privilege was outside the scope of his official duties. The court further held that the evidence showed that defendant's status as an officer did not enter into his taunting of decedent.

OUTCOME: The court affirmed the grant of summary judgment for defendant police officers in the civil rights claim of plaintiff relatives of decedent, in which plaintiffs sought damages for decedent's suffering, because defendant who shot decedent was not acting under color of state law.

Appellant's Analysis: Under this example it is inarguable that the law enforcement officer was not acting within the scope of his official duties when he stepped outside the bar and entered into a fight with a bar patron. Nor was he acting in an official capacity when he shot the decedent. These actions are not the actions or behavior sanctioned by state law that law enforcement officers have. Therefore the courts ruled he lost his status as a Public Servant when this incident occurred, and his actions were not actions taken under color of law. It follows that while Hallmark is a probation officer, her actions were also outside the scope of her authority, and therefore she lost her status as a Public Servant when she did deny Mr. Eggum his freedom because she did not want Mr. Eggum's business restarting.

SUSAN CARLOTTA ELLIS, Plaintiff, v. CHICAGO POLICE DEPARTMENT, and CITY OF CHICAGO,
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN
DIVISION

1986 U.S. Dist. LEXIS 25549

No. 85 C 6604

May 13, 1986

PROCEDURAL POSTURE: Plaintiff brought an action under 42 U.S.C.S. § 1983. Defendant city filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) and defendant police officer filed a motion to dismiss for failure to state a cause of action and for lack of subject matter jurisdiction. In the alternative, he sought a more definite statement of facts and to strike a paragraph of the complaint. Plaintiff's complaint stated claim that police officer was acting under color of state law when he participated in taking nude photos of her. However, she failed to state a claim against city merely because it had knowledge of officer's misconduct.

OVERVIEW: Plaintiff alleged that when she was 13 years old, another defendant, who was also a **police officer**, took pictures of her naked and that she was forced into having pictures taken while engaged in sexual relations with the officers. She contended that the pictures were prominently displayed through the officer's home and shown to other members of the police department. She claimed that the officer who took the pictures attempted to extort money from her when she tried to obtain them. She alleged that these actions were under the color of law and were taken with the direct knowledge of other police officers, including the officers' direct supervisor. She contended that the police department failed to make any attempt to deter the officers' actions and breached its duty to her. The court found that plaintiff stated a claim upon which relief could be granted under 1983 against the officer. As a result, the court had subject matter jurisdiction over the action. However, she did not state a claim against the city because mere knowledge of and acquiescence in prior misconduct of an employee was not sufficient grounds to base the city's 1983 liability.

OUTCOME: The court denied the officer's motion to dismiss for failure to state a claim and for lack of subject matter jurisdiction. The court denied the officer's motion for a more definite statement. The court denied the officer's motion to strike a paragraph in the complaint. The court granted the city's motion to dismiss the complaint for failure to state a claim upon which relief could be granted.

Appellant's Analysis: Under this example it is inarguable that the law enforcement officer was not acting within the scope of his official duties when he took nude / sexual photographs of an underage girl [or any person no matter the age or gender], and therefore he was not acting within the scope of his official duties when he did these acts. So he lost his status as a Public Servant and he was not performing an official duty when he did these things, although he cloaked his actions under color of law as a law enforcement officer. The same doctrine follows for Hallmark's actions. Hallmark is not allowed to arrest and/or imprison anyone because she has a **moral bias** against his business restarting. Denying his submitted address which was foisted upon him for that purpose is the same as imprisoning someone.

LISA POKALSKY Plaintiff, v. SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
2002 U.S. Dist. LEXIS 16175
CIVIL ACTION NO. 02-323
August 28, 2002, Decided
August 28, 2002, Filed; August 29, 2002, Entered

PROCEDURAL POSTURE: Plaintiff disabled passenger sued defendants, the Pennsylvania Transportation System (Septa), a transportation contractor, a driver, and an individual, under 42 U.S.C.S. § 1983 and the Americans With Disability Act (ADA), for injuries from the driver's rape of the passenger. The individual was dismissed. Disabled passenger's complaint against a state agency and a transportation contractor for injuries from a driver's rape was adequately stated in a claim because the driver's actions were connected with his employment and constituted state action.

OVERVIEW: Septa contracted with the contractor to provide transportation services. Defendants argued that the driver was not a state actor. The court held that (1) the driver's actions were connected with his employment and constituted state action; (2) the complaint adequately stated a claim that Septa and the contractor violated 42 U.S.C.S. § 1983 because of a constitutionally deficient practice of not investigating claims of driver sexual misconduct, but it did not adequately state a claim that Septa and the contractor had a custom of not investigating the criminal history of their drivers as the driver had no conviction, only a prior arrest, which could not be considered by employers under Pennsylvania law; (3) the passenger would not be allowed to pursue either a state-created danger theory or a special relationship theory of liability, which were not raised in the complaint; (4) the complaint failed to state a claim for relief under the ADA; (5) Septa was immune from liability for the state tort claims; (6) the contractor was not immune, but it was not vicariously liable for the intentional torts; and (7) a private party was without authority to prosecute criminal charges.

OUTCOME: The motions to dismiss were granted as to (1) the state law claims against Septa, (2) the claim that the contractor was vicariously liable for the intentional torts, and (3) the ADA claim, but was denied as to the (1) 1983 claim based on a policy of not investigating complaints, (2) the contractor's claim of sovereign immunity, and (3) the claim that the contractor was liable for inflicting emotional distress. The motion to strike was granted.

Civil Rights Law > Section 1983 Actions > Elements > Color of State Law > Overview

Traditionally, **acting under color of state law** requires that the defendant have exercised power **possessed by virtue of state law** and made **possible only because the wrongdoer is clothed** with the authority of state law. Accordingly, acts **committed in an official capacity**, regardless of whether they complained of conduct furthered the goals of the state or constituted an **abuse of official power**, are deemed to have occurred under the color of state law. To emphasize, it is well settled that when an **employee abuses his position**, he is nonetheless deemed a state actor.**[However...]**

Civil Rights Law > Section 1983 Actions > Elements > Color of State Law > Overview

[However...]The standard for finding state action does not mean that **all acts committed** by an on-duty state employee **constitute state action**. While generally state employment is sufficient to meet the state action requirement, not all torts constitute state action. For example, a state employee who **pursues purely private motives** [such as personal grievances or biases] and whose interaction with the victim is **unconnected with his execution of official duties** does not act under color of law. Thus, the key inquiry is whether the employee in committing the alleged act **abused a power** or position granted by the state.

Appellant's Analysis: In this example it is clear that Hallmark was **pursuing purely private motives** when she denied the defendant's address that was foisted upon him in the furtherance of the unlawful objectives mentioned within SAG-A, whereas that group of persons conspired to keep Mr. Eggum incarcerated **[as a means]** to prevent his business from restarting.

The courts have repeatedly held:

Robert G. **BEARD**, Plaintiff-Appellant, v. Stephen G. **UDALL**, et al., Defendants-Appellees.
UNITED STATES COURT OF APPEALS, NINTH CIRCUIT
648 F.2d 1264;1981 U.S. App. LEXIS 11973
No. 79-3023
October 6, 1980, Argued
June 26, 1981, Decided

OVERVIEW: On February 26, 1974 a divorce decree was entered in Maricopa County terminating the marriage of Roger and Stephanie Beard. As part of the decree, Roger Beard (Beard) was awarded custody of his two minor sons. Stephanie Beard subsequently moved to Apache County, where she married Bill Crabtree and began working as a **secretary** for the County **Prosecuting Attorney**, Stephen **Udall**.

On July 8, 1977 Beard brought his two sons from his home in Maricopa County to visit their mother (Crabtree) in Apache County. While the boys were with their mother, **Prosecutor Udall**, representing Crabtree in his private capacity, petitioned Judge Greer of the Apache County Court to **modify the original divorce decree** and award custody of the children to Crabtree. Judge Greer set a hearing on an order to show cause (OSC) and entered a temporary restraining order (TRO) prohibiting Beard from removing the children from Apache County. The hearing was set for July 29, the day the TRO was due to expire. Beard filed a **motion to dismiss** on the ground that the Apache County Court **did not have jurisdiction**, a motion for an immediate termination of the TRO, and a motion for a change of venue. Judge Greer was apparently hearing another case on July 29 and, therefore, could not hold a hearing on the Beard matter until August 1. On August 1, Judge Greer heard arguments relating to Beard's motions and delayed the hearing on the OSC. Judge Greer's minute entry of August 1 made **no** mention of an extension of the TRO.

Beard returned to Apache County with his present wife and her sister on August 10 to pick up his sons. Apparently without informing anyone, Beard took the children from the house where they were staying, placed them in his car, and drove back to his home in Maricopa County. When it was discovered that the children were no longer in the county, a **complaint was sworn out** and signed by Deputy Sheriff Gilchrist charging Beard and his companions with various felonies and misdemeanors, including kidnapping. **Warrants were issued for the arrest of Beard** and his companions by a justice of the peace, and bond was set at \$ 60,000. Sheriff Lee of Apache County sent **a** telex to the Maricopa County sheriff's office regarding the arrest warrants. A Maricopa County police officer was sent to Beard's home and **arrested Beard** as he returned with his children from Apache County. Beard presented the **custody decree** to the officer **in** an attempt to convince the officer the **charges were unjustified**.

The officer was informed by his headquarters that he should nevertheless arrest Beard because the Maricopa County police had contacted **Udall** who had advised them that the arrest warrants were valid. Beard's attorney then contacted Judge McDonald of the Maricopa County Court. In his affidavit, Judge McDonald states that his **suspensions** were **sufficiently aroused** by the circumstances surrounding the arrests, specifically the **apparent conflict of interest** facing Prosecutor Udall, that he proceeded to investigate the matter.

Judge McDonald telephoned Udall, who stated that he was both Crabtree's private attorney and the **County Prosecuting Attorney**. Udall further stated that he had caused the charges to be brought against Beard. He justified the kidnapping charge on the ground that there was a valid TRO in effect which prohibited Beard from removing the children from the county. Udall allegedly also sought to mislead Judge McDonald as to the whereabouts of Judge Greer.

Judge McDonald finally contacted Judge Greer at his home. According to Judge McDonald, Judge Greer seemed to know what had transpired that day. Judge Greer informed Judge McDonald that the TRO was in effect, that he wanted the children returned, and that **Beard would have to answer to criminal charges** that had been filed against him. On the basis of his conversations with Udall and Judge Greer, Judge McDonald ordered that the bond set for Beard and his companions be reduced and that they be released.

Five days after the criminal charges were brought, Judge Greer made a minute entry amending his minute entry of August 1. In the amended minute entry, he indicated that all Beard's motions, including the motion to terminate the TRO, were denied. Judge Greer further set a hearing date, for later in the month before a different judge, on the original custody modification petition.

Beard brought a special action proceeding before the Arizona Court of Appeals, appealing the denial of his motion to have the custody modification proceeding in Apache County dismissed for lack of jurisdiction. The court of appeals held that Judge Greer did not have jurisdiction to entertain the custody modification petition because jurisdiction to modify a custody decree lies exclusively in the courts of the county that granted the decree. Beard v. Greer, 116 Ariz. 536, 570 P.2d 223 (Ct.App. 1977). Udall turned the criminal charges over to the State Attorney General. On September 21, 1977 the Attorney General informed Udall that he would not prosecute the charges brought against Beard. Nevertheless, on October 17, Udall wrote to Beard's attorney that the Beard matter was in the hands of the Attorney General and thus Udall could not dismiss the charges.

Beard, his wife, and his wife's sister **brought suit under** 42 U.S.C. 1983, alleging that **Udall, Judge Greer, and Sheriff Lee** were responsible for the instigation, prosecution, and continuation of proceedings against Beard and his companions and that these **wrongful acts** caused them to be **deprived of their federally protected rights**.

Plaintiffs sought compensatory damages, punitive damages, and attorney's fees from **all** three defendants. The district court awarded summary judgment to the defendants on the ground that they enjoyed immunity for their alleged official misconduct. Beard appeals from the district court decision claiming he was entitled to summary judgment for plaintiff's claim alleging that he improperly entered a temporary restraining order (TRO) because **defendant judge** did not act in clear absence of all jurisdiction and his entry of the TRO was clearly a judicial function.

Second, however, there was a **genuine issue of material fact** regarding whether **defendant judge conspired** to arrest plaintiff and because **such an agreement would not be a judicial act**, summary judgment was inappropriate on this claim. Third, defendant prosecutor was not entitled to summary judgment because his actions were **performed to further a private purpose**. And finally, defendant sheriff was also not entitled to summary judgment because he was **not entitled to immunity** unless his actions were taken in good faith and with probable cause.

OUTCOME: The court affirmed the defendant judge was immune from damages for entering a temporary restraining order, but simultaneously reversed the summary judgment on the claim that he **conspired to arrest plaintiff**.

The court also reversed the summary judgment to **defendant prosecutor** because he was **not acting in his official capacity** and it reversed the summary judgment to defendant sheriff because it was a question of fact whether he acted in good faith.

Appellant's Analysis: In Mr. Eggum's case, Deputy Prosecuting Attorney (DPA) Richey admits that he **did not have statute authority** to seize the property in question. DPA Richey freely admits that he had informed Gray's attorney [Fasano] that he would attempt to make the illegal seizure but that there were no promises.

DPA Richey then approached Judge Uhrig, much the same as Udall had approached Judge Greer and Judge McDonald, and took advantage of his **working relationship** with Uhrig to **obtain an illegal search & seizure warrant**, much the same as Udall used his relationship with the court to obtain the TRO and arrest warrant for Beard.

And at RP 329 DPA Richey freely admits to trying to “toss the property” to Fasano, as opposed to returning it to its rightful owner; and for **over 5 years Uhrig** has continually **refused to return the illegally-seized property**.

At RP 673 Judge Uhrig **disingenuously says** that he wants to “ensure that Mr. Eggum has everything returned to him that is rightfully, lawfully, and indisputably his,” but several months later [15 Mar. 2011] Judge Uhrig **refused to return the property** yet again. How many times does this need to occur before a **prejudice is recognized** by the COA? Is this court blind?

[Not returning the property is okay with Mr. Eggum though, because Mr. Eggum has stated to **Uhrig & Richey** that it is his intention (SAG-E / Forewarning to State) to **mass-market** Whatcom County with **15,000 free promotional movies** until Judge **Uhrig honors his disingenuous words**. Isn't the *threat* of mass-marketing these promotional movies the **basis of the gravamen complaint** made by the AAG within this case?]

Therefore it follows that if **Uhrig** is working with **Richey** to this end, then a reasonable person can also rightfully assume that **Uhrig** is also **conspiring** with the prosecution to deny Mr. Eggum a **fair & impartial trial**. If the COA looks at SAG-M, a prior judge had ruled that it would be inappropriate for Mr. Eggum to go to trial in front of Judge Uhrig, but yet here we have **Uhrig continually refusing to recuse himself** from the case [motioned 3+ times] and then denying every one of Mr. Eggum's pre-trial motions, and then improperly instructing the jury as to the definition of a threat, not instructing the jurors that Mr. Eggum is legally entitled to sell his movies regardless of the invalid Restraint Order that Uhrig allowed to be read to the jurors. Then at the end of the day, Uhrig adopts the prosecutions sentencing recommendations sentencing Mr. Eggum to more time than a murder gets. Was this because Mr. Eggum owns a sex tape of the senior DPA's wife? Or is this because Uhrig promised Richey to do everything within **his** power to ensure Mr. Eggum couldn't mass-market Whatcom County because of their actions?

**Prosecutor Richey and Judge Uhrig Conspiring
to Fix the Outcome of Trial**

In the preceding caselaw it is well established that any time a law enforcement employee **or** any **Public Servant** uses the **power of their office** in the **furtherance of a personal interest**, **that** those actions are **no longer deemed to be official duties** they are performing, even if that **duty** is one which they would normally perform as part of their duties.

This **“Abuse of Authority Doctrine”** not only applies to ancillary Public Servants but also applies to **prosecutors & judges working in concerted effort** towards an unlawful end. The following caselaw addresses **Judge Uhrig working in tandem with prosecutor Richey** with regard to Richey admittedly seizing property that he knew he did not have the statute authority to retain [RP 332], and making that **illegal-seizure** through **Judge Uhrig**, with Judge Uhrig then doing everything within his power to **not-return the property** illegally-seized by Richey. This property was seized in 2004 & 2006 [2 batches] and Uhrig has had **ample opportunity** to **return** the property - but hasn't - because he's conspiring with Richey to “toss it” to Fasano by letting the “civil side handle it” as Richey had stated [RP 332].

If Uhrig is working with Richey to this extent then it is **inconceivable to think** that Judge Uhrig didn't conspire with Richey by **refusing to recuse himself** from the case, adversely ruling against Mr. Eggum at every motion, and then improperly instructing the jury [faulty instruction] to **obtain a flawed conviction**, and then handing down the most harsh sentence ever handed out in the history of the Washington State or the United States of America.

LexisNexis Headnotes

Torts > Public Entity Liability > Immunity > Judicial Immunity

A judge **does not enjoy judicial immunity** if the judge's actions were either non-judicial or taken in **clear absence of all jurisdiction**. The two factors that should be considered in determining whether an act is "judicial" are the nature of the act itself, that is, whether it is a function normally performed by a judge, **and** the expectations of the parties, that is, whether they dealt with the judge in his judicial capacity.

Civil Procedure > Judicial Officers > General Overview

A prior agreement to decide in favor of one party is not a judicial act. This conclusion follows from the fact that a party expects judicial impartiality in dealing with a judge; thus, if a judge connives with **one** of the parties to predetermine the outcome of a judicial proceeding, the other parties' expectations are frustrated. Moreover, an agreement by a judge to predetermine the outcome of a proceeding is not a function normally performed by a judge. Even though the judge's disposition of the proceeding remains **a** judicial act, under Rankin the prior agreement is deemed the essential cause of any deprivation of federally protected rights. Accordingly, the judge may be liable for damages due to the deprivation.

Civil Procedure > Summary Judgment > Standards > Genuine Disputes

When a **litigant makes a charge that a judge and another party** entered into a **private agreement regarding the outcome of a case**, the court of appeals takes into account the ease with which such a charge can be made. The court of appeals also keeps in mind that hailing a judge into court to answer such charges severely chills principled and fearless decision-making. In opposing a motion by the judge-defendant for summary judgment, a plaintiff making such charges may not rest upon the allegations or denials in the pleadings, but must set forth specific facts showing there is a genuine issue of fact for **trial**.

Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Conspiracy > Penalties

A judge can be liable for participating in a conspiracy if the acts indicating participation were taken by **the** judge otherwise than in his judicial role.

Torts > Public Entity Liability > Immunity > Judicial Immunity

A prosecutor is absolutely immune for his quasi-judicial activity. The immunity of a prosecutor is based upon the same considerations that underlie the immunity of a judge. Nevertheless, a prosecutor's immunity is not necessarily co-extensive with that of a judge. Absolute prosecutorial immunity now exists if the **prosecutor was acting within the scope of his or her authority** and the prosecutor was acting in a quasi-judicial capacity.

Legal Ethics > Prosecutorial Conduct

A **prosecutor who faces a conflict of interest** is in as poor a position to act impartially as a judge who predetermines a judicial proceeding.

Torts > Public Entity Liability > Immunity > Judicial Immunity

Where a prosecutor faces an **actual conflict of interest**, and files charges he or she knows to be baseless, the prosecutor is **acting outside the scope of his or her authority** and thus lacks immunity.

Appendix-2

Count [3] IPS Richey

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

Continued from SAG:

[SAG exhibit-N] is a copy of the June 07, 2009 letter written to Richey, and at RP 273-77 Richey reads the letter into the record; and at **RP 363-76 Subin dissects and questions Richey** regarding the various paragraphs to determine **exactly where** Mr. Eggum had threatened Richey, because there is **no threat within that letter** as shown. This letter was responsive to Richey's filing the Hallmark IPS[1] count and was **sent directly** to the prosecutor's office, so the openness of that mailing shows that Eggum clearly did not believe the letter contained any **threat**. As who commits a criminal act and sends it to the prosecutor's office? Mr. Eggum's **focus** was on **Richey & Hallmark's meddling in Mr. Eggum's adult business affairs**, which both persons admit is not an official duty of theirs as sanctioned by statute. The letter is broken down as follows:

"I have read your Affidavit of Probable Cause where you assert I was Intimidating a Public Servant, and **I can assure you that there was no attempt** to Influence any Decision that Hallmark thought that she had the authority to make. Hallmark already made her decision, therefore it would have been impossible to have influenced it."
[RP 363-64]

"Additionally, **DOC has ruled** that Hallmark **wasn't lawfully entitled** to delay my release, as having an address wasn't a factor in my releasing, just as I had said. Therefore, Hallmark **didn't have any "decision-making-ability"** from which to try influencing. Her decision had been made anyway. Worthless as it was. **Both are components** which are required, and neither exit. But I think you know that."
[RP 364-65]

Within those two paragraphs Mr. Eggum reasserts his position that there was never any attempt to influence any decision Hallmark had made under the IPS[1] count, and Eggum shows Richey that **DOC ruled [SAG-G]** that there was **never any "decision-making-ability"** from which to have influenced, in the past, present, or the future. Richey admits that there is not threat within those passages, and Eggum's letter continues:

"So I think you know this charge isn't going anywhere. There's no way Whatcom County would be able to take this matter to trial given the **unlawful involvement** of the prosecutor's office. Plus, given the situation, you are going to be placed on the **stand as a witness**, given your personal involvement alongside Fasano and Chambers, as well as Hallmark, both before and now." [RP 365] [Refer to SAG-A]

In this passage Mr. Eggum refers to the **unlawful motivation** of Richey and the others who are named as the **Group of Concerted Persons [SAG-A]** whose primary purpose is to keep Mr. Eggum incarcerated **[as a means]** to keep his website off the air. The **ends justify the means** in their minds, regardless of the **laws guarding against such outrage**. Richey admits that no threat exists within this passage, and then Mr. Eggum goes to the **heart of the matter** in the 2009 case:

“Given what you have stated in your complaint, it seems you are **overly concerned** about me **selling and marketing** my movies in **St. John’s, Newfoundland, Canada**. And Whatcom County shouldn’t have any interest in the affairs of Canada. What business is that of Whatcom County? What business is that of Washington State? The answer should be none. My movies have been marketed and sold in St. John’s for years, and will be sold there in the future.” [RP 274]

This passage goes to the **heart of the matter** in this 2009 case, and also goes to the core of the Hallmark IPS [1] count and why Mr. Eggum stated he was going to give away promotional movies in **St. John’s as opposed to Timbuktu** [*id.* at]. Richey as a DPA acting on behalf of the state has **no lawful authority** to make [**illegal**] **seizures** of Mr. Eggum’s property because of **moral biases** he has, or attempt to make those seizures on behalf of someone else and toss the property to Fasano [*id.* at]. Richey admits at RP 368 that he doesn’t have any authority whatsoever to regulate Mr. Eggum’s website activities in Canada. So **Mr. Eggum’s focus** here is on **Richey meddling in his business affairs**, just as Hallmark and he had done. There is no threat here and Richey admits as much, the letter dissection continues:

“So you are aware, **Fasano was provided with a copy** of the **Canadian Ruling** and **offered the opportunity to renegotiate** her position if she had any concerns, and she had declined.” [RP 275]

Please note: Gray had **turned down** the **proffered marketing rights** to the movies in 2001-2003, and **regretted the decision** because of **faulty legal advice** she had received from Fasano [thru the prosecutor’s office] and with the **Canadian Legal Determination** in hand and knowing that Mr. Eggum has **every legal right** to continue selling his movies on AVP in/from Canada, **Gray turns down the proffered movies yet again?**

Please note that under **Lewis v. LeGrow** cited at **Appendix-4**: “There can be no invasion of privacy complaint [harassment claim] under the theory of intrusion upon seclusion of the complainant, if the **complainant consented to the very action they now complain.**” This Common Sense Doctrine applies to the videotaping, marketing, and denied rights.

In short, Gray complains about **embarrassment** stemming from her **privacy being invaded** but yet **consents to the continued marketing and sales** of the movies through her denial of the proffered movie rights [yet again?]. There was nothing attached to the proffered movie rights. Mr. Eggum's letter continues and goes to the **crux of the problem** within the current case:

“But it seems you have concerns where you shouldn't, as my movies being marketed in **Canada** shouldn't have been mentioned in your complaint at all, because **Canada** has **ruled** that my **website as Lawful**. So that shows your true underlying motivation behind everything you have done. You are **using the power of your office** for the personal interests of Fasano [& Gray] .” [RP 368]
[Refer to Abuse of Power Appendix-1]

Please note that nowhere within Richey's complaint for a Detainer Warrant does he state to the judge that Mr. Eggum has sold these movies in Newfoundland in the past, sells them there currently, and will sell them in the future because of the Canadian Legal Determination that Richey neglected to mention during his complain cited at RP 368. The next section of letter is where Richey identifies his threat used under his count of IPS[3]., as follows:

“It would **seem to me that you'd be more concerned** about **mixing** Todd's adult pornography with inmates at McNeil Island. I'd be more concerned about having 1,200 inmates buying Todd's pornography, than the entirety of Newfoundland owning one. This island is 50% sexual offenders, and not a day goes by where an inmate doesn't come up to me and ask me for the website address where my movies are sold at today. I've even had offenders approach me and ask if that's really my wife on the photos that they had printed off. I think that would bother you more than Newfoundlanders buying them. And here you are filing new charges against me, keeping me in prison where I tell everyone my story [& give out my website addy]. Doesn't make sense to me.” [RP 369]

In regard to that passage, at RP 281 Richey **identifies** this passage as the **requisite threat**:
“The first thing I'll point out is that he's making **threats in here similar** to what he made to Melissa Hallmark. He is saying he that he is going to **'continue to sell his videotapes'** wherever he is at, even if it's in prison.” Please note: This **cannot be used as the requisite threat** because this is what Mr. Eggum **does for a living**, legally from Canada, and whether Richey morally agrees with Eggum **“continuing to sell”** his movies is **irrelevant**. Please also note the **Analytical Nature** of Eggum commenting on **Richey's Rationale** and how that relates to the **Analytical Rationale** statements Mr. Eggum quoted his former attorney saying under Richey's supposed Felony Death Threat [4] cited at [id. at .]. Richey's actions never make logical sense.

In short, Mr. Eggum is an **adult entertainment entrepreneur** as cited by the AAG in his Motions in Limine [pg 1] and wherever Mr. Eggum goes he is going to market and sell his productions. If Eggum were in **Rome** the **Vatican** would be marketed [hyperbole]. It follows that Mr. Eggum also promotes his business while incarcerated. Mr. Eggum's letter continues and goes to show the conflict of interest in Richey's actions within the Hallmark IPS[1] count:

"My counselor here at McNeil Island says Hallmark and you do not want me returning to Whatcom County, and that why you called her, to get my address delayed, if that's your concern I have an **offer to make you**. I will **agree to relocate** to Snohomish County as long as there is an agreement in place whereas I can **travel freely** to Everson to **care for my dying mother**. And as part of that agreement, I'll agree to stay out of Lynden [where Gray resides], and if I violate that promise, you can arrest me. So here's the offer: Cancel your warrant, allow me to depart McNeil Island without being arrested [to care for dying mother], and if you ever hear of anyone seeing me in Lynden you can arrest me on these charges. Easy enough, and there's nothing to lose. That's a **pretty damn good offer**, because there's nothing preventing me from returning to Lynden nine months down the road (when probation ends), and I don't believe the state (or DOC) can prevent me from returning there anyway. here you have me agreeing to not return to Lynden. Isn't that what you want?" [RP 371-75]

Richey claims that this is Eggum trying to get him to **change his decision** – to cancel the warrant – **but simultaneously** Richey **admits** that Mr. Eggum has the **right to negotiate** an agreement because Eggum was **acting pro se** at that time. Additionally, if Richey's **true motive** was to ensure Eggum wouldn't stalk anymore, as alleged, wasn't this a **damn good offer** as Eggum had said? This goes to show Richey's **true ulterior motive**, he doesn't want Eggum's **website going active** again with him at the controls because of the doors he's opened and the fight that's about to occur [SAG-E, **Forewarning to the State**]. The letter continues:

"In addition, I'll return the **Lisa Fasano Fuck Tape [DPA Chambers's wife's tape]** that I own, and drop the WSBA complaint, if you'll agree to return the movies that you illegally-seized. Then we part ways. It's time to end this. Enough is enough. This is a damn good offer. Cancel the warrant and lets part ways. *Signed, Marlow Todd Eggum.*" [RP 374-376]

Please take **special notice**: Mr. Eggum is offering to return the sex tape that he owns of the senior deputy's wife being laid by someone else. This Fasano is more than just Janice Gray's former divorce attorney as appellate attorney Dana Lind Nelson had referred to her as. [Conflict of Interest/ Change of Venue / Refusal of Judge to Recuse Issues].

Appendix-3

Conspiratorial Group of Persons

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

At **SAG exhibit-A**, attorney Alan Chalfie testified as an **officer of the court** that he had spoken to each of the individuals cited within his declaration, and that they had admitted to him that there “was a **united group effort in place** to keep Mr. Eggum incarcerated [**as a means**] of preventing him from continuing to sell sexually explicit movies of his ex-wife,” which they were **morally opposed** to because of advice each of them had given to Gray. That **SAG-A** declaration is cited below:

“Mr. **Richey** was in regular contact with Eggum’s ex-wife Janice **Gray**; her divorce attorney Lisa **Fasano**; and Eggum’s DOC probation officer Melissa **Hallmark**; in their **united efforts** to put the defendant back into custody ‘**as a means**’ to prevent him from continuing to sell sexually explicit movies Of Janice Gray, which they morally disagreed with.” [SAG exhibit-A]

Please take note that putting the defendant into custody because he legally does something that those Public Servants **morally disagrees** with is **not an official duty** that any of those persons has [if they are Public Servants] and each one of them works within the **legal system** in one capacity of another. The definition of Conspiracy is defined at Appendix-6, but it is inarguable that depriving Mr. Eggum “of his freedom” because he does something those persons disagrees with is not a **Conspiracy by definition**. Why does that **Conspiratorial Group** exist? And who is involved within it? Is **Richey, Fasano, Hallmark**, two victims’ advocates and Gray a part of that Conspiracy? Does it **extend to the bench**? How **involved is Judge Uhrig** in this concerted group effort? Is there any indication that his involvement in this case - **and his *continued refusal to recuse*** himself - was a part of that concerted effort? Please **note** how this group was formed and how each of those persons has played a role:

Mr. Eggum filmed his wife from 1995-2001 engaged in swinging activities whereas she had **contractually relinquished** her future **right to privacy** by contracting with Mr. Eggum to allow him to sell those swinger movies through his adult entertainment company, AVP. Those movies and their associated marketing rights were **repeatedly offered** to Gray – through her attorney Fasano – from the parties’ separation in 2001 until the divorce finalization on July 8th, 2003.

The *basis* of those denials was that Fasano had given **faulty legal advice** that it would *somehow be unlawful* for Eggum to continue selling those sex movies [of Gray swinging] once the divorce was finalized. Six months after the divorce was finalized [19 Nov. 2003 / SAG-B] Fasano and Gray found out that Mr. Eggum could in fact continue to sell these movies *contrary* to the *faulty legal advice* Gray had been given. At that juncture Gray moved to sue Fasano for that faulty legal advice, and Fasano moved to correct her error to avoid being sued.

At RP 216-217 Gray admits that she now **wanted to movies back**, but only after learning of the legal advice that had been wrong, and Gray admits that Fasano had offered to get the movies back for her. This is in keeping with the *Conspiratorial Group effort*, and at this juncture only Gray and Fasano are involved, and this was where the group’s core was formed. But looking at RP 218 Gray admits that Fasano had contacted Richey and he had stated that he would attempt to get the movies back for Fasano and Gray, “but there were no promises.” But please also note that at RP 332 Richey admits that he *doesn’t have statute authority to possess the movies*, therefore he doesn’t have *statute authority to seize the movies either*, and at RP 329 Richey admits that he was seizing the movies in an attempt to toss the movies to Fasano [the civil side]. Also please note that Fasano went to the prosecutor’s office to have Mr. Eggum arrested for selling his movies, but no one in the prosecutor’s office could arrest Mr. Eggum for running his website business because the continued *sales of the movies was not unlawful*.

If the **sales of these movies were unlawful** wouldn't Eggum have *been arrested* for it? Nor could they *legally seize* the movies, but Fasano [a *newlywed bride* at the time] **sexually bribed** senior deputy prosecutor attorney (DPA) Craig Chambers in an effort to "*persuade*" him to get the movies back that she [Fasano] had previously denied. This was *how* Richey was introduced to Fasano & Gray - through Chambers having been *sexually induced* into helping her to get the movies back. Chambers did not have the ability to request the warrant himself because Chambers strictly prosecutes drug cases and Mr. Eggum has no drug history, therefore his request out a search warrant for swinger movies would have been highly suspect by anyone.

While this may not seem to have any relevance now, please bear in mind Mr. Eggum now **owns a sex movie of Fasano**, and **Fasano is now senior DPA Chambers's wife**.

The *only way* the prosecution can help Fasano get the movies back that she previous denied is to *commit perjury* before the court. Why is that? Because as Richey had admitted at RP 332 he *didn't have statute authority* to possess them, and if he cannot possess them then it follows that he cannot seize them, not *unless he perjures himself*. And in order to perjury himself he needs a complicit judge, and that complicit judge shall be Judge Uhrig. And the COA needs to pay special attention on what transpires from here on out with regard to Uhrig.

Senior DPA **Chambers** and senior DPA **Richey** and divorce attorney **Fasano** approach Judge **Uhrig** ex parte and advise Uhrig of the situation that Fasano has created for herself by *denying the proffered movie rights* thinking it'd somehow be unlawful for Mr. Eggum to continue selling her client's sex movies. The brief *ex parte* communication then concludes whereas Richey approaches Uhrig on the record to request a *search & seizure warrant* to retrieve the movies that Mr. Eggum sells. Please note: this is **admittedly unlawful**. In their minds: seize the movies and seize the ability for Mr. Eggum's business to operate.

Therefore the seizure of movies shuts-down the website because there's nothing to sell. Before continuing, how does Mr. Eggum know that *ex parte communication* occurred between **Fasano, Richey, Chambers, and Judge Uhrig**?

Mr. Eggum had hired a **Private Investigator** (PI) [RP 687] to follow Gray and on the 9th of November 2004 Mr. Eggum's **PI** had reported to him that Gray was at her attorney's office and they had gone to the prosecutors' office [en mass] and then a few of the attorneys went into **Judge Uhrig's chambers**. Please note that at RP 320-21 Richey cannot seem to recall *which* judge he went before to get that search warrant, or who was with him when he got it, this even though Judge Uhrig sits not 3 feet way from him. And this "*memory lapse*" occurs even though a few *months prior* Richey had been in the courtroom with Uhrig answering to allegations regarding the *illegal seizure* that **Richey & Uhrig** had made. That's telling and indicative of collusion between the two. This indicates *beyond any doubt whatsoever* that Uhrig was involved with Richey in illegally seizing these movies.

Please also note what transpires within the context of the **Probable Cause Complaint** for a **Search & Seizure Warrant** before **Judge Uhrig** [SAG exhibit-U]. At that hearing Richey complains to Uhrig that *movies jackets* have "*allegedly*" been found at the Nuthouse Bar & Grill in Lynden. These movies jackets are from the *commercial movies* that Mr. Eggum sells on his AVP website. Richey informs Uhrig that *nobody other than Mr. Eggum* would have these type images, therefore he requests a search & seizure warrant to seize every single image out of Mr. Eggum's residence. Not only protective *movie jackets* but the actual movies Mr. Eggum sells as well. But the most telling part of the *Conspiracy currently taking place* is that nowhere does DPA Richey inform Judge Uhrig that Mr. Eggum has been *selling these movies on his websites* and through magazines from 1995-2004 and that Mr. Eggum sells these movies for a living.

Had DPA Richey **disclosed that singular fact on the record** Judge Uhrig would have been bound by law to **deny** DPA Richey his search & seizure warrant, because Richey **did not** have the **statute authority** to possess this property as Richey had admitted at RP 332. And he certainly had no legal authority to make an illegal seizure and then try tossing it to Fasano simply because Fasano had **sexually induced** Chambers into using his 20-years' tenure to obtain the unlawful warrant. Was Judge Uhrig **complicit in this illegal seizure** and just going through the motions with DPA Richey to make it look lawful?

In the opening remarks of the complaint [SAG-U, pg 2] Richey states to Judge Uhrig that Janice Gray told him that she was “basically forced to make these videotapes” and that seemed to **explain away the existence** of the movies they now wanted back. Please also note that at trial the AAG and Gray stipulated that Gray had voluntarily made the movies, so it is now obvious this was a lie made at that time in an effort to do something that otherwise would be unlawful to do. The **first question** that **any reasonable person** would have [and **any judge** would have] is; “well... is this is a **rape arrest warrant** you are seeking?” But Judge Uhrig makes no attempt to question Richey at all. When the **alleged movie jackets** are **not produced** as evidence Judge Uhrig doesn't question this at all. If you are complaining about movies jackets being found, don't you have them to show as evidence? Or would showing the commercial movie jacket defeat the purpose of getting the warrant? Raise too many eyebrows? Nor does Uhrig question Richey about **why** the commercial movies **exist** in the first place. Or how many movies were made. How long they had been made for? Or **how** Gray was forced? Was Gray forced at gunpoint? Knifepoint? How many times? Etcetera. Judge Uhrig doesn't make an attempt to ask one single question, and any reasonable mind would have had thousands of questions. Or at least one. Uhrig didn't have one question.

That's because everything that he had wanted to know about what had occurred had been *answered ex parte* in closed chambers moments before, with Richey, Chambers and Fasano in chambers with Judge Uhrig with Gray *waiting outside* in the hallway-foyer with Mr. Eggum's PI standing there relaying the information to him.

That's because everything that Judge **Uhrig** would have wanted to *question* Richey about had already been *answered ex parte* in chambers moments before, with DPA Richey, DPA Chambers and divorce attorney Fasano in chambers with Judge Uhrig while Gray *waited outside* in the court's hallway with Mr. Eggum's *PI stranding there relaying* the information to Mr. Eggum about what he was seeing. To argue otherwise would show that Judge **Uhrig** did not *exercise due diligence* in questioning this public employee[s] about why he wanted to invade Mr. Eggum's residence and *illegally seize property* belonging to Mr. Eggum, in blatant violation of the 4th Amendment of the Constitution of the United States. Although Whatcom County *routinely makes unlawful seizures* as this court is well aware, always saying after the fact that *the ends justified the means* [citing State v. Smith: currently before the COA whereas Whatcom County seized Mr. Mike Smith's safe (inside a locked closet) without a warrant stating it was part of a protective sweep (what BS), this is SOP at Whatcom].

At trial Richey has admitted that he *didn't have statute authority* to do what he was doing, which also means Judge **Uhrig did not have statute authority** to do what he was being requested to do, and Gray's testimony ties it all together, *indefensibly*. But the question here is: Does Judge **Uhrig** work with **Richey**, **Hallmark**, Chambers and **Fasano**, and **Gray**, towards that *end* just as defense attorney Chalfie had testified to in SAG-A?

On February 7th 2005 DPA Richey *renege*d on a plea to *return the illegally seized property* which resulted in the *faulty conviction* mentioned herein at 2004 conviction [*id.* at 14-17], and that *renege*d plea was made in front of Uhrig. Judge **Uhrig as the presiding judge**, was obligated by law to do either *return the illegally seized property* that he had authorized DPA Richey to seize[in Richey's attempt to close down Mr. Eggum's business] or if Richey failed to do this, Judge Uhrig was *obligated* to return the defendant to a *not-guilty status*, as follows:

Washington Criminal Practice in Courts of Limited Jurisdiction Chapter § 8.05:

D. Breach of Plea Agreement by Prosecutor

The prosecutor must comply with the terms of a plea bargain agreement. Because a plea bargain involves a waiver of fundamental constitutional rights, a prosecutor's breach of the bargain is an issue of constitutional magnitude. The prosecutor's compliance with the terms of the plea bargain must be full and wholehearted; less than wholehearted support by the prosecutor for terms of the agreement may constitute a breach, regardless of the prosecutor's motivation.

The remedy for the prosecutor's breach of a plea agreement is either

1. to **allow the defendant to withdraw the guilty plea**, or
2. to **grant specific performance** of the agreement.

In this particular case Judge Uhrig allowed the *faulty guilty plea to stand* while refusing to order specific performance by DPA Richey. Furthermore, DPA Richey, DPA Chambers and Fasano then re-approached Uhrig and requested that Uhrig “*toss the property*” to the civil side [i.e. divorce court] because the criminal court *did not have the statute authority* to retain possession of the property. On February 7th 2005 Uhrig *refused to return the property*, and on February 23rd 2005 Uhrig still *refused to return the property*, and a few weeks later on March 4th 2005 Judge Uhrig “*tossed the property to Fasano*” by tossing the illegally-seized property from the jurisdiction of his criminal court to the jurisdiction of the divorce court, much the same as a quarterback throws a football, where Judge Uhrig then acted as the temporary divorce court judge [receiver of the pass] and accepted his thrown football [i.e. property] as having not been previously divided during the divorce proceedings.

But the most *indicative indicator* that *Uhrig* was *acting in concert* with these other persons as part of that **Conspiratorial Group** was what he did on that same day. On March 4th 2005 he signed a temporary **Imagery Restraint Order** which was prepared by Fasano which ordered Mr. Eggum to **shut down his lawful website** [which operates in Canada? Huh?]. Looking to SAG exhibit-I the court will note the order was prepared by Fasano.

And **Richey** was admittedly working with **Fasano**, and the two of them (et al) were meeting *ex parte* with **Uhrig** towards this end – as cited by Eggum’s PI -, because that’s what they were doing at *Uhrig’s office en mass* on the 9th of November 2004 [date of search & seizure warrant].

Was **Judge Uhrig** part of this **Conspiratorial Group of Persons** working together towards keeping Mr. Eggum **incarcerated [as a means]** to prevent him from continuing to sell his movies which portrayed his ex-wife, which they all morally disagreed with Mr. Eggum being able to legally do [from Canada, mind you]?

Not once at any of the pre-trial motions did Judge Uhrig ever rule in Mr. Eggum’s favor. *Every ruling he made was adverse to Mr. Eggum.* And Mr. Eggum had continually motioned *Uhrig to recuse himself* from this matter because of his *biased involvement* within this matter. Judge Steven Mura [SAG exhibit-M] had even previously ruled that it would *not be proper* for Mr. Eggum to go to trial in front of Judge Uhrig, and that if that were to occur he would grant the change of venue first so that Mr. Eggum could receive a fair and impartial trial. Therefore **Uhrig** was **refusing to recuse** with another judge’s ruling that he shouldn’t preside over Eggum’s case. That’s telling.

This seizure of property was from the 2004 seizure, but since that time *another seizure* has been made by *Richey, Fasano and others*. This *second seizure* was made without any warrant whatsoever, without a crime being charged, and Judge *Uhrig is continuing to refuse to return* it. This is acting in concert towards an end. And this was property that this COA acknowledges was awarded to Mr. Eggum as his ½ of that property [SAG exhibit- H]. See **Dana Lind’s** opening brief page 8. And the *reasoning* behind that *refusal to return the property* is that Judge **Uhrig** is working in *tandem with Richey, Chambers, Fasano* and others towards the end mentioned within SAG-A.

Is this true or not? There's *one telling indicator* better than all the rest. Or at least it is current. Looking at RP 673 Judge *Uhrig disingenuously makes the following statement* while on the record, trying to make it appear as if he's fair & impartial to what is happening; as Mr. Eggum's trial attorney motioned for Uhrig to return the property at the conclusion of trial. If there were ever a time to show your *integrity and impartiality* now would have been the time to do so. But that was going to occur. Uhrig said:

"I want to see to it that Mr Eggum has everything returned to him that is *lawfully* and *rightfully* and *indisputably* his."

Is Uhrig fishing for loopholes to not return the property, or would Uhrig actually return the property to Mr. Eggum if Mr. Eggum proved all of those things? This statement occurred at sentencing on January 14th 2011, and on March 15th 2011 Judge Uhrig again *refused to return* the property because of his *biases* and because of the *promises* that he made to DPA Richey and Fasano and others. Please note: Mr. Eggum doesn't believe Judge Uhrig would be *stupid enough* to actually admit to the COA that he had *ex parte communication* with any of these parties, nor *admit to working in tandem* with them, as it'd mean the end of his job, so the court has to use its common sense when hearing Uhrig's denials of these proven facts. A denial of these facts is to be expected.

The *unlawful seizures* and the *refusal to return the property* are "okay" with Mr. Eggum though, because Mr. Eggum intends upon opening a *small business shop* on George Street in downtown *St. John's, Newfoundland, Canada*, just as soon as possible, and give away an *unlimited supply of free promotional movies* in response to being challenged by Judge Uhrig & DPA Richey [for acting outside the scope of their authority]. "But hey", isn't this the same exact situation that existed when Mr. Eggum was releasing from prison in June of 2009? [SAG-E].

Appendix-4

Legality of Website

Invasion of Privacy Issues / To Reveal a Secret

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

Throughout the RP the court will note that the appellant sought a **Legal Determination** from the **Canadian Government** on whether or not his adult entertainment website that he operated from Canada was lawful, with regard to the Temporary Imagery Restraint Order that was entered by Judge **Uhrig** [presiding judge refusing to recuse himself / conflict of interest issue] on 04 March 2005; and the permanent Imagery Restraint Order the court on 06 May 2005; which attempted to prohibit the appellant from operating his business in Canada; and the AAG now cites this as his basis for 2 counts of IPS and Stalking.

The **sole determiner** of whether or not that **website is lawful is Canada**, not Whatcom County, nor any other court in the United States, although I believe a lot of caselaw that Canada uses parallels that of the U.S.. When Canada made that **Legal Determination** they had a **copy** of the aforementioned Imagery Restraint Order in their hand and was informed that one of the actresses featured on the website was Janice Gray-Eggum. Canada made a Legal Determination that: (1) the Injunctive Order had **no lawful jurisdictional authority** in Canada, and additionally determined (2) that there was nothing unlawful about the site. Had it been unlawful the appellant would have been arrested before leaving the Magistrate's Offices. At RP 368 Richey admits that as a DPA in Whatcom County that he has no lawful authority whatsoever to regulate Eggum's business in Canada, and that applies across the board to any other entity.

At PT-RP 124 you will learn that Mr. Eggum **ran a business** selling pornographic movies of married women having extramarital sex with exceedingly well hung men while their husbands watched the sexual activity [commonly known as cuckolding]. At the AAG's Motions in Limine [pg 1] you will learn that the AAG acknowledged that Eggum considered himself a **pornography entrepreneur**, and a **movie producer**: producing, marketing and selling these types of movies, much the same as an artist would. At PT-RP 125 you will learn that Gray made these movies as a willing participant from 1995 to 2001, and as such Ms. Gray is a pornography actress much the same as Mr. Eggum is cast in the light of a pornography producer.

At PT-RP 133 you will learn of several commercial tapes that were viewed by attorney Subin whereas he testified that Gray is seen [fully clothed] in a portion of that film [at the beginning] holding up a **published pornography magazine** where a photograph of her was published along with an advertisement underneath **offering the movies for sale and/or trade**. With regard to that **published** magazine (and others) at RP 216 Gray admits "I knew he had ads out in magazines." During this 7 year period Gray **signed numerous contractual agreements** with Mr. Eggum as well as with various vendors that marketed Mr. Eggum's product. Well over 50 times.

The **proprietary marketing rights** to these movies were **repeatedly offered** to Gray throughout the 2 year separation [thru her atty Fasano] and all those magnanimous **offers were denied**, and Gray admits this at RP 217. These denials might be deemed a blunder for lack of a better word, that being if seeing the movies marketed in the future was going to be a concern.

At this juncture [as a pornography actress] Gray has just **relinquished her future right** to claim an **invasion of privacy** due to seeing Mr. Eggum's movies continue to be marketed. Because through her denial of the **proprietary marketing rights** she has just **consented** to seeing them continue to be actively marketed. Although the movies will always be out there. Much the same as Marilyn Chambers's movies are still out there; much the same as Tracy Lord's movies are still out there even though she's now a mother and respectable church member now and no longer wants to see her movies marketed. But she realizes that she has no say in that, much the same as Gray, or any other pornography actress.

At RP 201 Gray admits that she **regretted having turned down the generous offers** and that her attorney had told her that she would **help get the movies back** that they had turned down, and help get the website business shut down. Fasano did this because of her **faulty legal advice** she had given Gray, where Fasano had informed Gray it would somehow be illegal for Eggum to continue running AVP and selling his movies of Gray once the divorce was finalized, therefore the NCO could be employed to gain full custody.

At RP 206-07 Gray admits that Fasano took her to see DPA Richey [through Fusan's sexual bribery of DPA Chambers] and that Richey had told her that he would help her **get the movies back** that she had turned down, although Gray says that "...**no promises** were made '**for sure**' that they could actually get them back." At RP 332 Richey admits that he **did not have** statute **authority to seize** them or **statute authority to retain possession** of them if he could seize them, so the act he is performing is **outside the scope of his authority** and **unlawful** in nature.

At RP 329 Richey admits that he was trying to seize the movies and then toss the stolen property to Fasano in the civil court. The COA will need to examine, is this the act of a Public Servant acting under color of law in the furtherance of an unlawful objective, in violation of the 4th Amendment Protections against **unreasonable searches & seizures** made by state employees. Goes to the IPS [1] and IPS [2] counts.

With the background facts regarding these movies well established; at RP 367-68 Richey admits that divorce attorney Fasano and Gray were **provided with a copy** of the **Legal Determination** from **Canada** and given the **opportunity to renegotiate** their position [fix their error] in having turned down the marketing rights earlier, and **declined yet again** with full knowledge that the Canadian Government had ruled the site lawful, and that the Whatcom County Order was **jurisdictionally invalid**.

Therefore the question arises: "Does Gray now make a **claim of invasion of privacy** even though she **consented to the activity** that she now complains?"
[See Lewis v. LeGrow, encl., **id.**].

United States caselaw follows: although it is Canada that is the sole determiner of whether or not the website sales are lawful, not Whatcom County, not Washington State. Although the COA may review the local caselaw governing these things and see that Mr. Eggum does in fact have **every legal right** to continue marketing these movies as stated by Judge Uhrig in SAG-D.

CATHERINE BOSLEY, et al., Plaintiffs, vs. WILDWETT.COM, et al., Defendants.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
310 F. Supp. 2d 914;2004 U.S. Dist. LEXIS 5124;70 U.S.P.Q.2D (BNA) 1520;32 Media L. Rep. 1577
CASE NO. 4:04-cv-393
March 31, 2004, Decided

PROCEDURAL POSTURE: Plaintiff wet T-shirt contestant filed a motion for a preliminary injunction alleging that defendant **adult videotape producers' sale of the videotape of her performance** and defendants' use of her images on their websites violated the contestant's **right of publicity** under Ohio Rev. Code Ann. 2741.01, Fla. Stat. ch. 5408, and common law. **Adult video producers** were enjoined from **selling, distributing for sale, or promoting videotape** of wet T-shirt contestant's performance where state law required **explicit oral consent from the contestant** to make commercial use of her images.

OVERVIEW: The contestant, who worked as a **news anchor** in Ohio for approximately 10 years, leading to her **status as a regional celebrity**, argued that defendants' **sale of the video tape** of her performance and their use of images of her on their websites violated her **right of publicity** under Ohio Rev. Code Ann. 2741.02, Fla. Stat. ch. 5408, and common law. The district court granted injunctive relief on finding, inter alia, that the prominent displays of the contestant's name, image, and likeness on the cover of defendants' video and website clearly constituted an advertisement and were not merely "incidental to the promotion" of these products. Further, the advertisements were not protected under the public affairs exception to the First Amendment, and, even as commercial speech, the images of the contestant did **not** contain expressive or editorial content protected under the First Amendment. Finally, although defendants came forward with **strong evidence that the contestant impliedly consented to being photographed**, this implied consent was no defense under Fla. Stat. ch. 5408, which **required explicit oral consent** from the contestant to make commercial use of her images.

Appellant's Analysis: Plaintiff Bosley goes to a Florida **wet tee-shirt contest** while on vacation, and that event had innumerable signage attesting that the event is being filmed for commercial use. Plaintiff Bosley **averts** that she gave **no written or oral permission** for the use of her likeness, acting ignorant, even though she is **filmed looking into the cameraman's lense and talking with him as he films her**; and the Defendants come forward with **no strong evidence that she did because of the signs** placed throughout the event, and the fact that the **emcee had announced** throughout the event that it was being **filmed for commercial usage**. The court held that because she had not given her **oral consent** on camera to **market those images**, or **written permission** to that effect, that it was an invasion of her right to publicity. While Mr. Eggum disagrees with the court here on their reasoning - feeling that the signage was more than adequate - the ruling does side with Mr. Eggum because Gray had signed numerous **contractual agreements** with Mr. Eggum (as required under **Bosley**), and those agreements are still valid; and at [PT-RP 124, 125, 133] attorney Subin testifies that Ms. Gray in **seen on-camera** giving her **oral consent** to market and publish the movies with Gray seen holding up the published magazine to that effect. Therefore, Bosley affirms that there can be no claim for an invasion of privacy or invasion of right to publicity because Gray had **consented both orally, on video, and in writing**. [Although, be reminded, that Canada is the sole determiner of whether or not this caselaw applies in their ruling, but this caselaw seems to support their finding].

This flows into **Lane v. Mantra Films**, 242 F. Supp. 2d 1205 (2002), whereas a young 17-year-old female and her friend **bared their breasts** for a cameraman and that **flashing footage** ended up on a Girls Gone Wild video, whereas Veronica Lane then claimed she hadn't given her consent to that invasion of her privacy. The court ruled against her as follows:

VERONICA **LANE**, Plaintiff, -vs- MRA HOLDINGS, LLC d/b/a MRA VIDEO; **MANTRA FILMS**, INC.; AMX PRODUCTIONS, LLC; VENTURA DISTRIBUTION, INC.; and WOODHOLLY PRODUCTIONS, INC., UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION
242 F. Supp. 2d 1205; 2002 U.S. Dist. LEXIS 24111; 16 Fla. L. Weekly Fed. D 36

Case No.: 6:01-cv-1493-Orl-22KRS

November 26, 2002, Decided

November 26, 2002, Filed

CASE SUMMARY

PROCEDURAL POSTURE: In a suit that was removed from Florida state court, plaintiff sued defendants, video producers, distributors, and others, for **unauthorized publication** in violation of Fla. Stat. ch. 540.08, common law **invasion of privacy** for commercial **misappropriation of likeness**, **false light invasion of privacy**, and fraud. Defendants moved for summary judgment, and plaintiff moved for summary judgment on the issue of capacity to consent. Inclusion of video tape of a minor exposing herself in a video that depicted other young women engaging in similar acts **did not amount to unauthorized publication** or misappropriation of the minor's image, nor did it **place the minor in a false light**.

OVERVIEW: Plaintiff, a minor, was approached by individuals with a **video camera** who asked plaintiff and a companion to **expose themselves** in exchange for beaded necklaces. Plaintiff exposed her breasts to the camera. The video tape of plaintiff exposing her breasts appeared in a video that depicted young women exposing themselves in public places. The video was produced, distributed, and marketed by defendants. The court found that plaintiff's ch. 540.08 claims failed because the minor's image and likeness were not used to directly promote a product or service and because (1) minors did not lack capacity to consent to publication of their images and likenesses where no compensation was involved and (2) plaintiff had placed no restriction on the use of the video tape. Because the elements of common law invasion of privacy/commercial misappropriation of likeness coincided with the ch. 540.08 elements, the common law claims also failed. It could **not be said that inclusion of the video tape** of plaintiff together with **depictions of other women engaging in similar acts portrayed plaintiff in a false light**.

b. The Extent of Lane's Consent

In making this argument, Lane calls attention to her allegation that the cameraman who captured her image represented that he was intending to film young ladies for his **own personal use** "and that no one other than those present at the time of the filming would see any videotape. After viewing the *Girls Gone Wild* video, this Court finds that even if the cameraman made such representations, **no reasonable jury could conclude** that Lane's consent **limited the viewing** of her image and likeness to only those persons present at the time of the filming.

This Court rests its decisions on a variety of factors. Foremost, is the fact that the **interactions between Lane and the cameraman were not private in nature**. Lane exposed herself on a public street while several pedestrians were in the general vicinity. Second, Lane did not know the cameraman before whom she exposed herself. It is **unreasonable to expect** that a total stranger would limit the viewing of a video with shots of young women publicly exposing themselves to only those persons present at the time of the filming.

Finally, and perhaps most damaging to Lane's argument, is the fact that before any clothes were removed, Lane's companion stated that **two years earlier** she had been **photographed** at Mardi Gras, and that her **photograph had been published in *Maxim***. This statement should have raised Lane's eyebrows, and if she were concerned about the extent of the publication of her image, she should have restricted the use of the video tapes before exposing her breasts. There is nothing in the record indicating that Lane placed any restriction on the use of the video tape. Instead, after her friend made such statement, Lane pulled down her tube top for the camera without any hesitation.

Appellant's Analysis: Under **Lane**, no reasonable jury could conclude that Gray's actions were intended for private use, as she is seen on camera holding up a published magazine which depicts her offering the extramarital sex movies for sale / trade. Therefore **no invasion of privacy claim** can be pursued.

Jessica Lewis v. James Frances LeGrow, 258 Mich. App. 175, 670 N.W. 2d 675 (2003)
Court of Appeals Michigan
Submitted May 6, 2003, at Detroit
Decided August 21, 2003

Under *Lewis v. LeGrow*, the defendant **secretly videotaped his sexual activity** with three women, the plaintiffs. A **videotape** showing the defendant having sex with each of the plaintiffs mysteriously ended up on the door step of one of the plaintiffs. The plaintiffs admittedly had consented to the sex, but they denied consenting to the video recording. The defendant claimed they did consent. The court of appeals stated:

"there can be no invasion of privacy under the theory of intrusion upon the seclusion of plaintiffs if plaintiffs consented to defendant's intrusion (videotaping)." *Lewis*, 258 Mich. App. at 195, 670 N.W. 2d at 688.

Because the plaintiffs had the right to keep sexual details secret, the secret taping of intimate acts could be found objectionable, and the fact dispute on the issue of **consent**, the court of appeals held that the plaintiffs had presented sufficient evidence to get to the jury on their intrusion on seclusion claim. The court held that:

"the scope of a waiver or consent will present a question of fact for the jury . . . unless reasonable minds cannot disagree that the plaintiffs consented to the very activity about which they complain."

Lewis, 258 Mich. App. at 195, 670 N.W. 2d at 688.

"A party may waive the right to privacy by authorizing the action."

Lewis v. LeGrow, 258 Mich. App. 175, 670 N.W. 2d 675, 688 (Mich. Ct. App. 2003).

A waiver can be implied, but it must show a **"clear, unequivocal, and decisive act of the party showing such a purpose."** *Id.*

"Generally, the scope of a waiver or consent will present a question of fact for the jury, unless reasonable minds cannot disagree that the plaintiffs consented to the activity about which they complain."

Lewis v. LeGrow, 258 Mich. App.

Appellant's Analysis: Like the plaintiffs in Lewis v. LeGrow, Gray consented to the sex taking place - the extramarital swinging with other males while being filmed by Eggum, but hereafter the cases differ. Unlike the three plaintiffs, Eggum did not clandestinely videotaped the encounter, but rather Gray had openly consented to the filming [3 cameras can be seen filming her talking to the cameraman (Eggum) while having sex].

Gray also consented to give up her **future right to privacy** claim by **consenting** to the **marketing of these movies**, signing numerous releases with Mr. Eggum and others, and Gray can be seen in a commercial film holding up a published swinger magazine which showed the films **offered for sale / trade** to the public [PT-RP 133, id. at 6].

Therefore, under these rulings within Lewis v. LeGrow:

1. **"A party may waive their right to privacy by authorizing the action."**
In this case Gray waived her right to privacy by agreeing to the activities both verbally, on camera, in writing, and visually on camera while holding up the published magazine with the advertisement seen on camera.
2. **"The scope of a waiver or consent will present a question of fact for the jury... unless reasonable minds cannot disagree that the plaintiffs consented to the activity about which they complain."**
In this case Gray authorized the very activity about which she now complains, she authorized the sexual encounter and she consented to the marketing and sales of the movies, and a reasonable person would not attempt to argue otherwise, given the contractual agreements and video evidence to the contrary. It is irrefutable.
3. **"There can be no invasion of privacy under the theory of intrusion upon the seclusion of plaintiffs if plaintiffs consented to defendant's intrusion (videotaping)."**
In this case Gray consented to the very activity about which she now complains, and upon being given an opportunity to correct her attorney's error and possibly have the movies removed from the marketplace [RP 367], as she now claims she does, Gray yet again consented to the movies remaining on the market by denying the magnanimous offer presented by Mr. Eggum.

FRANK NALI, Petitioner, v. THOMAS PHILLIPS, Respondent.
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN
DIVISION
630 F. Supp. 2d 807; 2009 U.S. Dist. LEXIS 55374
Case Number: 07-CV-15487
June 29, 2009, Decided
June 29, 2009, Filed

OVERVIEW: The inmate was involved for 10 years with a woman who was already married. Over the years, the inmate had **video tapes of them having sex**. The **married woman** claimed that she told the inmate to destroy the tapes but he didn't. Eventually, the **woman divorced** her husband. The inmate and the woman continued their relationship about another four months after her divorce and then it ended. The inmate was upset about breaking up and **sent tapes** of them having sex to the woman's **ex-husband** and **daughter**.

The inmate claimed there was insufficient evidence to convict him of extortion and that he received ineffective assistance of counsel. The district court found that even if one accepted the inmate's phone messages as threatening, they still did not rise to the level of extortion. Nothing in those messages suggested that the woman would suffer consequences if she failed to adhere to some demand.

The court ruled that the **inmate's conduct** in this case, though **spiteful and vengeful**, did not **represent the type of behavior made criminal** as extortion. There was no evidence of extortionate threats. Trial counsel's trial strategy in this case was sound.

OUTCOME: The court found inmate was entitled to federal **habeas corpus relief** on his insufficient evidence claim. The court ordered inmate's **conviction to be vacated**.

Appellant's Analysis: This case differs from Eggum's case in so much as Mr. Eggum's films were made with the **intention of being marketed** whereas these [Nali] films apparently were not. Here, Mr. Nali sends copies of the tapes to his ex-girlfriend's former husband and her (grown) daughter, and that abrasive act was deemed by the court to be **spiteful and vengeful** but **not amounting to criminal behavior**, and therefore the **conviction was vacated**, because **no crime existed**, just as Mr. Eggum maintains herein.

Mr. Eggum was convicted for having "**threatened**" to give away 1,000 free promotional movies because of his probation's officer's **biases** and her **meddling** outside the scope of her authority with Mr. Eggum's business - by delaying his business's restart - and Mr. Eggum's **responsive behavior** is **neither spiteful or vengeful** in the sense that Nali's was, as the **giving away promotional movies** is what Mr. Eggum **does for a living**, whether this probation officer morally agrees with it or not. But moreover, the court ruled that **no crime existed** here and **vacated** Mr. Nali's conviction, and that is what needs to occur here. Because of the **system's meddling** in Mr. Eggum's business affairs through the prosecution of this case, the **resultant effect** is now that Mr. Eggum operates a **storefront business** in **St. John's Newfoundland**, not giving away a thousand free promotions, but rather an **unlimited supply** of them. **Is this a crime?**

Appendix-5

“Tenor of Letters”

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

From June 2007 until June of 2009, at least 82 letters were intercepted by DOC, where those letters [written to Mr. Eggum’s mother] were scanned and forwarded to DPA Richey in the Whatcom County Prosecutors Office, and that occurred through the Whatcom County Sheriff’s Department acting as an intermediary. That occurred without a search warrant. In appellant attorney Dana Lind Nelson’s opening brief [pg 1] she states:

“Moreover, it **cannot be disputed** that that Mr. Eggum was convicted [primarily] on the **basis of the letters** written to his mother.” [CP 39] [Also see Sentencing Memorandum 1-11-11 acknowledging “letters written to his mother.”]

All of those letters written to Mr. Eggum’s mother were written in an **effort to persuade her into mediating & intervening** between himself and his ex-wife and the legal system’s usage of a NCO. In the VRP Mr. Eggum uses the words “**mediate or intervene**” at least **15 times**¹, and this was only in the letters that were read to the jury. The **entire tenor of the letters** was to **induce his mother into intervention**, for reasons cited below. At RP 470 Hallmark was questioned about the **tenor of the letters**: “Is it fair to say that in a lot of the letters that the defendant wrote to his mother that he was trying to get her attention?” With Hallmark answering: “He was **trying to get her to do things, yep.**” Then at RP 471 she was asked, “Did it sound as if he was **venting?**” With Hallmark responding: “It **sounded like venting** to me.”

In Mr. Eggum’s discourses to his mother over a 2 year period he **tried relentlessly** to get his mother to **act as a mediator** between the system and himself by going directly to his ex-wife to settle this matter. Mr. Eggum’s mother doesn’t care for Gray - never has - and therefore the task was impossible. Mr. Eggum used every **imaginable persuasive technique** he could think of to **prod her into action** before anything worse could happen. Resorting to inflammatory argument, **fatalism**, and citing horrendous domestic violence occurrences where things ended poorly for the participants, and quoting acts of political terrorism against corrupt government.

¹ Appears at RP 111, 132, 134, 137, 144, 150, 151, 155, 157, 158, 160, 163, 179, 233, 290, and 307.

As an example: In 2005, as cited herein at **count [5] within Appendix-9**, Gray was showing up at Eggum's worksites repeatedly, calling 911, and having a coworker/friend accompany her, and during those unlawful contacts a **handgun was being brandished** against Mr. Eggum in a very threatening manner. Mr. Eggum wanted his mother to **intervene** and go directly to Gray to persuade her to **cease this type threatening behavior** before someone got hurt, possibly killed.

Mr. Eggum's count [5] conviction centers on this. Was Mr. Eggum threatening Gray at his jobsites? Or was Gray threatening Mr. Eggum? And Mr. Eggum only seeking help? If the court looks at RP 226, Subin asks Gray about a passage Mr. Eggum had wrote to his pastor asking his **pastor to intervene**, because his mother wouldn't: "Jerry Hemple [& Gray] threatened me with a 357 handgun," he reads to Gray, "was that true?" Gray replies: "Jerry hand a handgun, he carried it with him when we were walking." Subin continues, "Is it true he threatened Mr. Eggum with a handgun?" Gray replies, "**Depends on how you are defining 'threatened'.**"

"Pulled the gun out, showed it to him?" Subin pushes, with Gray **responding evasively**, "To my knowledge he didn't do that, but **you'd have to ask Jerry, I guess.**" That response tells it all. Mr. Eggum was a **victim of a death threat** by Gray & Hemple **brandishing a gun** against him in a threatening manner, just as he had complained. The tenor of Mr. Eggum's letters was to induce his mother into taking action so things like this did not happen any longer.

Appendix-6
Conspiracy Definition
Joining a Conspiracy
Conspiracy Between Parties Cited at SAG-A
Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

Under: United States v. Friedman, 593 F.2d 109, 118 (9th Cir. 1979).

“Conspiracy is established when there is an **agreement to accomplish an illegal objective**, coupled with one or more overt acts in **furtherance of the illegal purpose** and the **requisite intent** necessary to commit the **underlying substantive offense**. The government need **not show an explicit agreement**; the criminal scheme may be **inferred** from circumstantial evidence, which is as probative as direct evidence.”

“Once a conspiracy is shown, there need be only **slight evidence** to link defendant with it. The government must show that an **alleged co-conspirator** had **knowledge** of the **conspiracy** and **acted in furtherance** of it. Each **conspirator is liable for the acts** of his co-conspirators in **furtherance of a conspiracy**, even if he is unaware of some of the acts or actors. “

Under: United States v. Traylor, 656 F.2d 1326, 1333 (9th Cir. 1981).

A person may **join a conspiracy** that has **already been formed** and is in existence. The new conspirator will be **bound by all that has gone on before** in the conspiracy.

Under: Carpenter v. U.S., 988 F.2d 118, (9th Cir. 1993).

One who **joins a conspiracy** is **bound by the actions** of his **co-conspirators** taken in **furtherance of the conspiracy**. A conspirator is also responsible for all reasonably **foreseeable substantive crimes committed in furtherance of the conspiracy**. In order to **avoid complicity in a conspiracy**, one must **withdraw** before any overt act is taken in furtherance of the agreement.

It would be **indefensible to argue** that the **objective stated within SAG-A** wasn't an **unlawful objective**. No person or **Group of Persons** may incarcerate a citizen of the United States simply because that person does something that they find **morally objectionable**. If this were true, any **officer of the court** with a **personal moral bias** against **lesbianism** could arrest and incarcerate any woman with that particular disposition. The **prisons would be full**.

With that **established under the caselaw cited** above, it is **clear and indefensible** to try arguing that **Richey** did not **Conspire** with Lisa **Fasano** to defraud Mr. Eggum of his property [movies] through the illegal-seizures that Richey admits to having made. And Richey fully admits that he **found it morally objectionable** that Mr. Eggum possessed that property and that Mr. Eggum could **legally continue to sell it, contrary to the legal advice offered** to Gray from Fasano and the prosecutor's office (i.e. his advice). And Richey freely admits to trying to toss the illegally-seized property to Fasano. That's a **Conspiracy**, more so when coupled with the fact that **Richey & Hallmark & Fasano** also conspired to deprive Mr. Eggum of his constitutionally protected freedom [**as a means**] to keep Mr. Eggum's website business of the air with him at the controls.

Thus, the **question must be raised**, has **Judge Uhrig joined this Conspiracy** as the appellant asserts? Under **Friedman**, Judge **Uhrig** need only be aware that a **conspiracy exists**. There need be **no formal agreement** between **Richey & Fasano & Uhrig** to establish his **role** in the furtherance of that unlawful objective to **deprive** Mr. Eggum of the property that was seized by **Richey** [through **Uhrig's** seizure warrant].

If the COA looks to [**SAG exhibit-V**] the court will note that Mr. Eggum filed a motion for the Return of his property that was illegally-seized. This motion was filed on 17 **December 2008** which **correlates** to the 15 **December 2008** court hearing [cited id. at 25] whereas Fasano complained to Judge Snyder that Mr. Eggum was about to get out, cross the border into Canada and resume lawful operations of his business, and there was nothing they could do to prevent it. Contrary to the stated goal of the Group of Persons [cited at SAG-A].

Within that motion [**SAG exhibit-V**] **Friedman**, **Traylor**, **Karr**, and **Carpenter** are cited to **Uhrig**, along with CR2.3(e) and State v. **Alaway**, and Mr. Eggum spells out the Conspiracy for Judge **Uhrig**, which was **Richey & Fasano conspiring** to get an **unlawful warrant** to seize the movies Fasano had **previously turned down**. Please take special notice: On page 8 Mr. Eggum **incorrectly** believes that it was Judge **Mura** who had signed the warrant [or Judge Snyder], but in actuality it was Judge **Uhrig** who had **signed that unlawful search & seizure warrant** for **Richey & Fasano**, but Eggum wasn't made aware of this until 2010.

This property was seized as far back as 2004 and there have been multiple seizures since then, and Judge Uhrig has yet to **Return the Property** as required by law. He **acts in concert** with **Richey & Fasano** towards this end. To **toss the property** to Fasano.

Is there **evidence in the record to this effect?** It's **plainly obvious** that no judge in his right mind would **readily admit to acting in a conspiracy to use his power** to unlawfully seize business imagery he **morally disagrees** with, in the **furtherance** of helping one of his deputies achieve an unlawful objective in violation of the protections afforded citizens under the 4th Amendment of the Constitution. Prior to sentencing on 14 January 2011, at **RP 662**, attorney Subin motioned **Uhrig** to return the illegally-seized property that Richey admitted on the stand that he [the state] **did not have the statute authority to possess** [RP 332].

Richey admitted trying to **toss the illegally-seized property to Fasano**, by deceitfully saying it as **"I was trying to let the civil side handle it."** Then the AAG joins the Conspiracy at RP 666 by stating:

"For starters, even if you consider these videos part of this case [detained as evidence, wasn't it? Huh?], they are **not the defendant's property**, by prior court order they are **Janice Gray's property**." Subin **interjects**, "That's **incorrect**, and you are perjuring yourself." The AAG then shifts his position, "If the court disagrees with that for any reason, I would ask the court to order those tapes **forfeited as part of this sentence**."

At RP 670 Mr. Eggum states to Judge **Uhrig**: Reading **SAG exhibit-H** into the record:

"Those **tapes were awarded to me** in a prior case [5-6-05][SAG-H] and that needs to be **read into the record**, because if it's going to be disputed then I am entitled to an **Evidentiary Hearing** as required by **CR 2.3**[.] I am a pornographer, that's what I do. Judge Snyder ruled that anything that I retained was **mine as my ½ of that asset**, so **all retained imagery is mine**, and this is retained imagery. It's mine. Just because the court has found out its **injunctive order wasn't valid** in Canada you cannot not-return this property now."

Judge **Uhrig** then makes the following statement, **couching his words** carefully so he can toss the property to **Richey & Fasano**:

"I want to make sure that Mr. Eggum has everything returned to him, everything that is, that is **lawfully** and **rightfully** and **indisputably** his."

What **Uhrig** is doing is trying to **toss the property** to the other court [**Richey & Fasano**] by allowing the civil court [Judge Snyder] to take control of the property that the legal system within Whatcom County doesn't want to return to Mr. Eggum; because of the **faulty advice** the prosecutor's office had given Gray.

At Dana Lind's Opening Brief [at page 1], as an **officer of the court**, she **testified** that this batch of movies was awarded to Mr. Eggum, and that Gray had received her ½ of that property on that date.

Therefore, **we have established** – by **Uhrig's own words** – that Mr. Eggum is without question the **lawful owner** of that illegally-seized property; Mr. Eggum is the **rightful owner** of that property; and **no one can dispute his ownership** of it, because Gray has received hers on the date the order was entered. Therefore, based on Judge Uhrig's own words on January 14th 2011, the property needs to be returned to Mr. Eggum.

But at a subsequent **Return of Property** hearing heard on 15 March 2011, Judge Uhrig **refused to return the property** yet again, instead refusing to rule on the matter, allowing the property to be seized by the prosecutor's office [state]. As such, it is inarguable that Judge Uhrig's **actions** have shown that he was and is a **party to a conspiracy to deprive** Mr. Eggum of his business imagery because Judge **Uhrig** and the persons cited within SAG-A **morally disagree** with Mr. Eggum's business that he operated lawfully from Canada.

Appendix-7

Illegal Searches & Seizures of Property

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

It is *indefensible* to suggest that divorce attorney Lisa Fasano had *not blundered* when she advised her client [Gray] to turn down the movies that were *generously offered* to her by Mr. Eggum. Attorney Fasano, then a *newlywed woman* [married to doctor Levitt of Seattle] then lobbied the prosecuting attorneys' office to arrest Mr. Eggum, or do something about Mr. Eggum's adult entertainment business which continued to sell movies of her client. Fasano had created a legal liability for herself having advised Gray as she had, and now she moved to correct her error before she was sued by Gray.

Mrs. Lisa Fasano-Levitt then *sexually bribes* deputy prosecuting attorney (DPA) Chambers to *obtain* a *search and seizure warrant* so that she can seize the movies that she had previously turned down. In short: If Fasano can *seize the movies* that Eggum lawfully sells then she can [in effect] can shut down Mr. Eggum's entertainment business, and therefore there is *no liability* to Gray for having *advised her to turn down* the movies and their associated proprietary marketing rights which Mr. Eggum owns.

Senior DPA Craig Chambers had *20 years tenure* at the prosecutors' office at the time that this occurred [**now has 26 years tenure**]. DPA Craig Chambers is [strictly] *known* for being the *drug prosecutor* in Whatcom County, that's all he does, drug cases. Therefore it would be highly *suspect* for DPA Chambers to appear before a judge to request a search & seizure warrant for Mr. Eggum's property, because the property he'd be asking to seize is not related to drugs. He therefore enlists the assistance of his subordinate, DPA Eric Richey.

DPA Richey, DPA Craig Chambers and divorce attorney *Mrs.* Lisa Fasano-Levitt then go to Judge *Uhrig's office* to request [*ex parte*] a *search & seizure warrant* to seize the movies that Fasano had been *foolish enough* to have turned down. This is admitted to within the VRP.

Please take special notice that *Mrs. Fasano-Levitt* is a *newlywed bride* asking the senior prosecutor to *use the power of his position* to *obtain a search & seizure warrant* for something that he is *not authorized to possess*, and he's doing that *in exchange for sex* that she is offering him. In short blunt language: Newlywed bride *Mrs. Lisa Fasano-Levitt* *fucked* DPA Craig Chambers in order to *obtain an otherwise unobtainable search & seizure warrant*.

At trial in 2010 [RP 332] DPA Richey admits that he *did not have statute authority* to even *possess the property* he was taking. And at trial DPA Richey admits to *trying to toss* the illegally seized property to Fasano because he *did not have authority to possess* the property. All of that within the VRP for the COA to consider.

Richey *perjures himself* to Judge Uhrig [on the record] by stating that *no one other than* Mr. Eggum would have these images that were found on a *movie jacket* at the Nuthouse Bar and Grill other than Mr. Eggum, but that's not true, because Richey *failed to inform* Judge Uhrig that Mr. Eggum *owns a website* that has been *selling these movies* since 1995. So what about any of Mr. Eggum countless customers?

More telling that *ex parte communication occurred* is that Judge *Uhrig did not ask* Richey, Chambers or Fasano *one single question* about any of the things, and each of these people *knew* about the *website*; and that it *operated lawfully*. The reason Judge Uhrig did not question any of these issues was that he discussed everything previously, in chambers. Mr. Eggum is aware of this *ex parte communication* because his PI was in the hallway watching it occur.

The property that was seized was then **tossed** from one court [criminal] to the other court [civil] so that it could be seized and turned over to Fasano, and Judge Uhrig acted as both the **quarterback & the receiver** when he tossed the property from one court to the other, accepting the illegally-seized property in divorce court as having been undivided property [which is not true, as the property had been divided]. Judge **Uhrig** then signs an **Imagery Restraint Order** prohibiting Mr. Eggum from continuing to operate his business [which operates in **Canada?**] So did **unlawful ex parte communication** occur?

How else would Uhrig have signed the **ex parte temporary restraint order** on March 4th 2005 [SAG-I]? Look to the obvious: Richey had stated to Judge Uhrig that **nobody else other than Mr.** Eggum would have these type of pornographic images of Janice Gray [on November 9th 2004] but only **4 months later** they are asking Uhrig to sign an **injunctive order** attempting to prohibit Mr. Eggum from continuing to sell these movies on his **website business**, and that is **diametrically opposed** to what Richey had stated earlier in order to obtain the search & seizure warrant in the first place; because he said **nobody other than** Eggum would have these.

What about any one of Mr. **Eggum's customers** that had purchased one? What if Fasano and Gray had **purchased one online** and **then claimed** it had been found? Because that is what Mr. Eggum asserts had happened – if there ever was a movie at all.

In any event, in order to keep the property that they have seized [and unlawfully so], the court uses **community property law** to maintain jurisdiction over the property, and they then **divide** the property that has been taken, giving everything that they currently have [with Janice's image on it] to Gray as her community property portion of that property; and they give Mr. Eggum everything that wasn't seized as his **retained-portion** of that marital asset.

The court was under the *misguided notion* that it had *seized everything* that Mr. Eggum owned, therefore they *awarded everything currently* downstairs in the sheriff's possession to Gray, but that wasn't necessarily true, because Mr. Eggum actually owns *thousands of movies*. Mr. Eggum asked the court to *clarify* who owned the imagery that wasn't seized, since the judge was using community property law to divide it, specifically asking about the *imagery he retained* that he sold, and the judge *awarded that imagery* to Mr. Eggum, although restraining him from continuing to sell it from Canada. Although it *needs to be noted* that a *Washington State judge* cannot restrain a *Canadian citizen's* activity in *another jurisdiction* [Canada]. And this is the *core issue* of the appellant's defense to these allegations. Everything that is happening within the 2009 case is occurring because the Whatcom County prosecutor has no ability to stop Mr. Eggum from selling his movies.

Furthermore, if Eggum *chose to ignore* the injunction the *sole remedy* would be a civil *lawsuit*, which Mr. Eggum was prepared to handle, although the issue is moot since Eggum operates from Canada.

At Dana Lind Nelson's opening brief [pg 8] she *correctly states* that Janice Gray was *awarded everything* that the sheriff *possessed that day* that had her image on it as her ½ [share] of the property, and Mr. Eggum was *awarded everything* that he retained that *wasn't seized* as his portion of that property. [That is substantiated at SAG exhibit-H, a transcript from that ruling]. This situation was somewhat fine with Mr. Eggum, because the court had just awarded him everything he retained, so there would be no more illegal seizures, and the court was made fully aware that it had *no lawful jurisdiction* to tell Mr. Eggum what he could sell and couldn't sell from Canada.

And once this hearing concluded, Gray was given *her share* of that property. [Done deal]. But Fasano & Gray and the prosecutor's office [i.e. Richey] soon learned that their *unlawful seizure* had accomplished nothing [if the seizure was *intended to staunch his ability to sell movies*] because the *website was still active* and the website was still *able to fill orders* being placed . Shortly after the property [currently downstairs] was awarded to Gray, the prosecutor's office placed an order ¹ with Mr. Eggum's business to see if he was still able to fill orders. How does Mr. Eggum know that the prosecutor was placing orders testing Mr. Eggum's ability to continue selling his movies? Nobody would ever *purchase the entire series* and pay cash up front without first seeing one of the movies to see whether or not they were *attracted to the actress*, or if the actress was *any good*, and in this case this buyer purchased the *entire series* paying cash [never done on the net] without ever having seen a single movie. That raised an eyebrow with Mr. Eggum, who then tested the buyer to see if he also wanted to purchase a "DP" movie.

This prospective buyer did not know what a "DP" was, and any avid adult movie purchaser would know what a DP is [although this court might not, just as this buyer (prosecutor) did not]. Therefore, the prosecutor's office just found out that their unlawful seizure had accomplished nothing.

Fasano and Gray (et al) were not happy about Mr. Eggum being *awarded everything* that he *retained*, because they *regretted having turned down the movies*, and a year or more after this property was spilt, Lisa Fasano used her position within the prosecutor's office to have Richey and Chambers contact the sheriff's office and direct the sheriff's office [Det. Ray Oaks] to drive to Eggum's house and seize anything that he retained.

¹ Meaning: Either Gray, Fasano, or Richey, or **someone on their behalf** acting for the persons named within **SAG exhibit-A** and at FN1.

This property was **divided** on May 6th **2005** and in May or June of **2006** the sheriff department drove to Mr. Eggum's residence [which was being sold through court order] and asked the buyer who was moving in if he could search the residence looking for Mr. Eggum's **imagery that he retained**. Please note: The sheriff is asking to seize imagery that it knows was **awarded** to Mr. Eggum as his retained property. This would be an unlawful seizure. At the time Mr. Eggum's mother was still in the process of moving out and possession of the property had not occurred yet. The buyer directed the sheriff to a stack of boxes on the garage floor and said "those are Eggum's boxes there," and this was where the seizure occurred [without a search & seizure warrant]. Detective Ray Oaks went through the boxes and seized a number of movies [app. 30].

What was Detective Ray Oaks doing in Lynden, a 30 minute drive from his office? And what was he doing at knocking on the door of Eggum's residence? Was he there to casually chat with Mr. Eggum? Because he knew Mr. Eggum was in [his] jail. And Mr. Eggum had been incarcerated since June 3rd 2005 [over a year] so this visit could not have been part of any official investigation for Stalking, as Eggum could not have been stalking anybody from a jail cell. Ray Oaks **intention was to seize property** that he knew had been **awarded** to Mr. Eggum because persons within the prosecutor's office disagreed with Mr. Eggum owning it. And Oaks seized it on behalf of whomever had sent him; that being DPA Richey and Fasano.

This **illegally-seized property** was then held under the pending 2005 case [held as evidence? Evidence of what?], with the Whatcom County Superior Court [Uhrig, Snyder, Mura, working in unison] **refusing to return** it, even though the court knew that this property had been previously awarded to Mr. Eggum.

But that's okay, because if the property isn't returned for any reason whatsoever, then Mr. Eggum is going to do some *saturation marketing* within Whatcom County until the property is eventually returned. And as part of that marketing, Mr. Eggum is going to use the very same exact imagery that was seized, to show the prosecution (et al) that it is attempting to seize something that is **backed up**² a thousand times over.

With what was just said, has the appellant just committed the crime of Intimidating a Public Servant? Or committed the crime of Stalking Janice Gray? The appellant argues he's committed neither, as any *citizen has the right of governmental redress*, and the appellant's *redress* in this case can be either a civil lawsuit and/or responding to the prosecution-initiated "*tug of war*" by *tugging back* on that rope as hard as he can, ensuring that the rope isn't tugged on again. That being if the appellant can do that **legally**. And the appellant will **check with Canada** before doing anything. [Again, look to the jurisdictional issues raised].

Throughout 2006-2010 the appellant has continually motioned *Judge Uhrig* to return the illegally seized property, and *Uhrig* has continually refused to return it. The reasoning behind this is simple, Judge *Uhrig* is part of that **Conspiratorial Group of Persons** trying to keep Mr. Eggum incarcerated [**as a means**] to prevent his business from going online with him at the helm. And Judge Uhrig [being a judge] knows full well that the Imagery Restraint Orders entered by the court have '**no jurisdictional authority**' in Canada, therefore he **refuses to return** the movies, and agreed to incarcerate Mr. Eggum for an unheard of 26 years [total] because of his affiliation with these Group.

² The **first rule** in the adult entertainment business is once a movie is made it has to be **backed up**, so **several back up master copies** are made and then those **master copies are separated** and held at different locations just in case one of the locations burns down. Hence the name "**fire insurance**" when referring to the backup copies.

Appendix-8

42 U.S.C. § 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights [FREEDOM], privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Appendix-9

Count [5] Continued

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

As cited within the main body of the SAG, Mr. Eggum stating [to his mother or anyone else] that his attorney had said that he had the “**right to defend himself**” if a **gun was brandished**¹ against him again, this cannot be construed to be a death threat because Mr. Eggum has every **legal right** to defend his life if it is being threatened in any manner.. Therefore the supposed death threat allegation that the jury used to convict on **does not exist**.

Furthermore, the charging period on this alleged crime is from **January 2007 to July 2009** [over 2 ½ years] and it brings into question: Was **this** the death threat that the jury used to convict on? Or was it **another** statement made by Mr. Eggum? Isn't Mr. Eggum **legally entitled** to know **which** allegation he was convicted on, giving him the right to know which allegation from which to appeal? This is why the charging period is **unconstitutionally overbroad**. Was it a threat [written to his mother] in January **2007**, or one in February **2008**, or one in April **2009**? Or did the jurors take **bits and pieces** of each letter, **clip & paste** them together as the AAG had done for them in trial, and then used that collage of letters to convict on? **Clip & Paste** comments cannot be used for the **basis** of a death threat, and this is why this charging period is overly broad and unconstitutional by its very nature.

Since the threat's date isn't specified, the defendant is entitled to pick the **alleged** threat that he believes the jury convicted on, and appeal from that one. Therefore the AAG is obligated to only address the threat designated by the appellant since he had not specified the threat's exact date. Therefore this example shows the **constitutionality of the charging period**.

¹ At RP 227 Gray admitted that Hemple [while walking with her] had brandished a gun in a threatening manner against Mr. Eggum at his worksite, which Mr. Eggum had complained about.

Appendix-10

Assignment of Errors

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

COUNT [1]

1. None of the 3 components exists within the definition of IPS.
 - a. **Hallmark was not acting as a Public Servant** when she attempted to delay Eggum's business from restarting through the denial of his address, therefore she **loses her status as a Public Servant**, and there was no way for the jury to understand this point of law without additional jury instruction to that effect.
 - b. Denying addresses, while seen as a normal duty associated with her job, was **not an official duty** Hallmark had in this particular case, as she was not **authorized by statute to require the address** in the first place, and her denial of that address was for the wrong reasons [personal biases against Eggum's business restarting]. And denial of an address to delay a business restarting is not an official duty Hallmark has.
 - c. And the threat used must be the threat of immediate bodily harm to Hallmark, and that did not occur here. And the *threat* to give away free promotional movies cannot be the requisite threat used because the movies were not of Hallmark, but of Gray, Mr. Eggum's ex-wife, and Gray is a pornography actress which requires additional jury instruction.
2. The normal **definition[s] of threat** cannot be used by the jury without additional jury instruction directing them that the threat cannot be related to Mr. Eggum's lawful business.

COUNT [3]

1. The offer to return the Fasano sex tape [Richey's boss's wife's sex movie] cannot be used as the requisite threat for the IPS charge.
2. The statement that the defendant is going to continue to resume selling his swinger movies in Canada [or anywhere else] cannot be used as the requisite threat without additional jury instruction which directs the jury to disregard any pornographic movies Mr. Eggum is legally entitled to sell.
3. The jury asked the judge if the official duty performed by Richey had to be within **the** charging period [June of 2009] and the judge had answered no, which is incorrect, because then the official duty used could have been the unlawful seizures that Richey had made back in 2004 [leads to ambiguity].

COUNT [4]

1. The **charging period** of June 2007 to July 2009 is **too broad and unconstitutional** in nature.
 - a. If there is a **specific threat allegation** being made, then that **threat** has to be given a **specific identifiable date**. The AAG cannot ask the jury to look at **all** the 82 letters written over a 2 year period and then ask them to just agree that one threat exists in there somewhere; because to do that would be to deny **the** defendant the right to know which crime he had committed. It denies the appellant the right of appeal. From which alleged threat does the appellant challenge?

- b. In this particular instance, was the **“an eye for an eye”** statement used by the jury to convict, or was it Mr. Eggum reiterating what his former attorney said about **“never snapping and going off”** because Eggum had a history of rectifying things through his movie sales? Or was it Mr. Eggum’s political beliefs about Timothy McVeigh’s actions against the government? Any appellant has the right to know what statement was used to convict, just as a defendant has a constitutional right to know what he is being charged with. An appellant cannot properly appeal from a conviction without knowing which statement was used to convict, and that doesn’t exist here.
5. The **jury instruction** stated that the **jury need not unanimously agree** that each and every allegation made against Richey was an actual death threat, but rather the jury **need only agree that one threat had occurred somewhere** in that enormous 2⁺ year period, and that is improper jury instruction because it shifts the burden upon the defendant.
- a. Under this improper jury instruction it is entirely probable [as an example] that **eleven jurors had agreed** that the “eye for an eye” comment was a true death threat, with the **12th juror vehemently disagreeing**. This would have been sufficient for acquittal. But the **12th juror** may have simultaneously believed that the “snapping one day” comment was a death threat, while the 11 others did not, and because of that the 12th juror may have been **coerced** by the others to **concede his “not guilty” position** because he agreed that at least one threat had occurred somewhere. Therefore the vote would not have necessarily been unanimous.

- b. Therefore, **all 12 jurors may not have unanimously agreed** on one of the allegations being made over that 2⁺ year period, but rather the 12th juror's vote had been compromised due to improper jury instruction.
 - c. If the "eye for an eye" comment was truly believed to be a death threat, why wasn't it specifically charged as one? With a specified given date? Making **the** jury consider that statement and only that statement.
- 6. Because of this the **charging period is overly broad and unconstitutional**.
 - 7. None of the alleged threats are true threats as required.

COUNT [5]

- 1. The charging period under this count [5] somewhat mirrors count [4] in many respects, as the **charging period is overly broad, unspecific**, and therefore **unconstitutional**, having been charged from January 2007 until July 2009.
 - a. Under this death threat count, was it the defendant reciting what his attorney had told him about "snapping one day," or was it his recital of his attorney informing him he had the right to "defend his life and shoot" whoever pulled a gun on him in the future? Or was it one of Mr. Eggum's other comments to his mother?
 - b. The defendant is entitled [constitutionally] to know exactly which allegation was used in order to convict so that he is able to appeal from it.
- 2. None of these things written to Mr. Eggum's mother was ever intended to be read by Mr. Eggum's estranged ex-wife. Therefore there was **no conveyance** of a threat. In order for Gray to have known what was written those 82 letters had to pass through 5 different sets of hands before being presented to Gray for her perusal.

- a. This conveyance argument follows the “tree falling in the woods” conundrum; does it **make a sound** if no one is there to hear it? Mr. Eggum’s letters to his mother might be **analogous to writing in a diary**, or Mr. Eggum speaking with a psychologist; those thoughts are not being conveyed to anyone other than his confidant, in this case his mother. Caselaw does exist where writings in a diary cannot be used as a requisite threat. Had 5 persons not passed those letters from one person to the next with the prosecutor finally handing them over to Gray, then Gray would have never heard Mr. Eggum’s thoughts.

Therefore, there was no conveyance of a death threat [not that one exists].

3. Was the requisite threat used by the jury to convict here under count [5] the same threat as used under count [4] where Mr. Eggum’s former attorney said he would “snap and go off one day” if he didn’t have those movies to equalize things with? If this were the case then wouldn’t double jeopardy exist? You cannot punish someone twice for the same crime. This is another example of why the charging period is unconstitutionally overly broad.
4. Did **half of the jurors agree** that [hypothetical] alleged threat #1 was sufficient to convict on, with the remaining half of the jurors steadfastly disagreeing, with the disagreeing half believing alleged threat # 2 was sufficient to convict on? In this scenario half the jurors may have compromised their vote and “**just agreed**” out of **exasperation that somewhere within the 2 ½ year charging period** that at least one death threat had to exist somewhere within that charging period, regardless of which allegation it might be. Wasn’t this in essence what the AAG and jury instructions asked the jury to do?

5. Any defendant has a constitutional right to know what crime he is being charged with when he is initially arrested, and it follows that if he is convicted of an alleged crime he is constitutionally entitled to know what crime he is being incarcerated on. The prosecution cannot throw 50 allegations at a defendant and have a jury find that one of the allegations stuck, while 49 did not, and then not identify which one of the allegations was used to convict on.
 - a. To draw an analogy. What is an “alleged serial killer” was charged with killing 20 people who were either missing or found dead, and the AAG or jury instruction had asked the jury that they didn’t necessarily have to unanimously agree that the defendant had killed all 20 persons, only that he had killed at least one of them. If the “convicted killer” was then sentenced to death, wouldn’t the alleged killer be constitutionally entitled to know “which person” he was being executed for having killed? Or is it sufficient to inform him that the jury said he must have killed at least one of them? [This is in fact what occurred here].
6. In conclusion: Mr. Eggum telling his mother that his former attorney had informed him that he had the right [of self defense] to shoot anyone who brandished a gun against him, that isn’t a death threat and cannot be construed as such, and certainly doesn’t fall into the category of a true threat.

COUNT [6]

1. Under this count [6] the **jury instruction** says that the jury must find that the defendant **knowingly** stalked Janice Gray at sometime from January 2007 to July 2009 by knowingly and repeatedly harassing her. Please bear in mind Gray admits she has never received a call or a letter from Mr. Eggum, ever.
 - a. There is **no possible way** for Mr. Eggum to have **known** that his 82⁺ letters written [to his mother] were being intercepted by DOC mailroom staff, then scanned and forwarded to the Whatcom County Sheriff, who then in turn passed them to the prosecutor [Richey], who in turn passed them to Gray's attorney [Fasano], who then gave them to Gray to read. For Mr. Eggum to have knowing stalked Gray Mr. Eggum would have had to know that all these persons were doing these things, and that is impossibility. Therefore, under the very definition of stalking, the jury had erred.
2. Mr. Eggum writing to his mother that he is going to resume his Canadian Website business when he gets out of prison cannot be used as the requisite harassment required for stalking because this is what Mr. Eggum lawfully does for a living.
 - a. In charging this stalking allegation, the AAG relied on Mr. Eggum **threatening** to "reveal a secret" about Gray that Gray no longer wanted revealed. But in this particular case that secret happens to be that Gray is an ex-pornography actress who has an ex-husband who can continue to lawfully sell those movies.
 - i. Therefore, the jury needed **additional jury instruction** which instructed them that if this was the factor they were considering to

convict on, that this factor could not be used because Mr. Eggum has a **lawful right to continue selling those movies** regardless of Gray's current wishes, and regardless of the prosecution's legal advice to Gray.

3. Therefore the **definition of threat** and/or the **definition of harassment** and/or the **definition of stalking** that went back to the jury needed to be **qualified** that the **continued sales of movies** could not be used as the requisite harassment factor used to convict, because the sale of these movies was lawful.
4. The jurors were allowed to hear a portion of the [Invalid] Imagery Restraint Order read into the record, and that Injunctive Order needed to be qualified to the jury that although the Order prevented Mr. Eggum from continuing to sell those movies from Washington State, that it did not prevent him from continuing to sell them from Canada [which is where they are sold from], and if Mr. Eggum ignored the invalid injunctive order that Gray's **sole remedy was in the civil courts** [i.e., lawsuit].
 - a. Had the jury been given this additional jury instruction the jury would not have voted for conviction under the stalking claim because the jury would have known Gray's sole recourse was civil suit.
 - i. And Gray had [pretty much] relinquished any future claim to file a civil suit against Mr. Eggum because she had been offered ½ the proceeds from these sales and had repeatedly declined.
5. Additionally, it was not the state legislators' intent to have Mr. Eggum convicted of stalking for continuing to do something [legally] which they may or may not morally agree with. That leads to an **absurd construction of the statute**. The jury in essence

convicted Mr. Eggum of stalking because the AAG had asserted Mr. Eggum was **threatening to resume selling his movies** once he gets out of prison, and it was **Stalking** because Gray found that fact as **bothersome** because Eggum was continuing to “**reveal a secret**” about her that she no longer wanted made public [i.e., she’s a pornography actress].

a. Gray finding that fact as **bothersome** doesn’t somehow negate the fact that **the** act of Mr. Eggum **selling these movies isn’t unlawful**. Canada has ruled it is **100% lawful** to continue selling them, regardless of the **invalid order** signed by Judge **Uhrig** in Whatcom County [for **Richey**]. And for argument’s sake, and argument’s sake only, “if” Mr. Eggum chose to ignore the order and sell them from Whatcom County then he would only be liable to a civil suit, not criminal action.

6. In closing please remember that Gray stated at trial that **she has never received a single call or a letter** from Mr. Eggum [ever]. And during this time that Mr. Eggum was incarcerated it would have been **impossible** for Mr. Eggum to have **Stalked** Gray in the **normal sense** of the word. As suggested within the SAG, if this conviction were allowed to stand, Mr. Eggum would be the first person convicted of Stalking **for having left his wife alone and not attempted to contact her** in any way.

a. And if the conviction were allowed to stand, Mr. Eggum would be the first person to ever be convicted of stalking for threatening to resume operating a lawful business, and at the end of that incarceration be allowed to release from prison to resume [lawfully] selling those movies which he had been incarcerated for. That’s an **absurd construction of the statute**.

Appendix-11

Freedom of Speech Violations

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

Within a letter written [to his mother], in argument, Mr. Eggum (seemingly) applauded the actions of people such as **Timothy McVeigh & Usama Bin Laden**, infamous persons known for having blown up the Murrah Building and Twin Towers in their fight against the United States government overstepping their authority and abusing their power around the world.

Any jury member or patriotic citizen hearing Mr. Eggum's remarks would have the **predisposition** to vote Mr. Eggum guilty of any charge leveled at him, therefore it was essential that this **purely political speech** to be kept away from the jurors as to not **taint their opinion** of Mr. Eggum, letting the allegations stand on their own, and not **relying on the hatred or passions of the inflamed jury members**. This is what occurred here.

Twelve patriotic members of the jury (or even one), hearing those impassioned words would be akin to **12 black jurors** hearing a defendant repeatedly utter the word **Nigger** in a letter and then asking that **black jury** to render a **fair & impartial verdict**. In this particular case, the jurors wouldn't hear the letter read once, but twice. Once through Richey's reading of Eggum's letter [to his mother] and then a second time through Hallmark's reading. All this jury incensed needed was something to hand their hats on, and that's exactly what had occurred.

During **voir dire**, Judge Uhrig **purposefully & intentionally exacerbating the prejudice** against Mr. Eggum by asking the **jury members to pray** for all the United States service members currently serving in Pakistan who were laying their lives on the line in defense of this great country [trying to kill Usama Bin Laden, who would be mentioned shortly]. Make no mistake about it, this was intentional, because in pre-trial rulings **Uhrig had read the letters** Mr. Eggum had written his mother and ruled to allow the jury members to hear them.

Then at **jury voir dire**, he **spewed forth that patriotic rhetoric** knowing full well it would **incite the passions of those jury members** to vote Mr. Eggum guilty [mere days later]. He knew what he was doing. Prayer has no place in a courtroom, political speeches such as Uhrig's has no place in a courtroom, more so when this sort of rhetoric is going to be heard by jury members and used to determine the guilt of innocence of a man.

This was an egregious violation of Eggum's **1st Amendment Right to Freedom of Speech** under the Federal Constitution, as well as through the State's Constitution.

Political speech that is critical of the government is the most protected category of speech there is, because attempting to suppress **that speech** creates corruption and diabolical regimes, such as we see in the Middle East today: the very regimes we fight to overturn.

Freedom of Political speech is the most important cornerstone of the American society. You cannot penalize a person for what he thinks about government abuses, and that was exactly what has occurred here. That rhetoric was used to convict on a totally unrelated charge.

The AAG's office may argue "**true threats**" are **not protected** under the Freedom of Speech Amendment, and therefore these **utterances and political rhetoric were admissible**, but in this particular case Mr. Eggum was **not charged** with threatening to blow up any buildings, nor was there a "**true threat**" within those passages made against any of the "alleged victims" within this case.

Mr. Eggum's **political viewpoint** was used against him to **taint the juror's impression** of Mr. Eggum, much the same as Eggum had done with you (COA), using the N-word to incite you. If hearing that N-word angered you, then you might well imagine how it affected the jury members hearing Mr. Eggum's (seemingly) anti-American rhetoric. On this error alone Mr. Eggum would be entitled to a new trial before 12 new jurors who would not be allowed to hear Mr. Eggum's **political diatribe**.

The AAG's office might argue that the **jury's impartiality wasn't affected** by hearing this rhetoric because the jury had acquitted Mr. Eggum of count [2], but that acquittal occurred simply because there was **absolutely nothing** there for the jury to **hang their hat on**, as there was no death threat to Hallmark, but in Eggum's letters to his mother, Richey's name came up more often because of his involvement in this case[s], so the prejudiced jury therefore must have found something within those two years' worth of letters to hang their hat on. But as stated with count [4], saying that "the only reason you haven't snapped and killed someone was because you always hit back through your movies," that isn't a threat either, although this was apparently where the jury hung their hat. Although the charging period is so overwhelming that it is difficult for the appellant to isolate which statement Eggum made was the alleged death threat. As Mr. Eggum contends, there is none. Just as was the case with Hallmark.

So was this political diatribe used to incite the passions of the jury? Without a doubt. Did it play a role in influencing the jury to vote guilty? Without a doubt, or it wouldn't have been used.

It had **such detrimental significance** that the AAG purposefully chose to have it read to the jury on at least two occasions [RP 297-303, 435-37] and he cited it throughout his dialogue with the jury trying to inflame their passions into voting guilty.

Also please note that Mr. Eggum is an **ex-military combat aviator** [RP 297] and inarguably the most patriotic individual in the courtroom on that day - or arguably on any given day - so why the anti-government diatribe? Mr. Eggum **routinely argues politics** with his mother, and in the Tenor of Letter appendix [5] it is shown that Mr. Eggum was trying to **prod his mother** into intervening between the system and himself, with respect to his ex-wife and family, and this diatribe was used in furtherance of that objective. Eggum's hope was if 'things got bad enough' perhaps family would step in.

No crime exists here. And Mr. Eggum's **political viewpoints** [whether true or false] were used against him in violation of his **1st Amendment Protections regarding Freedom of Speech** critical of government abuses. As such, Mr. Eggum is constitutionally entitled to have a jury trial whereas those jury members are **not encumbered with that prejudice and/or distain.**

Appendix-12

Sentencing Issues

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

The AAG had originally offered a 50 month plea deal to the defendant in exchange for a guilty plea. Therefore, the AAG in considering all the factors of this case considered a 50 month sentence as a reasonable sentence for the crimes alleged. The defendant **refused to plea** to a crime that did not exist because of the previous plea agreements mentioned within this brief during the 2004 reneged plea deal and the prosecutor setting the defendant up in the 2005 case. Please note that a 50 month sentence just happens to coincide with what the sentencing grid calls for, cited below. At RP 692 the AAG admits that the SRA calls for a sentence of less than the defendant had received on the 2005 stalking conviction whereas Richey had instructed Gray to walk by Eggum's jobsites [i.e., less than 72 months].

As attorney Dana Lind Nelson had indicated in her opening brief, only one aggravator was charged in each of these allegations, therefore only one aggravator could have been proven, and more than two aggravators are required for an exceptional sentence, and defense attorney Subin and attorney Dana Lind Nelson argue that the sentence imposed should have been calculated at **6** points; not at the 8 points which the AAG used, as follows:

Count [1]	22 - 29 months
Count [3]	22 - 29 months
Count [4]	22 - 29 months
Count [5]	22 - 29 months
Count [6]	41 - 54 months

But this is calculating the sentence using the 4 prior felony points, and as the defendant has **inarguably shown** within this brief, there was **no valid conviction** in the 2004 and 2005 cases; therefore 4 prior felony points must be deducted from the sentencing calculations, as follows, calculating the sentence at 2 points, not at 6 points and not at 8 points:

Count [1]	4 - 12 months
Count [3]	4 - 12 months
Count [4]	4 - 12 months
Count [5]	4 - 12 months
Count [6]	13-17 months

As the court can see something is **terribly awry here on sentencing**. The defendant argues that “if” there was a crime committed in 2009 case, then the maximum sentence imposed should have been the 13-17 months under count [6] with all the counts being ran concurrent because they are the same criminal conduct [although the defendant maintains no criminal conduct has occurred]. This is a far cry from the original 50 months that offered and rejected and a far cry from the 20 year sentence that was imposed. Bear in mind this is a total of 26 years, not 20 years, for “alleged crimes” that are low-level and non-violent in nature.

In the defense’s sentencing memorandum, Subin points out that the average sentence for IPS was **3.1 months** (14 cases) and **5.6 months** (364 cases) for Harassment and **13.5 months** for Stalking (24 cases) in 2009.

This again points to something being awry within this case, especially when the AAG’s **gravamen complaint** has to do with the defendant threatening to resume operating a business which he **admits is 100% legal**. Could the sentence possibly have anything to do with the fact that Mr. Eggum owns a **sex movie of the prosecutor’s wife** going at it? And could this be the reasoning behind Judge **Uhrig refusing to recuse himself** from this matter and then handing down an absurd 20 year sentence? Please bear in mind this is a **total sentence of 26 years**, not just the 20 at hand. 26 years is a murder sentence, is it not?

Amanda Knox¹ was **sentenced to 26 years** for having viciously stabbed and slashed her roommate with a knife 31 times, almost decapitating her. It was a vicious murder. Therefore the Italian court had thought that a **26 year sentence was justified** for this level of crime. This just happens to be the same exact 26 year sentence that Mr. Eggum would have to serve in the totality of his sentence[s]. Stabbing and viciously killing someone is a far cry from ***threatening*** to resume operating a business which sells sex movies and which is 100% legal.

The **Lockerbie Scotland Bomber** was sentenced to **26 years** [to life] for having blown a 747 airliner out of the air and killed over 270⁺ persons onboard. That is a horrific crime. One can **only** imagine falling from 35,000 feet to your death. This would indicate that this person's crime somehow ***overlaps*** with what Mr. Eggum had done [at the 26 year level], and Mr. Eggum would argue that he hasn't hurt or killed anyone, only ***threatened to restart his business***, which is going to occur one day.

Mr. Eggum would petition the court to dismiss each and every count as **no crime exists here**, for the reasons cited within the SAG, because Mr. Eggum ***cannot threaten to expose a secret*** about Gray if the secret that Gray wants concealed is that she has pornographic movies actively being sold by her ex-husband. But should the court not dismiss these charges for any reason, **then** Mr. Eggum petitions the court to (1) **remand for re-trial** before an impartial judge in another county, whereas these issues will be addressed before the jury by Mr. Eggum over the objections of Judge Uhrig, or (2) **remand for re-sentencing** with the COA instructing Uhrig to sentence at 2 point level and to run the sentences concurrent as required by the SRA guidelines.

¹ Amanda Knox was recently acquitted of the crime, but that has no relevance to the sentence imposed for the crime committed.

Appendix-13

Timeline for Intimidating a Public Servant [1]

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

Timeline

- **December 15th 2008**, telephonic divorce hearing where Fasano complains to the judge that Mr. Eggum is going to **release** from prison soon and **resume selling** his movies from **Canada**, where Whatcom County has **no “jurisdictional authority”**. Fasano approaches Richey, Hallmark (et al) associated within the Conspiratorial Group of Persons [SAG-A] trying to keep Mr. Eggum **incarcerated [as a means]** of preventing his business from actively going online again.
- **December 15th 2008**: Immediately following the hearing Mr. Eggum is thrown in the hole and remains there for 60 days with no infraction (charges) ever having been filed.
- **February 10th 2009**: A DOC chrono report shows that the PA called CO Hallmark and they had spoken about delaying Eggum’s release. This chrono is not part of this SAG as Mary Neel ruled attorney Subin did not have to forward Eggum’s legal documents to him.
- **February 15th 2009**, Mr. Eggum releases from the segregation unit at McNeil Island and a **“release address condition”** is **foisted upon him** by Hallmark [DOC] whereas Mr. Eggum needs to submit an address which needs to be approved by them prior to his releasing.
- **February 2009**: Hallmark admits she receives Eggum’s release address submittal that was foisted upon him, sometime in February.
- **March 27th 2009**: Hallmark denies release address as per her conversation with Richey.
- **April 2009**: Mr. Eggum informed that Hallmark **denied the foisted** address because she didn’t want to see **Eggum’s business going online** again.
- **April 2009**: Eggum writes Hallmark a letter while simultaneously writing Susan Lay of DOC requesting a legal determination regarding the address condition, as Eggum maintains he doesn’t need an address in order to release.
- **April 22nd 2009**: Hallmark receives Eggum’s letter and Richey charges Eggum with IPS.
- **May 6th 2009**: Susan Lay of DOC records makes a legal determination that Hallmark was acting outside the scope of her authority when she required Mr. Eggum to have an address in order to release from prison, as Mr. Eggum’s sentence did not require an address in order to release, just as Eggum had maintained within his letter to Hallmark.

Appendix-14

Timeline of Events

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-I

- 2001 Separation
- 2002 Marketing rights repeatedly denied.
- 2003 Marketing rights repeatedly denied.
- 2003 Divorce finalized 08 July 2003, final offer denied.
- 2003 Fasano / Gray find out [Lynden Municipal] that Eggum can legally continue to sell his movies. [See Butler's email, SAG-B].
- 2004 Fasano admits to WSBA [in 2009] that she started an illicit affair with senior DPA Chambers in April, just days prior to Eggum's initial arrest [below].
- 2004 Eggum arrested on 15 April 2004 for allegedly stalking. Sighted 8 times in his town where he lives, over a 4 month period.
- 2004 Eggum bails out [April] moves to Seattle temporarily.
Rehires attorney Butler to represent him.
- 2004 Eggum returns to Lynden in September for the school year.
- 2004 Eggum notifies Fasano his intent to sell \$6,000 worth of movies to pay for Butler.
- 2004 On 09 November 2004 Mr. Eggum is arrested for Stalking [at his residence] and simultaneously an [unlawful] search & seizure warrant is executed on his property looking for movies which had been turned down previously, and which the state now admits at RP 332 that it did not have statute authority to possess.
- 2005 After being incarcerated for 90 days [07 February 2005], attorney Butler strikes a plea agreement with Richey to return the illegally seized movies in exchange for a plea. Richey breaches deal and refuses to return the movies after the plea had been entered.
- 2005 Eggum starts seeing his ex-wife show up at his jobsites from March through June and writes Richey complaining. Calls 911 each time.

- 2005 On 11 April 2005 [SAG-O, pg 4, para J] Mr. Eggum seeks a NCO to prohibit his ex-wife from repeatedly walking by his jobsites, and Eggum simultaneously writes 3 letters to DPA Richey complaining of these contacts, and eventually goes to the prosecutor's office complaining in person. Please also note that [SAG-A, pg 12, para 5] DPA Richey was asked by defense attorney Chalfie if he was responsible for these unlawful contacts and Richey refused to answer. He then prosecuted those contacts as Stalking, and 5 years later he finally answered the question; that "yes," he was responsible for the unlawful contacts that he had charged. This is a criminal act.
- 2005 On March 4th 2005 Judge Uhrig tosses the illegally seized property from his court [criminal] to the divorce court, and acts as the temporary divorce court judge in accepting it [on Richey & Fasano's behalf, because Richey has stated that he was trying to toss the property to Fasano.
- 2005 Judge Uhrig signs a temporary [invalid] Imagery Restraint Order [SAG-I] on Fasano's behalf. Please note the invalid nature of the order. Uhrig knows he has no lawful authority in Canada, yet he signs this order?
- 2005 From March-June 2005 Eggum simultaneously complains to CCO Hallmark about his ex-wife showing up at his jobsites and Hallmark and Richey continues to instruct Eggum's ex-wife to continue walking by his work, in an effort to arrest Eggum. This was done so the parties listed at FN1 and SAG-A could arrest Eggum to prohibit him from running his website business which continued to operate [which they morally opposed] and sell movies.

- 2005 On May 6th 2005 Judge Snyder accepts the illegally-seized property that was tossed to him by Judge Uhrig, and then divides the property with Eggum being awarded everything that he retained that day that had not been seized. Gray gets everything with her image on it that's currently in the sheriff's possession.
- 2005 Even though the movies were seized on November 9th 2003 the website is still active and able to sell movies, movies which they believed they had seized. This angers the group, because their seizures had accomplished nothing towards getting Eggum's business offline.[Please note: No one suggested to Gray that she pick up the phone and ask her estranged ex-husband if he might be willing to stop selling these movies].
- 2005 On the 3rd of June 2005, CCO Hallmark [on behalf of Richey & persons named within FN1 and SAG-A, as a concerted group effort] arrests Mr. Eggum for probation violations stemming from these contacts that Richey [and Hallmark] had initiated. This is the last time Mr. Eggum was free, as he is going to serve a 6 year sentence for the contacts that Richey had [criminally] induced.
- 2007 On January 24th 2007 Eggum is coerced into pleading guilty to stalking his ex-wife [at his jobsites] because Mr. Eggum is not able to prove that Richey was responsible for those contacts, as Richey had refused to answer defense attorney Chalfie if he was responsible for those unlawful contacts. Another factor behind that plea was that Richey had dog-piled the charges, charging Eggum with 15 felony counts and threatening asking for a 50 year sentence.
- 2007 Eggum is incarcerated at McNeil Island.
- 2008 Eggum is incarcerated at McNeil Island.

- 2008 A divorce court hearing is heard on 15 December 2008 with Eggum having only 6 months before he is released on this bogus charge, and Fasano that Eggum is going to release from prison and resume selling his movies, and that there was nothing that Whatcom County could do about it because of jurisdictional issues. This is 100% correct. And this is the core of this 2009 case, so I hope the court sees the error, because Whatcom County and the State of Washington have absolutely no jurisdictional say in whether or not Mr. Eggum may market his movies from a Canadian domain.
- 2008 Mr. Eggum is thrown into segregation within an hour of this hearing ending.
- 2008 DPA Richey admits that Fasano and others began approaching him and telling him you had better do something because Eggum is getting out soon and he's going to start his business again.
- 2009 A DOC chrono shows that Richey called Hallmark on this date and discussed not releasing Eggum when his sentence had ended.
- 2009 On February 15th 2009 Mr. Eggum is released from segregation.
- 2009 On February 15th 2009 a release address condition is foisted upon Mr. Eggum.
- 2009 Eggum argues he is not required to have an address in order to release from prison on his Earned Release Date [ERD] because his last count was a monetary commitment. DOC later rules [May] that Mr. Eggum was correct.
- 2009 In February, Hallmark receives Mr. Eggum's submitted address and denies it [sight unseen] on March 27th without ever having previewed the address.
- 2009 On March 27th 2009 Eggum is notified his foisted address had been denied by Hallmark, and the reasoning given [by CO Denzer] for that denial was that

- “Richey and Hallmark had spoken and they didn’t want to see your website starting up again.”
- 2009 Eggum writes a letter to Hallmark which he has CO Denser approve before sending it. It is approved and Eggum sends it.
- 2009 Eggum simultaneously writes Susan Lay of DOC Records at McNeil Island requesting a Legal Determination on the address issue and Eggum threatens a lawsuit against DOC if they continue to insist they have statute authority to require the address when they clearly did not.
- 2009 On May 5th 2009 Eggum files a pro se motion for dismissal because none of the components exist for this to be a crime, as cited herein.
- 2009 On May 6th 2009 [SAG-G] Susan Lay rules that Eggum is not required to submit an approvable address in order to release, just as Eggum had maintained.
- 2009 On April 22nd 2009 Hallmark receives her letter and calls Richey.
- 2009 On April 22nd 2009 Richey files IPS charges for Hallmark's letter.
- 2009 In early May-June of 2009 a motion for dismissal hearing is heard with Judge Snyder presiding, and Judge Snyder recuses himself from the matter because of conflicts of interest.
- 2009 [May-June] The case is reassigned to Judge Uhrig.
- 2009 Mr. Eggum petitions the court [Uhrig’s asst.]to reschedule the hearing date prior to his June 25th 2009 release date so that he is not detained past his scheduled release date.
- 2009 [July] Uhrig purposely reschedules the [pro se] motion for dismissal late into July knowing that Richey will have transported Eggum to county jail by then,

and thus the two of them have hampered Mr. Eggum's ability to start mass-marketing his free promotional movies in Whatcom County [SAG-E] as Eggum had stated that his intention was within the "Forewarning to the State."

2009 Mr. Eggum is transported to Whatcom County and his bail is set at \$500,000 so that he is not able to operate his business and resume selling his movies. In any county [in any state] within the United States the normal bail required for an IPS count might be \$10,000 bondable. But not here. Why? The court should be aware that there was only one count of IPS at that point and therefore was the \$500,000 bail a reasonable amount? This is another example of what Mr. Eggum means by DPA Richey and Judge Uhrig operating in concert towards a united goal of keeping Mr. Eggum incarcerated [as a means] of preventing him from resuming the helm of his adult entertainment business. Who ever heard of a \$500,000 bond on a single count of IPS?

2009 The Public Defender's Office conflicts out of the case. [So now Judge Mura has recused, Judge Snyder has recused, and the PD's office has recused, because of conflicts of interest.

2009 Attorney Andrew Subin assigned to the case and the pro se motion for dismissal is never heard. [convenient, isn't it?].

2009 Eggum motions repeatedly for Judge Uhrig to grant a Change of Venue so he can receive a fair and impartial trial and/or for Judge Uhrig to recuse himself from the case because of conflict of interest reasons and/or moral biases that Uhrig has, as Uhrig is part of that Concerted group of Persons mentioned at FN1 and SAG-A, and Judge Uhrig repeatedly denies both motions while steadfastly

remaining on Eggum's case so he can control the outcome of the trial by controlling the input of what the jury sees. .

Appendix-15

Motions in Limine

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-I

It is clear that Mr. Eggum's **legal ability to continue selling these movies** is the ***gravamen*** of the AAG's [i.e. **Richey's**, i.e. **Fasano's**, i.e. **Gray's**, i.e. **Uhrig's**] complaint, and that this **Conspiratorial Group of Persons** is doing everything within its power to keep Mr. Eggum from resuming the helm of his adult entertainment business because of the ***poor legal advice*** they had previously given to Gray. [They are covering their asses].

And it is **absolutely inarguable** that Judge Uhrig should have ruled that the defense attorney should be allowed to **present the defendant's defense** so that the defendant would be able to take the stand in his own defense, and address these issues to *edify the jurors*, since they are **core** issues, but that did not occur because Uhrig was purposefully setting the defendant up with pre-trial ruling that would result in a [faulty] conviction. This way Uhrig could help the prosecutor keep Mr. Eggum from resuming the helm of his business. And perhaps keep Mr. Eggum from obtaining his copy of the senior DPA's wife's sex movie? Would a fair & impartial judge in Pierce County have ruled that the defendant could not present his defense? Especially when it is a core issue?

Prior to trial, after Judge Uhrig had **repeatedly refused to recuse himself** from this case for ***conflict of interest reasons*** and/or because of his ***personal biases*** against the defendant legally operating his website, the **defendant had written** to Judge Uhrig and informed him that he **would refuse to appear for trial** unless he was going to be allowed to present his defense, and unless it was before another unbiased judge; in short stating that Uhrig would have to try the case in absentia if he was going to remain on the bench.

If the COA looks to [RP 11] the court will note that Judge *Uhrig* was perfectly content **trying the defendnat in absentia** as opposed to allowing the defendant to take the stand and present his own defense; or just stepping aside and allowing the case to be heard by another judge. Judge Uhrig “talks as if” he is agreeable with stepping aside and assigning the case to someone else, but those *words are disingenuous*, as he has every intention of remaining on the bench so he can control the outcome of the trial. Look to [SAG-M] where Judge Mura had ruled that it **would be improper** for Mr. Eggum to go to trial in front of Judge Uhrig.

If the COA looks at the **entirety of that motion** for Change of Venue based off Judicial Bias within the Whatcom County Judicial System, the COA will see that everything that Mr. Eggum had feared about the different legal system apparatuses coming together against him turned out to be 100% correct, and it occurred in 2009 under this case, and it involved the judge just as Mr. Eggum had feared. Therefore, how could Mr. Eggum possibly believe he was going to receive a fair and impartial trial in Whatcom County?

How does a judge [refusing to recuse] control the outcome of the trial? As isn't it the impartial jurors who decide the innocence or guilt of the defendant? The answer to that is: The judge **controls the input** to the jurors, controls what they see and what they hear, and controls the jurors' instructions, and in this case the judge did exactly that, **ruling adversely** against the defendant **100% of the time**, and then he handed the jurors a **faulty set of jury instructions**, not “**clarifying the definition of threat**” issue for the jurors, and further not instructing them that the defendant stating [threatening] that he was going to continue selling movies could not be used as the **requisite threat required** under all counts [1,3,5,6] because this was what the defendant legally did for a living.

How can the appellant put this case into the **proper perspective** for the COA to see what is occurring here? The defendant repeatedly requested that Judge Uhrig to step aside [because of his **morally-conflicted involvement** (biases) within his case] so he could receive a fair and impartial trial and be able to take the stand in his own defense. Judge Uhrig did not allow it, instead ruling he'd **try the defendant in absentia** as opposed to stepping aside. This is because Judge Uhrig was/is **working in tandem** with the prosecutor's office in their efforts to keep Mr. Eggum incarcerated so that he cannot resume running his business [SAG-A & FN1], which they are all **morally opposed** to. Judge Uhrig would probably **deny** that accusation, trying to make it sound as if he had *ruled fairly* at trial and *didn't have any moral biases*, because to admit otherwise would be to admit that he was part of something unlawful.

So let me state this another way: Because of Judge Uhrig's **personal biases**¹ he holds against my [lawful] adult entertainment business operating and continuing to sell my movies, I am therefore going to make it a **nonnegotiable consequence** that I am going to open up a **storefront** business on George Street in downtown St. John's, Newfoundland, Canada, and give away an **unlimited supply of free promotional movies**. And you **cannot mitigate** that. Wasn't this **exactly** what was said to Hallmark when she had **meddled** in Mr. Eggum's adult entertainment business by denying his address as a means of delaying his business from restarting? This is not a crime. So much so that I have had to say it again to ensure you heard it.

¹ At trial Judge Uhrig had heard DPA Richey admit that he **did not have statute authority to retain possession** of the movies that he had illegally-seized previously through Judge Uhrig, but yet Judge Uhrig has repeatedly **refused to return the movies** [over 5 years] because of his **promises** he has made to the people cited within SAG-A, and he's even refused to return it after appellate attorney Dana Lind Nelson had clarified that this imagery was previously awarded to Mr. Eggum as his portion of that particular asset, contrary to what is being espoused by others. These are **not official duties** that Judge Uhrig is performing, quite the opposite. If it was an official duty he was performing he would have returned the property as required by the 4th Amendment of the United States Constitution.. Therefore, his refusal to return it stems from his **personal biases** that he holds against Mr. Eggum operating an adult entertainment business that continues to sell sex movies of his ex-wife, contrary to the invalid court order he entered trying to order Mr. Eggum not to operate his business in Canada.

Additionally, as part of the **Motions in Limine [404(b)] rulings**, Judge Uhrig ruled that the jurors would not be allowed to hear of the prior “**wrongful acts of the prosecution’s witnesses**” and this goes to the *core* of the defendant’s defense. [One has to ask themselves, why not?]

The defendant wanted to present as part of his defense that divorce attorney Lisa Fasano had given **faulty legal advice** to her client, **thus causing Gray to deny the proffered movie rights**, and in order to obtain an otherwise **unobtainable search & seizure warrant** [to get the movies back] through DPA Richey and Judge Uhrig, that she had *sexually-bribed* senior DPA Chambers towards that end. Why shouldn’t the jurors be allowed to hear that? Was it because of the conflicted involvement of Judge Uhrig? If this testimony was allowed Judge Uhrig’s name would continually come up during the testimony regarding these wrongful acts.

Because if you’ll recall DPA Richey had purposefully **perjured himself** when he had stated that he couldn’t remember which judge he had gone before to obtain the [illegal] search and seizure warrant [**look at SAG exhibits R,V,X**]. It is inconceivable that DPA Richey could have forgotten which judge it was when he had appeared in front of Judge Uhrig just a few days before **discussing the illegal seizures** that Richey had made.

But yet we have Judge Uhrig ruling that the jurors would not be allowed to hear about those **wrongful acts**? [How convenient]. If the defendant could have shown that this had in fact occurred then the jurors would have seen that this was nothing more than the Whatcom County **legal system** having **screwed the pooch** in legally advising Gray to turn down the proffered movie rights, and now doing everything within their power to correct their error, by keeping Mr. Eggum incarcerated for as long as possible to delay his business from restarting.

SAG Exhibit List

Statement of Additional Grounds / Marlow Todd Eggum / COA 66554-5-1

- A. **Defense Attorney Alan “Chalfie’s Declaration”**
Names persons within the Conspiratorial Group of persons attempting to keep Eggum incarcerated as a means to prevent his business from continuing to sell sexually explicit movies of his ex-wife, which Mr. Eggum does lawfully.
- B. **Attorney Robert “Butler’s E-mail”**
“Take your movies go to Canada and sell them and make lots of money, just leave Janice alone,” IE, this isn’t Stalking and this isn’t Harassment, and this isn’t unlawful in any manner, because the prosecutor had agreed to it.
- C. **Attorney Robert “Butler’s Statements in Open Court”**
Transcript from 23 February 2005 where DPA Richey and Judge Uhrig acknowledge that the sale of movies isn’t Stalking and isn’t Harassment and isn’t unlawful in any manner.
- D. **Judge “Uhrig’s Paris Hilton Ruling”**
Uhrig rules that Hilton’s former boyfriend has every legal right to sell his sex movies and make lots of money, just as Mr. Eggum does.
- E. **Eggum’s “Forewarning to State”**
Mr. Eggum stating he’s going to mass-market Whatcom County with 15,000 free promotional movies in order to firmly establish his legal rights to his business, and to ensure his property isn’t illegally seized again. Look to the conflict of interest issues herein.
- F. **2005 Judgment & Sentence**
Shows a release address was not required in order for Eggum to release.
- G. **Susan Lay DOC Ruling Regarding Release Address**
Susan Lay determines Eggum was not required to submit an address in order to release, and determines that Hallmark had no statute authority to require the address condition for Eggum to release.
- H. **Judge Snyder’s Retained Property Ownership / Property Split**
Shows that all the imagery that Eggum possessed on this date was awarded to him, and that everything that Gray was given that day was her share of that property. Also shows that if Eggum ignores the injunctive order that Gray’s sole remedy is to sue Eggum, there are no criminal ramifications.
- I. **Judge Uhrig’s Invalid Injunctive Order Regarding Website**
Shows that Fasano approached Judge Uhrig ex parte to get Uhrig to toss her the property that had been seized for her [unlawfully] and that Uhrig had signed an injunctive order directing Eggum to shut down his website in Canada. This shows undoubtedly that Uhrig works in tandem with both Richey and Fasano, as a group effort.
- J. **“Paul Justiano” Divorce Court Document**
Shows that a Paul Justiano holds Mr. Eggum’s business hardware and movies, and that Paul Heaven was not the “Paul” that Eggum had referred to within his letters when he stated he was going to go by Paul’s House and get his tools and go pound some nails.
- K. **Permanent Imagery Restraint Order**
Shows that the property was spilt on that date and that Gray was awarded everything downstairs that was currently in the sheriff’s department, and also shows that Eggum is restrained from disseminating images on his business of Gray from Whatcom County or from Washington State, although this order is completely invalid in Canada, which is where Eggum’s business operates from.
- L. **Richey’s 02 April 2010 Interview**
Richey admits that the prosecution had agreed to return the movies to Mr. Eggum as part of the plea entered into on February 7th 2005 and that they had breached said deal. Interview also shows that Richey knowingly set Eggum up on the charges in the 2005 case.

M. Judge Mura's Ruling

Judge Mura rules that it would not be proper for Judge Uhrig to preside over Mr. Eggum's trial, and that if that were to be a possibility that he would grant the change of venue request before that occurred to ensure Eggum could receive a fair trial..

N. Eggum's Letter to Richey

Primarily shows that Richey has no business meddling in Eggum's business affairs and that this is the focus of Eggum's motivation; not influencing any official duty Richey performs. Also shows that Eggum offered to return a sex tape depicting the senior DPA's wife.

O. Affidavit RE: Judicial Bias of the Whatcom County Bench [2005]

Paragraph G-I: Shows Conspiratorial Group effort between Richey, Fasano and Uhrig [and Judge Snyder].
Paragraph J: Eggum requests a NCO to keep his ex-wife away from his jobsites.

P. Pro Se Motion for Dismissal

Shows that Mr. Eggum was informed by DOC that the reasoning behind the address denial was that Richey had called Hallmark and the two of them did not want Eggum's business restarting. Not official duties that either of these Public Servants has.

Q. Whatcom County Prosecutor's Response to Lawsuit

Letter from 2008 acknowledging that Eggum had retained Hester Law Group to sue Richey, Fasano, Hallmark, Judge Uhrig and others in regard to their actions against Mr. Eggum, and shows a conflict of interest that each of these named codefendants has in charging Mr. Eggum and then not recusing themselves from the current case.

R. Motion RE: LFOs, Statute of Limitations on Civil Lawsuit

Uhrig acknowledges that Mr. Eggum is going to lawfully sex his sex movies of Gray to pay for the LFOs that he entered.

S. False Allegation about DVD Movie Jackets Founds

Richey alleges that an empty DVD protective movie jacket was found and that nobody other than Eggum would have this imagery and this when Mr. Eggum has been selling these movies for over 10 years.

T. Supplemental Brief "No Address required"

CCO Denzer and CUS Cossette acknowledging that Eggum isn't required to submit an address in order to release on his release date.

U. Subin's Summary Notes from Search Warrant Request

Shows Richey perjuring himself to Uhrig to obtain an otherwise unobtainable search warrant, and shows Uhrig complicit in that because he doesn't ask Richey a single question that any reasonable person would have asked. This was because of prior ex parte communication between the parties, in chambers.

V. Gemini Angel Motion for Return of Property

Shows Uhrig's refusal to return Eggum's property and shows Richey had perjured himself on the stand when he stated he couldn't remember which judge had granted the unlawful search & seizure warrant, because Uhrig and Richey attended this hearing, just months before not remembering. [Short memories].

W. Transcript November 2nd 2009 & December 8th 2009

Judge Uhrig acknowledges that Mr. Eggum is a lawful pornographer.

X. Motion For Evidentiary Hearing Regarding Unlawful Seizure

Filed on February 2010 and shows that Richey and Uhrig knew that Richey had not forgotten who he had requested the unlawful search & seizure warrant from.

Exhibit-A

Counsel's Declaration

I, Alan Chalfie, under penalty of perjury of the Laws of the State of Washington, declare:

- 1) I am an attorney employed by the Office of the Whatcom County Public Defender and I represent Marlow Todd Eggum (herein "defendant") in the above-entitled case.
- 2) I have: (1) reviewed discovery; (2) reviewed Department of Corrections (DOC) records; (3) reviewed court files pertinent to this case; and (4) reviewed summaries of interviews conducted by defendant's former attorney, Sean Devlin. I have interviewed one additional witness for this motion. Based on this review, I anticipate that the following evidence will be elicited at a hearing on this motion.
- 3) Eric Richey is a deputy prosecutor in the Office of the Whatcom County Prosecuting Attorney. He has a daily professional relationship with alleged victim, Pauline Rose, and a daily working relationship with a senior deputy prosecuting attorney, whose fiancé is a witness and potential victim of defendant, and who has repeatedly expressed her fear of defendant; Mr. Richey has also worked in close association with alleged victim, Cheryl Cartwright, a domestic violence advocate.
- 4) Mr. Richey was the deputy prosecuting attorney who prosecuted defendant on a previous charge of felony stalking. The victim in that case was Janice Gray, the named victim in Counts 1, 3, 5, 7, 8, 9, 10, 13, 14, and 15, of the present Information. Following defendant's release from custody in February, 2005, Mr. Richey was in regular contact with Janice Gray; her divorce attorney, Lisa Fasano; Pauline Rose; and Cheryl Cartwright, in their united efforts to put defendant back in custody, and to prohibit him from continuing to sell sexually explicit pictures of Janice Gray. Mr. Richey also had contact with defendant's probation officer from the Department of Corrections, several police agencies, and defendant himself.
- 5) In the spring of 2005, defendant spoke to Mr. Richey twice in person in the county courthouse, once on the telephone, and sent him three or four letters. In those communications, ~~defendant told Mr. Richey that Janice Gray was coming to defendant's worksite, repeatedly in an apparent effort to accuse defendant of having unlawful contact with her.~~ Defendant denied contacting Pauline Rose, and asked Mr. Richey why he had sent the sheriff to his home at 6:30 a.m. on a Saturday to tell him to quit bothering her. Mr. Richey said he had heard about that. ~~When asked directly if he was the one who authorized the contact, Mr. Richey declined to answer the question.~~
- 6) In our interview of Cheryl Cartwright, the alleged victim in Count XII, she informed us that, between February and June of 2005, when the majority of the charged incidents occurred, she met weekly with Eric Richey to discuss defendant's alleged violations of his community supervision. These discussions occurred at the weekly domestic violence meetings held in the Prosecutor's Office, and involved Pauline Rose.

- 7) Ms. Cartwright informed that she consults regularly with Ms. Rose and the Whatcom County Prosecuting Attorney's Office on their cases. When asked whether she had discussed defendant's criminal matters with Lisa Fasano, Ms. Cartwright answered, "Sure I did."
- 8) Mr. Richey received a threatening letter from defendant on October 31, 2005. This letter was cited by the Department of Corrections when it violated defendant's community release in November, 2005. The DOC hearing officer concluded that defendant had intimidated Mr. Richey in the latter's capacity as a public servant.
- 9) Two months later, Mr. Richey amended the charges against defendant and substantially increased his potential sentence. He added ten charges including one count alleging that defendant had stalked Pauline Rose, his colleague who had worked in he capacity as a prosecution employee on several cases involving defendant. On behalf of Ms. Rose and at her request, Eric Richey and/or chief deputy Mac Setter personally contacted defendant, at a time when no charges were pending, to warn him to stay away from their colleague. Since this count was added to the Information, Mr. Richey has permitted Ms. Rose to take an active and substantial role in the prosecution of the entire case.
- 10) Lisa Fasano is a local attorney who has represented Janice Gray since July 2002, in Ms. Gray's dissolution, child custody, property settlement, and claim for damages against defendant. Ms. Fasano has filed several declarations and motions during the course of her representation alleging that defendant is a danger to her personally, and that she is in fear of him.
- 11) Ms. Fasano is engaged to a senior deputy prosecuting attorney in the Office of the Whatcom County Prosecuting Attorney, who is in daily professional contact with Eric Richey. Ms. Fasano has used her relationship with the Prosecutor's Office to encourage that office to investigate and prosecute defendant.
- 12) The balance of this declaration is presented under seal.

Dated: This 22ND day of August 2006, at Bellingham, Washington

WHATCOM COUNTY PUBLIC DEFENDER



Alan Chalfie, #91001
Attorney for Marlow Todd Eggum

Counsel's Sealed Declaration

Counsel submits this portion of his declaration under seal because it contains personal information about a deputy prosecutor. I request that the court order that this part of the brief be sealed from public view.

I, Alan Chalfie, under penalty of perjury of the Laws of the State of Washington, declare:

- 1) The senior deputy prosecutor referred to in counsel's primary declaration is Craig Chambers. Mr. Chambers has worked in the office of the Whatcom County Prosecuting Attorney for 20 years. He and Lisa Fasano have been dating for two years, and are engaged to be married. They are expecting a child later this year.
- 2) I spoke to Mr. Chambers about a month ago, and he confirmed the information just stated. He told me that he is familiar with the current case against defendant, as well as defendant's prior felony stalking case. He told me that he and Ms. Fasano have spoken numerous times about Mr. Eggum, and he is very aware of her concerns about him. He told me that Ms. Fasano considers defendant to be very dangerous, and that she fears him.
- 3) Mr. Chambers told me that he is not involved in the prosecution of Mr. Eggum, but he has checked on the progress of the case.
- 4) I anticipate that at a hearing on this motion, the preceding facts will be elicited as well as the following facts:

Eric Richey and Craig Chambers have had a professional relationship since Mr. Richey joined the Prosecutor's Office in 1993, and have had almost daily contact since then.

Mr. Richey is aware of the relationship between Craig Chambers and Lisa Fasano, and is aware that they are expecting a child together later this year.

Mr. Richey and Lisa Fasano have consulted about Mr. Eggum for at least the past two years, and they have coordinated their efforts to have Mr. Eggum investigated by the Department of Corrections, the Sheriff's Department, other local police agencies, and other local prosecuting authorities.

Mr. Richey is aware that Lisa Fasano feels threatened and is afraid of defendant.

Dated this 22nd day of August at Bellingham, Washington.

WHATCOMCOUNTY PUBLIC DEFENDER

Alan Chalfie, #91001
Attorney for Marlow Todd Eggum

Exhibit-B

Subj: Re: Grennan-Readiness Hearing
Date: 9/10/03 8:45:05 AM Pacific Daylight Time
From: admin@rdbutlerlaw.com
To: Toddeggum@aol.com

Todd,

So, that is the deal. You get to close out all your pending court matters, go and sell your videos and make a lot of money just do not contact Janice in any way and you will do fine. I assume we can make this an alford plea so that you do not agree that you are guilty but are accepting the plea deal because it is too good to pass up...

I will be in court either way, think about it and let me know.

Exhibit-C

1 MR. BUTLER: Thank you, Your Honor. The fact
2 remains that Mr. Eggum does enjoy a property
3 interest in the videotapes and images and can sell
4 them, has sold them, will sell them. So it's not
5 appropriate for the court to retain any of his
6 property. It is not contraband. It is not illegal.
7 I would make an offer to the State, first of all,
8 with regards to this alleged under-aged female.
9 There is two pieces to that. First of all, the
10 State knows that that's his first wife and the --
11 the police reports indicate that -- the second piece
12 is you know there is no proof of age. That said,
13 um, you know, probably be okay without that image
14 coming back because we certainly would hate to have
15 the State give it back and turn around and somehow
16 decide they wanted to charge for possession.

17 The reality is they can't or they would have.
18 And the reason they can't is because, one, it's his
19 wife and, two, they can't prove age because it's an
20 old photo.

21 But with regards to the items, what I have
22 done with my motion, Your Honor, is simply attach
23 the evidence seizure lists. And if the State wants
24 to line out what it is that they think can't come
25 back, we would ask the State to do that. If that's

Exhibit-D

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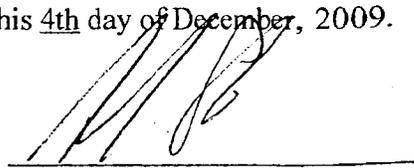
WHATCOM COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	Case No.: 09-1-00486-5
Plaintiff,)	
vs.)	MOTION TO RECONSIDER ORDER
MARLOW TODD EGGUM,)	DENYING MOTION FOR RECUSAL OF
Defendant.)	TRIAL COURT JUDGE

MOTION FOR RECONSIDERATION

Now comes the defendant Marlow Todd Eggum and respectfully requests this court to reconsider its order denying defendant's motion for recusal of the trial court judge. This motion is based on the attached declaration of counsel.

Dated this 4th day of December, 2009.



Andrew Subin,
Attorney for Defendant
~~1313 E. Maple St., No. 424~~ 114 N. MAGNOLIA ST.
Bellingham, WA 98225
(360) 734-6677

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DECLARATION OF COUNSEL

I, Andrew Subin, hereby declare, under penalty of perjury, that the foregoing facts are true and correct:

1. I am counsel for the defendant, Todd Eggum in the above captioned matter. Mr. Eggum has previously moved for recusal of the trial court judge assigned to this matter, the Honorable Ira Uhrig. Judge Uhrig denied defendant's motion for recusal.

2. One of the issues in this case concerns whether the defendant acted with "lawful authority" when he stated that he was going to distribute pornographic images of his ex-wife, Janice Gray. See WPIC 36.07.02 (that the defendant acted "without lawful authority" is an element of felony harassment).

3. At trial, the defendant intends to present evidence that he had the lawful authority to distribute these video tapes and that his stated intention to do so was not, therefore, a "threat" as that term is defined by statute.

4. Mr. Eggum believed that he had the lawful authority to distribute the videotapes because ~~Judge Ira Uhrig~~ told him that he had such authority. On February 23, 2005, in Whatcom County Cause No. 04-1-0500-3, in ruling on defendant's motion to return these same video tapes, ~~Judge Uhrig~~ stated: "From a legal perspective, I think some of the analyses are very similar to that. The former boyfriend of Paris Hilton sits back and makes a lot of money off those tapes and he has every legal right to do so."

5. Because Judge Uhrig is on the record in this case, telling the defendant in open court that he had every legal right to sell the videos in question, Judge Uhrig is a potential defense witness in this case. Because of the high probability that Judge Uhrig will be called to testify for the defense, he should recuse himself from this matter.

Exhibit-E

FILED

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

WHATCOM COUNTY
WASHINGTON

BY _____

Washington State, Plaintiff,

Case No: ~~05-1-01094-3~~

09-1-00486-5

v.

FOREWARNING TO THE STATE

Marlow Todd Eggum, Defendant.

On November 9th 2004 the state arrested the defendant on the crime of Stalking his wife, and during that arrest the state searched & seized pornographic imagery from the defendant's residence. That seizure was illegal, and the prosecutor had done it in exchange for sex (bribery).

Under RCW 10.79.015 (Grounds for Issuance of Search Warrant), the state is only entitled to request a search & seizure warrant in regard to evidence related to the crime being charged. In this case - Stalking - that would mean that the state could ask for a warrant to seize binoculars, night vision equipment, dark clothing, masks, etc., etc., as those items might be related to the alleged crime of Stalking.

Certainly, pornography doesn't fall into that category of possible items.

And it is now known - after the fact - that the prosecutor had accepted sex from the defendant's wife's divorce attorney (Lisa Fasano) in exchange for obtaining the warrant which violated RCW 10.79.015. Their actions are unlawful and violate RCW 10.79.040.

In any case, the state through their actions have attempted to seize imagery that belongs to the defendant, and as such, have attempted to vie for dominion and control of the defendant's lawful business (adult entertainment company).

The senior prosecutor who had accepted the sex - in exchange for the illegal seizure - had used his senior status to arrange for the court to toss the property from one courtroom to another, in order that the illegally seized property could be given to Lisa Fasano - in divorce court - in violation of the rules governign the return of seized property, therefore in violation of CR 2.3(e) and caselaw such as State v. Alaway (64 Wn.).

This was the first seizure that violated the law. *And Judge Ira Vining was a knowing and willing participant in that collusion / conspiracy.*

The state believed that it had successfully shut down the defendant's ability to operate his business, because without anything to sell the business would fold. ~~No~~ movies equals no website movie sales. This seizure was an attempt to vie for ownership of the defendant's business. A challenge by the state.

This small seizure accomplished nothing with regard to shutting down the defendant's ability to market & sell his movies, and so the prosecution moved to arrest the defendant on more Stalking charges. In essence, arrest the defendant and you remove the webmaster from the website and therefore kill the snake by cutting off the head of the snake. That in itself is an attempt to vie for domionion & control of my business.

During that second arrest, which is the case herein, the defendant had been incarcerated for over a year when the sheriff was called by the prosecutor, in which the prosecutor asked the sheriff to make another unlawful seizure on his behalf. Again using the power of his office to accomplish something unlawful, whereas he accepted sex in exchange for what he was doing, in exchange for what he was providing to Lisa Fasano (the movies she wanted).

This 2nd seizure was made without any warrant whatsoever. And again, the seized imagery was in violation of RCW 10.79.015. The defendant demanded that this property be returned immediately, and the state refused to return it. This again is a clear attempt by the state to vie for ownership of the defendant's business. A challenge.

Several letters have been written to sheriff Bill Elfo, demanding that the illegally seized property be returned. Some of those letters before the court order of October 18th 2007.

In those letters the defendant had made it clear that if the illegally seized property wasn't returned, or any reason whatsoever, regardless of reasoning, that the defendant would consider the sheriff's actions (state's) and the actions of the prosecutors (state's) as an attempt to steal the defendant's business, by stealing his imagery that he uses to sell his movies. And as such the defendant would firmly establish his legal right to continue selling his imagery by giving away 15,000 free promotional movies within Whatcom County.

This Forewarning has been sent to the sheriff, the prosecutor, as well as recorded into the record with the judge in this matter. So the state is well aware of the consequences for not returning the property that was seized illegally. Therefore, the state assumes responsibility for seeing a promotional marketing campaign established with Whatcom County.

Additionally, the state has also been warned that the defendant is going to file a civil lawsuit against the state for any losses arising out of either illegal seizure. This at a time when the state has the opportunity and ability to return the illegally seized property. That amount (damages) in the last seizure is 6.9 million, a substantial amount. *And Judge Ira Uhrig is also a named codefendant in that lawsuit, as it was his signature that authorized the illegal seizures, and he that signed the imagery restraint order (useless in Canada).*

In plain easy to understand language, the defendant has warned the state to "Return the illegally seized imagery, or I will shove my website movies up the state's ass and firmly establish my legal right to sell my movies in the process." That is about as succinct as one can state it, and the defendant wants it on the record that the warning has been made. *And that Uhrig is a part of it.*

The defendant / appellant herein submits this Forewarning to the state, as part of the record, on this 20th day of APRIL 2009.

Resubmitted on this 22nd day of March, 2010.

A handwritten signature in black ink, appearing to read "Marlow Todd Eggum", with a long horizontal line extending to the right.

Marlow Todd Eggum

Exhibit-F

LBA

FILED IN OPEN COURT
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WHATCOM COUNTY CLERK
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SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,
vs.
MARLOW TODD EGGUM, Defendant.
DOB: August 28, 1961

No. 05-1-01094-3
JUDGMENT AND SENTENCE (FJS) (Jooswe)
PRISON
[XX] CLERK'S ACTION REQUIRED-para 4.1 (LFO'S),
4.3 (NCO), (10.99)
[XX] JAIL ACTION REQUIRED - para 4.4

ORIGINAL

I. HEARING

1.1 A sentencing hearing was held and the defendant, Marlow Todd Eggum, the defendant's lawyer, Alan Chalfe, and the Deputy Prosecuting Attorney, Eric J. Richey, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on January 24, 2007 by PLEA of:

COUNT	CRIME	RCW	DATE OF CRIME
I	STALKING	9A.46.110(5)(B)	
II	STALKING	9A.46.110(5)(B)	
III	FELONY HARASSMENT	9A.46.020(2)	May 8, 2006

as charged in the Amended Information.

[XX] The crime(s) charged in this cause involve domestic violence.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME
STALKING	02/07/05	Whatcom County Washington	A	Class C Felony
STALKING	11/19/03	Lynden, Washington	A	Misdemeanor

Judgment and Sentence (JS) (Felony)
(RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002)
MARLOW TODD EGGUM

07-9-00209-1
cc: weso / BFO

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C/PA
JIS-80

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ASSAULT 4	02/13/02	Lynden, Washington	A	Gross Misdemeanor
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- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000 see paragraph 6(f).)	MAXIMUM TERM
I	3	V	15-20 Months		72 months with credit for time served since June 3, 2005	9-18 months	5 yrs/\$10,000
II	3	V	15-20 Months		72 months with credit for time served starting on 6/3/2005	9-18 months	5 yrs/\$10,000
III	3	III	9-12 Months		72 Months with credit for time served starting on 6/3/2005.		5 yrs/\$10,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8).

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence: **ABOVE** the standard range for Count(s) **I, II, and III**.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence **ABOVE** the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were: stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The Court DISMISSES Count(s)

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$	Restitution to:

RTN/RJN
Office).

(Name and Address--address may be withheld and provided confidentially to Clerk's

PCV	<u>\$500.00</u>	Victim Assessment		RCW 7.68.035
	<u>\$100.00</u>	Domestic Violence Assessment		RCW 10.99.080
CRC	<u>\$200.00</u>	Court costs, including:		RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee	<u>\$200.00</u>	FRC
		Witness costs	\$	WFR
		Sheriff service fees	\$	SFR/SFS/SFW/WRF
		Jury demand fee	<u>\$0</u>	JFR
PUB	<u>\$600</u>	Fees for court appointed attorney		RCW 9.94A.760
WFR	\$	Court appointed defense expert and other defense costs		RCW 9.94A.760
FCM	\$	Fine		RCW 9A.20.021
LDI	\$	VUCSA Fine	<input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
MTH	\$	Meth Lab Cleanup	<input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50
CDF/LDI/ FCD/NTF/ SAD/SDI	\$	Drug enforcement fund	RCW 69.50.401	RCW 9.94A.760
CLF	\$	Crime lab fee	<input type="checkbox"/> Suspended due to indigency	RCW 43.43.690

DNA	<u>\$100.00</u>	Felony DNA Collection Fee	<input type="checkbox"/> Not imposed due to hardship	RCW 43.43.(Ch. 289 L 2002 § 4)
RTN/RJN	\$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)		RCW 38.52.430
	\$ _____	TOTAL		RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

- shall be set by the prosecutor
- is scheduled for _____

RESTITUTION. Schedule attached

All payments shall be made in accordance with the policies, procedures and schedules of the Whatcom County Clerk as supervision of legal financial obligations has been assumed by the Court. RCW 9.94A.760

PAYMENT IN FULL: Defendant agrees and is hereby ordered to make payment in full within _____ days after the imposition of sentence to the Whatcom County Clerk for the amount due and owing for legal financial obligations and restitution.

MONTHLY PAYMENT PLAN: The defendant agrees and is hereby ordered to enter into a monthly payment plan, with the Whatcom County Clerk for the amounts due and owing for legal financial obligations and restitution, immediately after sentencing. The Court hereby sets the defendant's monthly payment amount at \$100.00, which will remain in effect until such time as the defendant executes a payment plan negotiated with the Collections Deputy. The first payment of \$100.00 is due immediately after imposition of sentence or release from confinement, whichever occurs last.

During the period of repayment, the Whatcom County Clerk's Collections Deputy may require the defendant to appear for financial review hearings regarding the appropriateness of the collection schedule. The defendant will respond truthfully and honestly to all questions concerning earning capabilities, the location and nature of all property or financial assets and provide all written documentation requested by the Collections Deputy in order to facilitate review of the payment schedule. RCW 9.94A. The defendant shall keep current all personal information provided on the financial statement provided to the Collections Deputy. Specifically, the defendant shall notify the Whatcom County Superior Court Clerk's Collection Deputy, or any subsequent designee, of any material change in circumstance, previously provided in the financial statement, i.e. address, telephone or employment within 48 hours of change.

DEFENDANT MUST MEET WITH COLLECTIONS DEPUTY PRIOR TO RELEASE FROM CUSTODY.

The defendant shall pay the cost of services to collect unpaid legal financial obligations, which include monitoring fees for a monthly time payment plan and/or collection agency fees if the account becomes delinquent. (RCW 36.18.190)

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ (JLR) RCW 9.94A.760

4.2 [XX]DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

[]HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340

4.3 NO CONTACT ORDER/ORDER PROHIBITING CONTACT

[XX] The defendant is ordered to refrain, directly or indirectly, from contacting, intimidating, threatening, keeping under surveillance or otherwise interfering with JERRY HEMPLE, SHERYL CARTWRIGHT and PAULINE ROSE and from making any attempt to engage in such conduct. The defendant is ordered to stay 500' away from the protected people's home, school, business, place of employment or wherever they may be. This no contact order is valid for 5 years. It expires on January 24, 2012.

[] NO POST-CONVICTION ORDER PROHIBITING CONTACT IS BEING ENTERED OR EXTENDED. ANY PRIOR ORDER ENTERED, HAVING THIS CAUSE NUMBER, TERMINATES ON THE DATE THIS JUDGMENT IS SIGNED.

[X] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence. SEE ATTACHED APPENDIX F.

4.4 OTHER:

[XX] Defendant shall IMMEDIATELY report to the Whatcom County Jail to be booked and released for purposes of generating a Washington State Disposition Report of these crimes for criminal history purposes if not sentenced to serve jail time.

[] Defendant is to be released immediately to set up jail alternatives.

[] DEPORTATION. If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service, subject to arrest and reincarceration in accordance with law, then the undersigned Judge or Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.280

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

- (a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

72 months with credit for time served since June 3, 2005 for COUNT: I, 72 months with credit for time served starting on 6/3/2005 for COUNT: II, 72 Months with credit for time served starting on 6/3/2005. for COUNT: III,

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data above)

OTHER: To clarify time to serve: The defendant shall receive an exceptional sentence on all three counts up to 24 months on each. Each of the three counts shall run consecutively to a total of 72 months. The defendant shall receive credit for time served with his incarceration beginning on 6/3/2005. The estimated number of days of credit is 691 days.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA, in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above in section 2.3, and except for the following which shall be served CONSECUTIVELY:

The sentence herein shall run consecutively with the sentence in but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence IMMEDIATELY unless otherwise set forth here: _____
 (should be a Monday if possible) between 1:00 p.m. and 4:00 p.m.

- (c) The defendant shall receive credit for time served prior to sentencing, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6 SUPERVISION: Community PLACEMENT/Community CUSTODY/Community SUPERVISION, as determined by DOC, for 9-18 months for Count I, 9-18 months for Count II, for Count III, ; or the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. [Use paragraph 4.7 to impose community custody following work ethic camp.]

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or a felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a).

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent Offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with

Paragraph 8 applies only for sex offenses, and this is not a sex offense. Doesn't apply, either.

the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Defendant shall report to DOC, 1111 Cornwall Avenue, #200, Bellingham, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this judgment and Sentence. The defendant shall:

- The defendant shall not consume any alcohol.
- Defendant shall comply with the No Contact provisions stated above.
- Defendant shall remain WITHIN of a specified geographical boundary, to wit:
- The defendant shall undergo an evaluation for treatment for the concern noted below AND FULLY COMPLY with all recommended treatment.
 - Domestic Violence
 - Substance Abuse
 - Mental Health
 - Anger Management
- The defendant shall participate in the following crime related treatment or counseling services:
- The defendant shall comply with the following crime-related prohibitions:

Other conditions may be imposed by the court or Department during community custody, or are set forth here:

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

- 4.7 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.
- 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

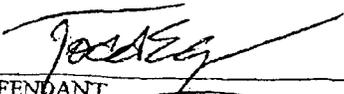
V. NOTICES AND SIGNATURES

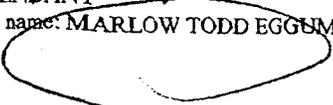
- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years

from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5)

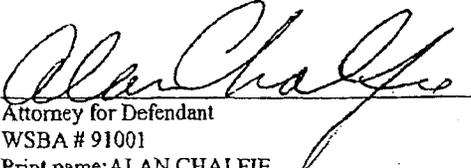
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.7 The court finds that Count(s) is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately mark the person's Washington State Driver's license or permit to drive, if any in a manner authorized by the department. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.8 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- 5.9 **OTHER:**

DONE in Open Court and in the presence of the defendant this date: **January 24, 2007.**


DEFENDANT
Print name: MARLOW TODD EGGUM


Deputy Prosecuting Attorney
WSBA # 22860
Print name: ERIC J. RICHEY


JUDGE


Attorney for Defendant
WSBA # 91001
Print name: ALAN CHALFIE

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____

Todd Eggum

MARLOW TODD EGGUM
CAUSE NUMBER of this case: 05-1-01094-3

I, Todd Eggum, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: January 24, 2007.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. _____
(If no SID take fingerprint card for State Patrol)

Date of Birth: 08/28/61

FBI No. _____

Local ID No. _____

PCN No. _____

Other _____

Alias name, SSN, DOB:

Race: White

Sex: Male

Defendant's Last Known Address: c/o Whatcom County Jail

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his fingerprints and signature thereto.

Clerk of the Court: Todd Eggum, Deputy Clerk. Dated: January 24, 2007

DEFENDANT'S SIGNATURE: Todd Eggum

Left Thumb



Right Thumb



Exhibit-G



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
MCNEIL ISLAND CORRECTIONS CENTER

P.O. Box 88900 • Steilacoom, Washington 98388-0900 • (253) 588-5281

May 6, 2009

TO: EGGUM, Marlow #879587
B124-2

FROM: Susan Lay
Susan Lay
Correctional Records Manager

RE: JUDGMENT AND SENTENCE

The Records Department has received your correspondence (three kites and two kiosk messages) in which you state that your Judgment and Sentence regarding paragraph eight for Whatcom County cause #051010943 has been misinterpreted. You also contend that since three of the sentences mention sex offender they only apply to sex offenders.

You were convicted of two counts for stalking and one count for harassment. As of 09/01/01, stalking became a community custody offense with a 9-18 month range of supervision. If it was committed before 09/01/01, it requires 12 months of community placement supervision. Since the maximum incarceration time for stalking expired on 11/16/08, you do not need an approved address. However, per policy, in order to be eligible for a ten day early out, you will need to provide a viable address. Any other concerns in this area should be addressed with your counselor or FRMT.

Section 4.6 of your Judgment and Sentence applies to all community placement/custody crimes except for subsection 8 which only applies to sex offenders. This section begins with "for sex offenses submit to electronic monitoring" and ends with "monitoring if imposed by DOC". The next sentence regarding residence location and living arrangements does not indicate that this condition only applies to sex offenders. It is not part of subsection 8. It is inclusive with subsections 1-7 to cover all terms of supervision.

If you disagree with the language in the Judgment and Sentence, you may want to pursue your concerns through legal channels. Any further correspondence to Records regarding these concerns will be returned with "see previous memo".

cc: Daniel Fitzpatrick, CPM
Matthew Cossette, CUS
Ryan Denzer, CC2
Central File

"Working Together for SAFE Communities"

Exhibit-H

1 still submitting it to the Court. You had -- you had stated
2 that part of your ruling with regard to this order that she
3 had not participated and hadn't provided anything.

4 THE COURT: I didn't say she hadn't provided.
5 I said you had provided to the court no evidence of that.

6 MR. EGGUM: You are correct. I said I had
7 given no evidence that she had also participated or given
8 her consent in any way and this shows that she had, in fact,
9 given her consent, so you should look at it.

10 THE COURT: It doesn't help me make the
11 decision I need to make here, my decision who gets this
12 property, which of this property she gets and what property
13 you get, and what you and she may have agreed to many years
14 ago on a contract with someone else is irrelevant.

15 MR. EGGUM: Is it the Court's belief that the
16 property that's in question that was seized by the sheriff's
17 department is the entirety of the imagery?

18 THE COURT: No. It's only one property that
19 I have any authority over.

20 MR. EGGUM: Yes, and, and the -- that's
21 correct, so we're making a dissolution over the property
22 here and Janice is getting as part of her I guess award,
23 whatever imagery she received from the sheriff's department
24 is hers, and whatever I retain is mine?

25 THE COURT: Sure, whatever is yours, but you

1 can't disseminate to anybody. You can look at it all day if
2 you want but you can't give it to anybody else to use or
3 look it.

4 MR. EGGUM: I got my own in storage. It's
5 not even at the house, 75 copies.

6 THE COURT: I'm not ruling on that. All I'm
7 ruling on is this particular box of property or boxes or
8 whatever it is that's held by the sheriff, which part she
9 gets and which part you get.

10 MR. EGGUM: So, if Ms. Fasano comes at me, is
11 there -- it says in here I am in contempt of this Court on
12 this restraining order, she makes the allegation --

13 THE COURT: She has to prove it.

14 MR. EGGUM: She is going to have to prove it
15 because the problem that I find myself in is that if
16 Ms. Fasano makes the allegation, I'm arrested, I sit in jail
17 --

18 THE COURT: That's not the point here. The
19 point is does this order reflect what I said in court that
20 day.

21 MR. EGGUM: Well, on this date you also said
22 that her recourse if I violate this or that she makes the
23 allegations in a civil court, not in a criminal court,
24 meaning arrest, that's correct, I can't get arrested on
25 this.

1 up and they're brought before the Court and both parties
2 know what it's about and have a chance to respond to it. An
3 open motion just filed and floating around out there is not
4 going be heard until it's noted for hearing and specifically
5 noted for that particular motion.

6 MR. EGGUM: Okay.

7 MS. FASANO: I have the original.

8 THE COURT: There's a couple changes I want
9 to make on that and I'm going hand it to Mr. Eggum to look
10 at it and review.

11 MR. EGGUM: You can sign it.

12 THE COURT: I want you to look at the changes
13 I'm going to make here.

14 MR. EGGUM: Ms. Fasano can send me a copy of
15 that. I think you're just going to strike one line in
16 there.

17 THE COURT: I'm striking 3 lines here, and
18 I'm going to add something about the property will be
19 divided as per this inventory sheet.

20 MR. EGGUM: I believe this -- well, it should
21 -- I believe it should make some sort of mention that the
22 imagery that I retained is mine.

23 THE COURT: It's yours. It goes without
24 saying that's part of this.

25 MR. EGGUM: Well, sometimes things gets

1 misconstrued later on by Ms. Gray.

2 MS. FASANO: I want to make sure Mr. Eggum is
3 clear it is his to retain for his personal use only, not for
4 distribution to anyone. I'm not sure he gets that.

5 THE COURT: Well, that's -- that's the whole
6 crux of this Paragraph 2.

7 MR. EGGUM: I don't think Ms. Fasano ^{my website}
8 understands. I can keep it up at the storage. ^{operates out of} The storage
9 stuff has nothing to do with whether the property is sold. ^{in Canada}
10 These videotapes are duplicated and sold. I mean you copy
11 them off, you sell them, they go out the door.

12 THE COURT: Look, Mr. Eggum, one more time
13 I'll say this as simply as I can say it, if some other
14 person who is not in this courtroom today, whoever they may
15 be, has a copy of that tape and they choose to duplicate it
16 and sell it, this order does not apply to them. ^(i.e. my webmaster)

17 MR. EGGUM: Yes, I'm aware of that.

18 THE COURT: If that person or any other
19 person comes to you and says I need a copy of this, will you
20 sell me one, you cannot do that under this order.

21 MR. EGGUM: Yes.

22 THE COURT: If they come to you and say we
23 want other images of Ms. Gray, you cannot give it to them
24 under the terms of this order. You, yourself, cannot
25 disseminate these anywhere to anyone under this order. You

Exhibit-I

SCANNED +

DOCKETED edg CD# _____ MTHRG HSTKNA HSTKSTP HCNT HSTK (other) _____
SCOMIS CODES
RESOLUTION CODE _____

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

Janice Leap

No. 02-3-00216-1

JUDGE Uhrig

vs. Marlow Eggen

REPORTER Foster

CLERK DeYoung

DATE 3-4-05 10:25 A.M.

Plaintiff/Petitioner Appeared in person Counsel Elizabeth Fasano
Defendant/Respondent Appeared in person Counsel pro se

THIS MATTER CAME ON FOR Ex Parte Motion

The following were called, sworn and testified on behalf of _____

Atty. Fasano moved for ex parte order.
Mr. Eggen presented argument.
Atty. Fasano responded.
Court signed Ex Parte Restraining Order/Order
To Show Cause (Po) and warned resp. from
leaving documents unfiled at his office.
Atty. Fasano moved (web site) be closed down
tonight.
Court so ordered.

Future hearings to be in Dept. 3.

- PREPARED ORDERS SIGNED:
- Order Granting Summary Judgment
 - Order on Show Cause Re Contempt
 - Order of Dismissal
 - Findings of Fact
 - Decree of Dissolution
 - Parenting Plan (Temp/Final)
 - Order of Child Support
 - Order of Default
 - Reissuance of Temporary Protection Order
 - Order for Protection
 - Temporary Order
 - Judgment & Order Determining Parentage
 - Order Requiring Blood Test
 - Order Re Review
 - Order Appointing GAL
 - Order of Continuance
 - Order for Issuance of Bench Warrant
 - Order Forfeiting Cash Bail & Directing Clerk to Release Funds

STRICKEN BY _____ CONTINUED TO _____ NO ONE APPEARED

DATE _____

SCANNED 4
FILED IN OPEN COURT
3-4 20 05
WHATCOM COUNTY CLERK

By [Signature]
Deputy

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SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

In re the Marriage of:

JANICE SHIRLEY GRAY

NO. 02-3-00216-1

Petitioner,

EX PARTE RESTRAINING
ORDER/ORDER TO SHOW
CAUSE (TPROTSC)

and

MARLOW TODD EGGUM

Clerk's Action Required

Respondent.

Restraining Order Summary:

Restraining Order Summary is set forth below:

Name of person(s) restrained: Marlow Eggum
Name of person(s) protected: Janice Gray
See paragraph 4.1.

**VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 4.1 BELOW WITH ACTUAL
KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW,
AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.060.**

I. SHOW CAUSE ORDER

It is ordered that the husband appear and show cause if any, why the restraints below should not be continued in full force and effect pending final determination of this action and why the other relief, if any, requested in the motion should not be granted. A hearing has been set for EX PARTE RESTRAINING ORD (TPROTSC) - Page 1 of 4 WPF DR 04.0170 (6/2004) - CR 65 (b); RCW 26.09.060

TARLO & ASSOCIATES, P.S.
119 N. Commerical Street, #1000
Bellingham, WA 98225
(360) 671-8500
(360) 733-7092 FAX

ce: wes0

*Jis/dh
235*

1 the following date, time and place:

2 Date: Friday, ~~17~~¹⁸ March 18, 2005

3 Time: 9:00 (a.m.)/p.m.

4 Place: Whatcom County Superior Court

5 Room/Department: Department 3

6 If you disagree with any part of the motion, you must respond to the motion in writing
7 before the hearing and by the deadline for your county. At the hearing, the court will
8 consider WRITTEN sworn affidavits or declarations. Oral testimony may NOT be allowed.
9 To respond you must: (1) file your documents with the court; (2) provide a copy of those
10 documents to the judge or commissioner's staff; (3) serve the other party's attorney with
11 copies of your documents (or have the other party served if that party does not have an
12 attorney); and (4) complete your filing and service of documents within the time period
13 required by the local court rules in effect in your county. If you need more information,
14 you are advised to consult an attorney or a courthouse facilitator.

15 FAILURE TO APPEAR MAY RESULT IN A TEMPORARY ORDER BEING ENTERED BY THE
16 COURT WHICH GRANTS THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER
17 NOTICE.

18 **II. BASIS**

19 A motion for a temporary restraining order without written or oral notice to the husband or that
20 party's lawyer has been made to this court.

21 **III. FINDINGS**

22 The court adopts paragraphs 2.1, 2.2, and 2.4 of the Motion/Declaration for an Ex Parte
23 Restraining Order and for an Order to Show Cause (Form WPF DR 04.0150), as its findings,
24 except as follows:

IV. ORDER

It is ORDERED that:

4.1 RESTRAINING ORDER.

VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 4.1 WITH ACTUAL
NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50
RCW AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.060

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The return of any videotapes, photographs, and/or any other materials containing images of Janice Gray to Marlow Todd Eggum, is restrained and enjoined until further hearing in this matter. *This order includes the website operated by Mr. Eggum which shall*
Marlow Todd Eggum is restrained and enjoined from displaying, selling, distributing, advertising, or otherwise disseminating images of Janice Gray. *be removed today*

CLERK'S ACTION. The clerk of the court shall forward a copy of this order, on or before the next judicial day, to Whatcom County Sheriff's Office which shall enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants. (A law enforcement information sheet must be completed by the party or the party's attorney and provided with this order before this order will be entered into the law enforcement computer system.)

FJ

4.2 OTHER RESTRAINING ORDERS

Other:

The return of any videotapes, photographs, and/or any other materials containing images of Janice Gray to Marlow Todd Eggum, is restrained and enjoined until further hearing in this matter.

Marlow Todd Eggum is restrained and enjoined from displaying, selling, distributing, advertising, or otherwise disseminating images of Janice Gray.

4.3 SURRENDER OF DEADLY WEAPONS.

Does not apply.

4.4 EXPIRATION DATE.

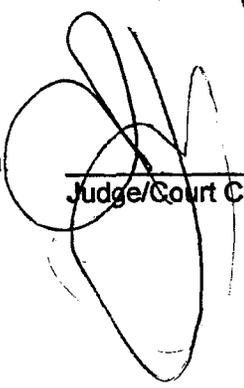
This order shall expire on the hearing date set forth above or 14 days from the date of issuance, whichever is sooner, unless otherwise extended by the court.

4.5 WAIVER OF BOND.

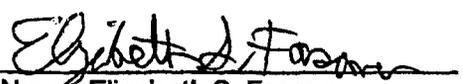
4.6 Other:

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Dated: 3/4/05 at 10³⁰ 0 a.m./p.m. _____
Judge/Court Commissioner



Presented by:



Name: Elizabeth S. Fasano
W.S.B.A. #32350
Attorney for Petitioner

*This is Judge Uhlir's signature
And the clerk's minutes
following confirm this.*

Exhibit-J

SAG Exhibit-J

“Paul Justiano”

On September 26, 2011, Commissioner Mary Neel denied a motion by the appellant which requested that trial attorney Andrew Subin be ordered to deliver to Mr. Eggum all of the legal documentation that Mr. Eggum had left with Subin for mailing. Therefore, if this exhibit is missing, therein lies the problem.

The importance of this document cannot be stressed enough. It shows that a Paul Justiano was holding Mr. Eggum's business assets and that when Mr. Eggum stated he was going to get out of prison and go pick up his tools and go pound some nails, Mr. Eggum was actually referring to going by Paul Justiano's House to pick up his tool and go pound some nails, not Paul Heaven's House as the AAG had speculated, as Paul Heaven doesn't own a home, and Mr. Eggum doesn't know Paul Heaven (as a friend).

This document was filed within the divorce case if it is still missing. It was filed just before the July 2003 divorce finalization.

Exhibit-K

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FILED IN OPEN COURT
5/16/2005
WHATCOM COUNTY CLERK
By [Signature]
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

In re the Marriage of:
JANICE SHIRLEY GRAY
Petitioner,
and
MARLOW TODD EGGUM
Respondent.

NO. 02-3-00216-1
ORDER ON SHOW CAUSE
RE: CONTINUING RESTRAINING
ORDER AND USE / OWNER-SHIP
OF IMAGES OF THE PETITIONER
Clerk's Action Required

Janice Gray presented a motion for a restraining order and regarding use and ownership of certain property to this court. The court having considered the motion, declaration(s), testimony and the court file, and finding good cause, IT IS HEREBY ORDERED AS FOLLOWS:

I. JUDGMENT/ORDER SUMMARIES

1.1 RESTRAINING ORDER SUMMARY:
Restraining Order Summary is set forth below:

Name of person(s) restrained: Marlow Todd Eggum
Name of person(s) protected: Janice Gray

See paragraph 4.1.

ORDER ON SHOW CAUSE RE: CONTINUING
RESTRAINING ORDER AND USE/OWNERSHIP
OF IMAGES OF THE PETITIONER - 1

cc: WCSO

Law Offices of
Elizabeth S. Fasano
999 Third Avenue, Suite 2525
Seattle, WA 98104
(206) 223-2122
FAX (206) 223-2124

No Jis/dk
ar 1

1
2 **VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.1 WITH**
3 **ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER**
4 **CHAPTER 26.50 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST.**
5 **RCW 26.09.060.**

6
7
8 **1.2 MONEY JUDGMENT SUMMARY**

9 Judgment summary is set forth below.

- 10 A. Judgment Creditor Janice Gray
11 B. Judgment Debtor Marlow Todd Eggum
12 C. Principal judgment amount \$
13 D. Interest to date of Judgment \$
14 E. Attorney's fees \$1,500.00
15 F. Costs \$
16 G. Other recovery amount \$
17 H. Principal judgment shall bear interest at 12% per annum.
18 I. Attorney's fees, costs and other recovery
19 amounts shall bear interest at 12% per annum.
20 J. Attorney for Judgment Creditor Elizabeth Fasano
21 K. Attorney for Judgment Debtor N/A
22 L. Other:

23
24 **II. BASIS**

25 A motion for a continuing restraining order and order to show cause why
additional relief regarding the use/ownership of property should not be granted
was presented to this court, and the court finds reasonable cause to issue the
order.

26
27 **III. FINDINGS AND CONCLUSIONS**

28 THIS COURT FINDS:

- 29
30
31 1. The Court finds that the videotapes held by the Whatcom County Sheriff's
32 Department are property held by Mr. Eggum and Ms. Gray as tenants in
33 common, because the court finds that they were not divided in the
34 dissolution action. None of the property listed there can reasonably be
35 assumed to encompass those, so they were not awarded. Both Ms. Gray
and Mr. Eggum have a fiduciary duty towards each other with regard to
the property, and should use it in an appropriate manner.

ORDER ON SHOW CAUSE RE: CONTINUING
RESTRAINING ORDER AND USE/OWNERSHIP
OF IMAGES OF THE PETITIONER - 2

**Law Offices of
Elizabeth S. Fasano**
999 Third Avenue, Suite 2525
Seattle, WA 98104
(206) 223-2122
FAX (206) 223-2124

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2. The use of the videotapes by Mr. Eggum constitutes a violation of the privacy of Ms. Gray as the cotenant of the property, and that the use of her image without her consent for sale or for any purpose to make money for Mr. Eggum is being done inappropriately and improperly, because he has an obligation to share with her one-half of any monies that he receives as a result of the use of that property, because they are tenants in common. Mr. Eggum has not done so. He has taken that money for his own purposes.

3. Any further exposure of the property (videotapes and images of Ms. Gray) would continue to be harmful to her, constituting harassment, constituting continuing violation of her privacy, and constitutes the use of her image without her consent for commercial purposes. That is the violation of all the obligations of one tenant to another.

4. Based upon the above violations, Janice Gray is awarded as sole owner, the property held by the Whatcom County Sheriff's Department including the following: all copies of the videotape, all originals, all prints or other images made from those videotapes or derived there from in any way, which depict Janice Gray. These items are now Janice Gray's property and her property only. (See 4.2 below.)

VI. ORDER

It is ORDERED that:

4.1 RESTRAINING ORDER.

VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 4.1 WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW 26.09.060.

Marlow Todd Eggum is restrained and enjoined from displaying, selling, distributing, advertising, or otherwise disseminating images of Janice Gray (including facilitating, participating in, and/or encouraging any such actions by third parties), on the internet or otherwise.

CLERK'S ACTION/LAW ENFORCEMENT ACTION:

This order shall be filed forthwith in the clerk's office and entered of record. The clerk of the court shall forward a copy of this order on or before the next judicial day to Whatcom County Sheriff's Dept. which shall forthwith enter this order into

1 any computer-based criminal intelligence system available in this state used by
2 law enforcement agencies to list outstanding warrants. (A law enforcement
3 information sheet must be completed by the party or the party's attorney
4 and provided with this order before this order will be entered into the law
5 enforcement computer system.)

6 SERVICE

7 The restrained party or attorney appeared in court or signed this order; service
8 of this order is not required.

9 EXPIRATION DATE.

10 This restraining order will expire in 12 months and shall be removed from any
11 computer-based criminal intelligence system available in this state used by law
12 enforcement agencies to list outstanding warrants, unless a new order is
13 issued, or unless the court sets forth another expiration date here: 03/01/2095
14 (Month/Day/Year)

15 4.2 PROPERTY AWARDED TO PETITIONER.

16 1. Janice Gray is hereby awarded any and all property held by the
17 Whatcom County Sheriff's Department that contains images of herself.

18 They shall be delivered to her within 10 days.

19 *EST* The property is to be distributed per the inventory prepared
20 by petitioner.

21 2. If the Sheriff wants to have an inventory and is unwilling to do it, then
22 the property shall be delivered to Ms. Fasano. It shall be inventoried by
23 a third-party to be chosen by Ms. Fasano. The inventory list shall then
24 be given to Mr. Eggum. Mr. Eggum is awarded all property that does
25 not contain any images of Janice Gray. Regarding the other images,
the Court does not care whether the images are pornographic or not.
The reason the Court is not giving any images of Janice Gray to Mr.
Eggum is because her images may then be used in inappropriate
ways, and considering Mr. Eggum's past history of the way he has
used the images, the Court is not going to give Mr. Eggum access to
any more of Janice Gray's images.

EST The property is to be distributed per the inventory prepared
by petitioner.

4.3 PROPERTY AWARDED TO RESPONDENT.

1. Any and all property held by the Whatcom County Sheriff's Department
which do not contain any images of Janice Gray are hereby awarded
to Mr. Eggum.

1 4.4 OTHER RESTRAINING ORDERS.

2
3 1. As to the website, the Court finds that it is also a mechanism for Mr.
4 Eggum to continue to utilize the property and images in an
5 inappropriate manner, and Mr. Eggum is permanently enjoined from
6 using any image, the name, or anything else identified with Janice
7 Gray without her express written consent on that website. Mr. Eggum
8 may run a web site, but if there is anything of Janice Gray on there, he
9 is enjoined permanently on that, and can be sued for damages if he
10 continues to do so.

11 2. Mr. Eggum may not disseminate or distribute through any action of his
12 own, any image of Janice Gray on the internet. ~~If someone else is
13 running a web site, and Mr. Eggum is giving them images, Mr. Eggum
14 will be in violation of this order and can be sued for damages for it.~~ *est* *est*

15 3. Mr. Eggum is restrained and enjoined from doing all the things the
16 Court has stated including facilitating and participating and/or
17 encouraging any such actions by third parties.

18 4. Mr. Eggum may not work with anyone else, interact with anyone else,
19 or act in anyway with anyone else to do any of the things that he is
20 prohibited by the Court from doing.

21 4.5 ATTORNEY FEES AND COSTS

22 Janice Gray is awarded \$1,500.00 in attorney fees against Marlow Todd
23 Eggum.

24 Dated: May 6, 2005


25 Judge/Commissioner

Presented by:

26 
27 Elizabeth S. Fasano, WSBA #32350
28 Attorney for Petitioner

Approved for entry:
Notice of presentation waived:

Chose not to sign, but was
29 Marlow Todd Eggum *caused of the*
30 Respondent Pro Se *effectiveness of*
The order

Exhibit-L

1 Q -- you involving negotiations with Mr. Butler?

2 A No. Mr. Butler will tell you that too.

3 Q Okay.

4 A I mean, there was -- we -- Marlow was, I think,
5 hollering about that while -- while Bob was getting
6 this plea -- trying to get the plea done.

Why is Eggum hollering? Broken deal?

7 Q Mm-hmm.

8 A And -- and Bob's, like, No, no. Just hold on. Hold
9 on. We'll take care of this. This is something else,
10 something else. Just --

11 Q Mm-hmm.

12 A -- you know, hold on. And anyway, that's -- that's
13 the way I recall it going on.

14 Q And, obviously, you don't know any discussions that may
15 have occurred between Mr. Eggum and Mr. Butler
16 regarding this subject?

17 A No. And I remember that at the time of the plea, the
18 sentencing, his mom was just going off too, and Bob did
19 a magnificent job of shutting her down, keep her quiet.

20 Q You mean Lorraine Eggum, Mr. --

21 A Yeah.

22 Q -- Eggum's mother?

23 A Yeah.

24 Q Okay.

25 A Amazing.

Why is Eggum's mother going off? Broken deal?

1 Q What was she upset about?

2 A I don't know. She just started just -- she just
3 started bellowing about something, and -- and Bob just
4 shut her down. I mean, I was really impressed by his
5 ability to keep her calm.

*Why's
she bellowing?
Broken deal?*

6 UNIDENTIFIED SPEAKER: Really?

7 Q (By Mr. Subin) Okay. So -- but ultimately, you
8 decided that you were not going to -- well, I mean, I
9 guess you're saying there was no -- there was no deal
10 to return the videotapes, but that's --

11 A No. And, you know, the thing is, is he kept
12 asserting -- Marlow, he kept asserting that there was
13 afterwards. And, you know, he just --

14 Q Right.

15 A -- kept saying it over and over and over again. And
16 Bob never came at me and said, Hey, we had this deal,
17 because we didn't have a deal.

*Maybe because it is
true.*

18 Q Okay.

19 A I mean, you know, it was just -- it was just Marlow
20 saying it over and over and over again. Again, you
21 know, one of the things that he -- you know, if you say
22 it enough times, then people believe it's true. And --
23 I mean, that's -- I think that's the way he acts, and
24 I think that's the way a lot of people react to him.

25 Q Mm-hmm.

1 A But no, we didn't have a deal like that. We -- I
2 was -- our -- and, you know, the plea agreement and
3 judgment and sentence speaks for itself. There was --
4 there was -- that's all I got to say.

5 Q Okay.

6 A You know.

7 Q All right. All right. But again, you don't know
8 whether Mr. Butler had said to him something along the
9 lines of, Don't worry. The tapes will come back, or
10 You'll get your property back. Or you have no way of
11 knowing what Mr. Butler had told Mr. Eggum?

12 A I do not know.

13 Q And it's possible that Mr. Butler had told Mr. Eggum
14 that the tapes were going to come back?

15 A Yeah, it's possible. You know, but it's also possible
16 the way Bob -- Bob Butler construed it. You know, I
17 probably told him, Look, I don't care about the tapes.
18 They're not my -- it's not my thing.

19 Q Right. And so if you said that to Bob, it might be
20 reasonable for him to say, Look, Eric doesn't care?

21 A Yeah. You're getting your tapes back.

22 UNIDENTIFIED SPEAKER: Mm-hmm.

23 MR. SUBIN: Right.

24 THE WITNESS: Yeah.

25 MR. SUBIN: Right.

*And here Richey
admits it, yeah,
said it, probably*

Exhibit-M

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

FILED
RECEIVED
COURT OF APPEALS
DIVISION ONE
OCT 27 2008

LM

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
MARLOW T. EGGUM,)
)
Defendant.)

NO. 05-1-01094-3

Place in both
W00W07-1
W08W01-0

VERBATIM REPORT OF PROCEEDINGS

RECEIVED
COURT OF APPEALS
DIVISION ONE
NOV 10 2008

~~May 16th, 2008~~

~~My Change of Venue Motion~~
BASED OFF
~~Technical Basis~~ WITHIN WHATCOM CO.

Today I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to attorneys of record of respondent/appellant/plaintiff containing a copy of the document to which this declaration is attached.

Whatcom County Prosecutor.
I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Patrick Marovsky 11-10-2008
Name Done in Seattle, WA Date

KENNETH E. QUINN
Official Court Reporter
Courthouse
Bellingham, Washington 98225
(360) 676-6748

IN THE PART IVE MENTIONED THIS HEARING AS BEING HEARD ON
MAY 8TH 2008 I USED THE FACT IT WAS FILED ON MAY 8TH AND

1 MR. DEVLIN: We are here before the court this
2 morning on Mr. Eggum's motion for change of venue
3 pursuant to RCW 10.25.070. Three pleadings have been
4 filed, a motion, memorandum of points and authorities,
5 and an affidavit Mr. Eggum drafted himself. ←

MENTIONING LISA
FASANO'S NAME
OVER 14 TIMES.

6 I'd like to say one thing to start out with. I'm
7 not sure if the court had an opportunity to review the
8 pleadings.

9 THE COURT: I have. ←

MURA HAS ADMITTED READING
LISA FASANO'S NAME BEING
MENTIONED 14+ TIMES.

10 MR. DEVLIN: Mr. Eggum is asking the court to
11 disqualify itself and I'm not sure how the court feels
12 about being put in that position.

13 THE COURT: Well, I have read his affidavit and he
14 said, I guess, that the entire Whatcom County bench is
15 familiar with his case and his issues that he's dealt
16 with in the past. The first I ever heard of it is when
17 I read his affidavit. I have no clue. First I ever
18 heard of Mr. Eggum's name or any of the things he said
19 in his affidavit was just this morning. ←

THE MOUR
TRAIT 1 ON
SEL LEGAL

THE MOUR
TRAIT 1 ON
SEL LEGAL
DENIES KNOWING LISA
FASANO.

20 MR. DEVLIN: Exactly, Your Honor. That's one of
21 the things that I discussed with Mr. Eggum with regards
22 to the fact that Your Honor is essentially the only,
23 besides perhaps Commissioner Heydrich -- I could see
24 pretty much every other judicial officer besides Your
25 Honor was mentioned.

1 Mr. Eggum, would you like to tell the court why
2 you believe he wouldn't be able to preside over this?

3 THE DEFENDANT: The divorce action in 2001 and
4 since 1995 my wife and I were engaged in pornography
5 which on the Internet was sold by me.

6 Over just the three years that this has been going
7 on, the four years this has been going on I was told by
8 the probation department -- first of all, the probation
9 department, the entire Whatcom County domestic violence
10 community that meets once a month, their entire
11 meetings were literally consumed, he was mad with me,
12 consumed with how they were going to deal with me
13 ~~owning a pornography site.~~ I said it was none of his
14 business because ~~what I did was legal,~~ it had nothing
15 to do with any of the allegations being made or any of
16 the problems. And, in fact, the domestic violence
17 advocates that were showing up at the meetings were
18 actually trying to take advantage of somebody that I
19 had within the domestic violence community working with
20 me and they were trying to basically go underneath,
21 well, circumvent the normal processes that were going
22 on. Then it came to my attention that Whatcom County
23 was mad that I was selling pornography. And when I
24 said it was Whatcom County I'm talking about the entire
25 community, everybody within this community, judicial

BECAUSE MY LEGAL COUNSEL'S ABILITY TO SECURE MY
SEX MOVIES DEFERS THEIR GOAL, THAT BEING
ABLE TO USE A N.I.C.O. WITHOUT THERE BEING

↑ i.e., THE ENTIRE "LEGAL SYSTEM"

1 community was mad because I operated this porn site.

2 THE COURT: That includes me. I have had no
3 contact with your case; I never even heard your name
4 until this morning. So what is it for me to change it
5 to another county, Mr. Eggum? If there's any kind of
6 prejudice that I have against you, or any kind of
7 dealings or contact I have had with your case, then I'm
8 certainly willing to take a look at that. But I have
9 never even seen you before today or never talked to
10 anybody about what has gone on in the past. So the
11 only thing I know is what you said in your affidavit.

Actual Defendant
Knowing First

Defendant's Name

Affidavit's
Reading First
Name Not as

12 THE DEFENDANT: Neither had Judge Uhrig or
13 Commissioner Verge, both of those people had no contact
14 with me but as soon as they took on the case or had a
15 hearing with me the entire domestic violence community,
16 advocates, ~~prosecuting attorney's office~~, sheriff's
17 department, would rush to that judge or commissioner
18 that I just cited and put pressure on them to get a
19 ~~search warrant to search my house and get the porn~~

THIS IS TRUE!
BECAUSE LISA
FRANCO HAD BEEN
PROSECUTING AT
THE
FOR 2 YEARS
THEY WERE
SENDED THIS

20 which wasn't there. What they did, it was in my
21 affidavit, I hadn't met Judge Uhrig, Judge Uhrig was
22 pressured by Mr. Richey standing right here.

AND WITHIN DE
COMMUNICABLE) THEN
KNOW THIS 2ND
SEARCH THE OR
WITH THE PROSEC
RECENT WORK.

23 THE COURT: Let me say one thing. First, I don't
24 know what happened in the past. I know what you've
25 said in your affidavit. And whether there was or was

1 not contact, I can tell you, number one, Mr. Richey
2 doesn't pressure me, nor does anybody in the
3 prosecutor's office. ~~Nobody ever comes and talks to me~~
4 ~~about cases before I go into court~~ If anybody did try
5 to come and talk to me about a case that was going to
6 be coming into my courtroom I'd chase them out of my
7 chambers.

DENNIS KNOWINGLY
LISA FASANO ASKED

8 THE DEFENDANT: My concern would be what you've
9 just said would be "the correct answer" for any judge to
10 have.

11 THE COURT: Again, Judge Uhrig isn't going to hear
12 your case. I will allow you to not have the case heard
13 because of your feelings and your concerns about Judge
14 Uhrig or Judge Snyder or Commissioner Gross or
15 Commissioner Heydrich, I'm not going to make you go to
16 trial with them with what you feel.

17 Whether the facts that you relate about their
18 involvement in the case are accurate or inaccurate, you
19 certainly believe them to be accurate, and they might
20 be, I don't know. I'm not going to make you go to
21 trial in Judge Snyder's or Judge Uhrig's courtroom. If
22 you're going to go to trial in Whatcom County it would
23 be in this department or it would be changed. And
24 before I change something to another county I have to
25 have a ~~valid reason~~, and ~~to know or none~~, why the case

JAA ADMITS
THERE'S A NEED
FOR A CHANGE OF
LAW, EXCEPT
HE HIMSELF
IS HAVING A
PROBATION, HE
WANTS TO DISCLOSE
LISA FASANO,
AND HE'S TRYING
TO HIDE THE
RELATIONSHIP.

AND NOW WE
KNOW THAT
BE TRUE, AS
FASANO ADMITS
TO SEX WITH
THE PROSECUTOR

TO SEARCH
APPARENTLY I
AGONY, DIDN'T
SEE HER NAME
MENTIONED
14+ TIMES.

LIKE MAYBE YOU ARE HAVING SEX WITH
LISA FASANO TOO, JUST LIKE THE PROSECUTOR?

1 couldn't be heard in this department. You have to tell
2 me a reason why this department couldn't hear it
3 because I can order that the case be heard in
4 Department Two, my department.

5 THE DEFENDANT: Well, just the things that have
6 happened to me within Whatcom County as a whole. If I
7 were to take and have a trial down in Mount Vernon and
8 let's say I was found guilty, at that point I would
9 know at least I had received a ~~fair trial~~ and they
10 ~~hadn't been biased~~ like up here towards me; up in
11 Whatcom County, because I had a ~~porn site~~.

AND HE WOULD
NOT BE HEARD IN
THE COURT! THESE
ISSUES ARE

12 THE COURT: I have ~~not been biased towards~~ you,
13 Mr. Eggum. ~~I don't even know you.~~ A jury that is
14 selected can't know anything about you or your past or
15 your cases.

AGAIN DEALING
KNOWING FASH

16 THE DEFENDANT: The problem is the porn issues are
17 going to be a part of this trial.

18 THE COURT: They may or may not be. The rules of
19 evidence control that.

20 THE DEFENDANT: One of the things that's going to
21 be coming up in this trial is Whatcom County coming to
22 my personal residence to seize property that was in my
23 house and not giving it back and destroying that
24 property, pornography. That is an open and notorious
25 bias towards me, coming into my house, not giving

1 page
removed
to SA

AND AGAIN, WITHIN DAYS OF THIS HEARING, THE PROSECUTOR'S OFFICE
GOES BACK TO MY HOUSE YET AGAIN (2ND TIME) AND SEIZES YET
MORE EVIDENCE, 39 TAPES THIS TIME. WITHOUT A WARRANT. HEY! I THOUGHT

THE PROSECUTOR SAID THIS WAS A STALKING CASE? WHAT'S HE DOING
SEIZING MOVIES FOR NSA FASH? 6

STILL COVERING
FOR ITSELF,

1 property that they had to give back to me. Two judges
2 juggling my property and a second judge that ended up
3 destroying my property to ask Whatcom County to sit in
4 judgment upon itself. I'm sure you're a fair judge but
5 you sit on judgment on two other judges that acted in
6 collusion. ← CONTINUES TO THIS DAY.

RIC RICHEY
CRANE
WHEELING
JE IN THE
TIME
SPEAK FOR
A PERSON.

7 THE COURT: What happened with two other judges
8 isn't even an issue in your case.

9 MR. RICHEY: It was a previous case. He is
10 charged with ~~stalking~~ at this point and ~~pornography~~
11 ~~should not be brought into this case.~~ ← SO WHAT THE F UCK IS HE
DOING OUT AT MY HOUSE
AT THAT VERY MOMENT
BEING WOODEN?

12 THE DEFENDANT: It will be brought in.

13 MR. RICHEY: I understand the defendant wants to
14 talk about it, he always wants to talk about it.
15 However, it should not be relevant in this case at all.

16 THE COURT: It may or may not be relevant because
17 I haven't heard the issue on the relevance of it. If
18 he wants it in he can argue it's admissible if he wants
19 to present it and I will rule whether it is or is not
20 at a later time.

21 I have to have a reason, and I have not seen one
22 or heard one, that this department should ~~disqualify~~ or
23 ~~refuse~~.

24 MR. DEVLIN: I have talked with Mr. Eggum about
25 this issue and everything about this case. I believe

"LIKE IN FUCKING LISA FASTO?"

BECAUSE YOU
DON'T KNOW
AND
PROBABLY LIKE
NEWER KNOW.

↑
BUT FIND
DID
OUT!

1 what Mr. Eggum's underlying concern is is the fact that
2 Pauline Rose, who is an employee of the Whatcom County
3 prosecutor's office, is a victim in this case;
4 Mr. Richey was a victim of an intimidating a witness
5 violation that Mr. Eggum was found guilty of.

6 THE COURT: This is a different case?

7 MR. RICHEY: No, Your Honor.

8 MR. DEVLIN: This is the same case.

9 MR. RICHEY: I think that's a separate motion that
10 hasn't been made part of this motion to change venue.
11 Pauline Rose is a victim in the charges here and I'm
12 not a victim in the charges here. I think that's a
13 different motion. I have to be in Judge Snyder's
14 courtroom in another matter.

15 MR. DEVLIN: All I'm saying, I have spoken with my
16 client and he believes there's an ~~underlying closeness~~
17 between the ~~different apparatuses~~ of Whatcom County,
18 the ~~prosecutor's office~~, the ~~sheriff's office~~, and the
19 ~~bench~~, and he believes that there's ex parte
20 communications that occurred. He believes that his
21 case is discussed at domestic violence meetings where
22 Mr. Richey is present, law enforcement is present,
23 judicial officers are present, and those sorts of
24 things. And I think Mr. Eggum's biggest fear is an
25 unknown. ← AND UNKNOWN WHICH I'M ABOUT TO
FIND OUT ABOUT.

THIS UNDERLYING CLOSENESS BETWEEN THE DIFFERENT APPARATUSES IS NOW KNOWN
TO HAVE BEEN CAUSED BY LISA FRANK OFFERING SENIOR PROSECUTOR CHRISTOPHER
DEVILIN... AND LISA FRANK...

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THE COURT: A fear of an unknown isn't enough.
Number one, I don't socialize with anybody from the
sheriff's office, or I've never socialized with
anybody. I don't socialize with anybody in the
prosecutor's office for that very reason. I don't
socialize with anybody from the Public Defender's
Office. I stay away from all that stuff.

I'm not going to be the finder of fact in the
case. It's going to be 12 people who know nothing
about the case or don't have any knowledge of the case.
It's not Whatcom County that's going to be judging you,
it's 12 jurors, citizens of Whatcom County that don't
know anything about you or your case other than what
they hear in the trial.

There's no basis presented in fact or law for me
to change venue. I will order, however, for
Mr. Eggum's benefit, the matter be tried in Department
2. (DEPT #2 IS IN FRONT OF MUDA)

ACTION
KNOWING
FRESH
DENIES
LISA
ALSO, JUST TO
POINT IT OUT. HON!
ALSO DENYING THAT
LISA HAS BEEN
CHAMBERS FOR OVER
2 YEARS, AS PER
HIS AFFIDAVIT
EXHIBIT
SEATED
SI-A.

Exhibit-N

June 7th 2009

Eric Richey:

I have read your Affidavit of Probable Cause where you assert that I was Intimidating a Public Servant, and I can assure you that there was no attempt to Influence any Decision that Hallmark thought that she had the authority to make. Hallmark had already made her decision, therefore it would have been impossible to have influenced it.

Additionally, DOC has ruled that Hallmark wasn't lawfully entitled to delay my release, as having an address wasn't a factor in my releasing, just as I had said. Therefore, Hallmark didn't have any decision-making-ability from which to try Influencing. And her decision had been made anyway. Worthless as it was. Both are components which are required, and neither exist. But I think you know that.

So I think you know that this charge isn't going anywhere. There's no way that Whatcom County would be able to take this matter to trial given the unlawful involvement of the Prosecutors Office. Plus, given the situation, you are going to be placed on that stand as a witness, given your personal involvement alongside Fasano and Chambers, as well as with Hallmark, both before, and now.

Chambers' wife →

Given what you have stated in your complaint, it seems that you are overly concerned about me selling and marketing my movies in St. Johns, Newfoundland, Canada. And Whatcom County shouldn't have any interest in the affairs of Canada. What business is that of Whatcom County? What business is that of Washington State? The answer should be none. My movies have been marketed and sold in St. Johns for years, and will remain being sold there in the future.

So you are aware, Fasano was provided with a copy of that Canadian ruling and offered the opportunity to renegotiate her position, if she had any concerns, and she had declined.

But it seems you have concerns where you shouldn't, as my movies being marketed and sold in Canada shouldn't have been mentioned in your complaint at all, because Canada has ruled my website as Lawful. So that shows your true underlying motivation behind everything you've done. You are using the power of your office for the personal interests of Fasano.

It would seem to me that you'd be more concerned about mixing Todd's adult pornography with the inmates at McNeil Island. I'd be more concerned about having 1,200 inmates buying Todd's porno, than the entirety of Newfoundland owning one. This island is more than 50% sexual offenders, and not a day goes by where an inmate doesn't come up to me and ask for the website address where my movies are sold at today. I've even had offenders approach me and ask if that's my wife on the photos that they had printed off. I think that would bother you more than Newfoundlanders buying them. And here you are filing new charges against me, keeping me in prison where I tell everyone my story. Doesn't make sense.

My counselor here at McNeil Island says Hallmark and you do not want me returning to Whatcom County, and that's why you had called her, to get my release delayed. If that's your concern, I have an offer to make you.

I will agree to relocate to Snohomish County as long as there is an agreement in place whereas I can travel freely to Everson to take care of my dying mother. And as part of that agreement, I'll agree to stay out of Lynden, and if I violate that, you can arrest me.

So here's the offer: Cancel the warrant, allow me to depart McNeil Island without being arrested, and if you hear of me in Lynden, or I'm seen there, you can issue the warrant for my arrest on these charges. Easy enough, and there's nothing for you to lose.

That's a pretty good offer, because there's nothing preventing me from returning to Lynden nine months down the road (when probation ends), and I don't believe that the State (or DOC) can prevent me from returning there anyway. Here, you have me agreeing to not return. Isn't that what you want.

Lisa Fasano's (now) wife

In addition, I'll agree to return the Lisa Fasano fuck tape that I own, and drop the WSBA complaint, if you'll agree to return the movies that you have illegally seized. Then we part ways. Bear in mind (FYI), that this small handful of movies is nothing more than that, and doesn't even touch the full amount of what I own. Therefore, you have nothing to lose here, either. So all in all, that's a damn good offer from where I stand. The alternative would be to try prosecuting this case - which I'd guess you'd not win - and the best that you could hope for would be to return me to prison where I'd continue to tell every inmate who asked, where they could find my movies being marketed. That's not a good scenario for you, one which I'd think you'd like to avoid.

It's time to end this. Enough is enough. This is a damn good offer. Cancel your warrant and let's part ways.

Marlow T. Eggum

Exhibit-O

JAVI S. MCLACHRAN
PROSECUTING ATTORNEY

06 MAY -8 PM 1:31

FILED
COUNTY CLERK

06 MAY -8 PM 12:00

WHATCOM COUNTY
WASHINGTON

BY _____

**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF WHATCOM**

STATE OF WASHINGTON
PLAINTIFF,

v.

MARLOW TODD EGGUM,
DEFENDANT.

No. 05-1-01094-3

**AFFIDAVIT OF MARLOW TODD
EGGUM REGARDING THE JUDICIAL
BIAS OF THE WHATCOM COUNTY
SUPERIOR COURT**

I, MARLOW TODD EGGUM, being first duly sworn upon oath, deposes and says:

- 1) I am the Defendant in the above-titled cause of action.
- 2) Because of the following facts, I believe that I cannot receive a fair trial before any of the Superior Court Judges in Whatcom County:

- a) In 2003, I was going through a divorce and my wife was represented by Elizabeth Fasano. Three months earlier, Judge Nichols had ordered Ms. Fasano to provide proposed final papers within three days. I did not hear from Ms. Fasano until 29 days later, the night before the thirty-day follow-up hearing. On this night before the follow-up hearing, at 11:30 PM, she called trying to deliver via fax the 40-page proposed final papers. This call was in violation of a no contact order between Ms. Fasano and me, which had been put in place by commissioner Gross. During this phone call, I told Ms. Fasano to give me the late documents in front of Judge Nichols the next day." My complaint was heard in front of Commissioner Gross and Commissioner Gross said that Ms. Fasano didn't violate the no-contact order. I argued that if Ms. Fasano was contacting me, it was setting me up to be charged with violating the no-contact order. Commissioner Gross let this obvious violation slide.

- b) A divorce trial date was set to July 11th, 2003. A settlement conference had been scheduled for July 8th in front of Commissioner Gross. Court rules state that final papers must be delivered to the opposing party at least six days before the settlement conference. The papers that Ms. Fasano showed up with, I had never seen before. (Note: the papers I had received in March were generic 'boiler plate' papers. Because I had never seen these papers, I wanted to have time to review them, and I asked that the meeting be rescheduled. Commissioner Gross pointed out that the hearing had to be held that day, because the trial was set for the 11th. I again asked to have the settlement hearing be rescheduled to a later date, so that I could have time to review the papers; she denied this request and said we were going to proceed.
- c) Also during the settlement hearing, Ms. Fasano slipped into the "proposed papers," a 1000-year no-contact order. I objected to that because I had agreed to the parenting plan, which called for joint-custody and communication. Since, there would be a no-contact order in place, it would have been impossible to have joint custody of a child, and so the parenting plan was worthless. Commissioner Gross became upset about my objection to the no-contact order because Commissioner Gross was really close to having a done deal. I refused to sign the divorce papers and Commissioner Gross screamed at me, "you'll sign the divorce papers or else you'll be sorry! I haven't sat here this long and gotten this close to have you refuse to sign! Now sign them or I will make you wish you had!" After being threatened three times, I was forced to sign papers I did not want to.
- d) A point of contention with my ex-wife and her attorney and the domestic violence advocates are pornographic tapes that I made with my ex-wife. In March of 2004, my ex-wife's attorney filed a contempt of court motion. The hearing was set for March 23, 2004 in front of Commissioner Gross. Gross was informed of the pornography issue at the July 8th, 2003 hearing, and thus was knowledgeable. Scott Choate was appointed to represent me because I was facing jail time. About an hour and half before the hearing Scott Choate called me and said, "something weird is going on!" Mr. Choate told me that the court clerk had contacted Mr. Choate and told him that Commissioner Gross had removed him as my attorney. The court clerk told Mr. Choate that he was not to show-up for any reason. I offered to pay Mr. Choate and he told me that he still couldn't show-up. Commissioner Gross did not want me represented by a lawyer at that hearing. At the hearing, Commissioner Gross ordered me to have a domestic violence evaluation even though Judge Nichols had refused to do so for 3 years. Commissioner Gross also refused to consider the evidence of Dr. Don Staal because it was favorable to me.

- e) I had the domestic violence evaluation done in Yakima and it showed that I don't need any treatment. Commissioner Gross learned that I complied with her order by getting the evaluation and she was upset because she believed that I needed treatment.
- f) In April of 2004, Ms. Fasano and my ex-wife contact Eric Richey and twisted his arm to file charges against me. I learned this because I spoke with Mr. Richey on the phone about the summons to appear in court. Commissioner Gross was the person that signed the Probable Cause Determination in that case. Mr. Richey and Commissioner Gross discussed the fact that I was still selling the adult movies that involved my ex-wife. I was arrested and Commissioner Gross was the one that set my bail at \$10,000 cash performance. I posted bail, and was released until November 2004.
- g) Then in November, Ms. Fasano and my ex-wife re-contacted Mr. Richey. They did this because they were trying to stop me from maintaining my Internet sites that contained the adult movies starring my ex-wife. Ms. Fasano, my ex-wife, and Lynden Detective were able to get Charles Snyder to sign the warrant by arguing that it wasn't ethical for me to sell the movies because my ex-wife was a victim. I had the legal right to sell those movies.
- h) I was arrested and the matter was put on Judge Urhig's docket. Mr. Richey and I agreed that I would plead guilty, but that in exchange for guilty plea, I would get my property back. This included any adult movies or images taken from my house. The deal would also include the fact that they would have to acknowledge my legal rights to the adult movies and images. Mr. Richey agreed to this, but after receiving pressure from the DV advocate and Ms. Fasano, and after I had pled guilty, Mr. Richey changed his mind and a hearing was set before Judge Urhig.
- i) Ms. Fasano, my ex-wife, and Mr. Richey pressured Judge Urhig not to give me back my property. Their argument was that it is like giving a gun back to a bank robber." This pressure caused Judge Urhig to be stuck because he knew that I had the legal rights to the adult movies. Judge Urhig consulted with Judge Snyder and they decided to turn the decision over to Judge Snyder, who was the divorce court judge. Judge Snyder determined that the ownership of the adult movies and imagery was not settled during the divorce proceedings and that it would go to my ex-wife. Judge Snyder was the one who had this property seized from my house and then had it given to back to my ex-wife. At Ms. Fasano's request, Judge Snyder also signed an order that restrained me from selling any of the adult movies on the Internet. During this hearing, Judge Urhig was hiding in the back of the courtroom to watch what happened.

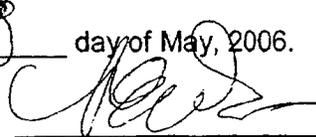
Judge Urhig
not Snyder.
Effort incorrectly
believed it was Snyder
but turns out to
be Urhig.

- j) On April 11, 2005, I scheduled a hearing to request a no-contact order to keep my ex-wife away from my job sites. I made this request pursuant to the advice I received from my attorneys and the Lynden Police Department. The hearing was before Commissioner Verge and days before the hearing, I was in the courthouse and saw that Commissioner Verge had pulled my divorce files. I also observed that Commissioner Gross was coaching Commissioner Verge on my case. At the hearing, Commissioner Verge fined me \$1,000.
- k) Earlier in 2005, during a meeting with Mr. Kroontje, my probation officer, earlier in the year, I learned that the Whatcom County Domestic Violence Community met once-a month with judges and advocates all in attendance. Mr. Kroontje complained to me that those meeting were being consumed talk of my case. Mr. Kroontje made it apparent to me that everyone in the system was concerned because I ran an adult website that contained images of "their victim" and that the system couldn't do anything about it.
- l) My concern is this: every judge in Whatcom County has heard about my case. And Commissioners Gross and Verge as well as Judges Urhig and Snyder have made rulings against me after consulting with one another. Additionally, regardless of why I was before the judges, they ruled against me because they feel like I am a bad person because they know I am selling pornographic movies of their victim.
- m) I do not think it is possible for me to have a fair trial before any of the judges in this County.

DATED this 8 day of May, 2006.


MARLOW TODD EGGUM
Defendant

SUBSCRIBED AND SWORN to before me this 8 day of May, 2006.


NOTARY PUBLIC

My commission expires: 10/24/07

Exhibit-P

FILED

SCANNED

5

2009 MAY 20 PM 1:31

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

Washington State, Plaintiff,

Case No: 09-1-00486-5

v.

**MOTION FOR DISMISSAL,
APPOINTMENT OF LEGAL COUNSEL**

Marlow Todd Eggum, Defendant.

-
1. In the prosecutor's Affidavit of Probable Cause, filed on April 22nd 2009, he asserts that the defendant is Intimidating a Public Servant by stating that he is going to release 1,000 movies into the Canadian marketplace, in response to an unlawful release address denial by his DOC CCO, which was denied on March 27th 2009.
 2. RCW 9A.76.180(1) defines the alleged crime as; " A person is guilty of Intimidating a Public Servant if, by use of threat, he attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.
 3. [Note] A person cannot attempt to influence a decision, if that decision has already been made beforehand.
 4. Community Corrections Officer (CCO) Melissa Hallmark unlawfully denied the the defendant's release address on March 27th 2009, almost a month prior to the letter written on April 22nd 2009, therefore, it would have been impossible to influence her decision, as her decision had already been made.
 5. The defendant therefore motions for Dismissal, with more details following.

- 6. On March 27th 2009, or thereabouts, the prosecutors office contacted CCO Hallmark and requested Hallmark to deny the defendant's release address, because the prosecutors office didn't want the defendant's adult business starting up. The defendant was informed of this by his counselor at McNeil Island (Denzer), when questioned as to why the address had been denied.
7. And that call was placed to CCO Hallmark at the request of Lisa Fasano, who is now married to deputy Craig Chambers, because Lisa Fasano finds it bothersome that the defendant's adult website business is about to go online again.
8. My adult business is no-business of the State. My adult business operates out of British Columbia, Canada, and Canada has ruled that the website is 100% legal within their jurisdiction. That fact may be bothersome to the State, to the prosecutors office, to DOC, as well as bothersome to Lisa Fasano, but it doesn't change the fact that the website sales are legal in Canada.
9. Therefore, it is the State's position that the defendant threatened to do something legal, trying to influence a decision that had already been made. That's preposterous.
10. [Fact] The defendant has owned and operated an adult website selling adult imagery since 1995. That's 10 years prior to the first arrest in this case(s). This has been the defendant's business, and is how the defendant makes his income. In short, the defendant is a pornographer, a movie producer, and that's how the defendant earns his income. If the prosecution finds that fact bothersome, it certainly isn't going to stop that from being a fact.
11. [Fact] Let it be noted, that attorney Lisa Fasano was offered these movies back in 2002 & 2003, and continually turned down any legal right to these movies - and turned down offers to have the website off the air - over a two year period, thinking that it would somehow be illegal for me to keep selling them after the divorce was finalized. Which is incorrect.

13. This court (Mura) is well aware that it is the defendant's position that the two cases that preceded this one, were falsified by the prosecution as retaliation against the defendant owning this adult website.
14. In case 04-1-00500-3, the defendant had agreed to plea out solely in exchange for the return of imagery that had been illegally seized by the prosecution. The defendant had been charged with Stalking, and under RCW 10.79.015 (Grounds for Issuance of Warrant) the only evidence that the prosecution is allowed to seize, is property related to the crime charged, that being stalking evidence. Pornography and Stalking are totally unrelated, and therefore the seizure was illegal.
15. [Note] It had been judge ~~Steven Mura~~ ^{Judge to Whom contacted TME} who had signed that warrant in violation of RCW 10.79.015, and ~~Mura~~ ^{Whom} had taken the complaint from Eric Richey and his associate Craig Chambers, and Lisa Fasano. This fact is important, because at the time the unlawful warrant was sought, Lisa Fasano was a newlywed woman, yet sexually-bribing deputy Craig Chambers to get an unlawful warrant for her.
16. That first unlawful seizure was made on November 9th 2004, and then a 2nd warrantless (unlawful) seizure was made under case 05-1-01094-3, which followed the case mentioned above. Both these cases are supposedly Stalking cases, but the facts of the case support that it is prosecutorial retaliation against the defendant, over his legal right to continue selling his website movies from Canada.
17. Looking back at the 2nd case (05-1-01094-3), the most recent one, that case started off by Lisa Fasano, Craig Chambers and Eric Richey contacting CCO Hallmark and asking her to arrest the defendant, not because he was doing a criminal act (as they could have arrested me, had that been the case), but because the defendant's adult movie website was still actively selling movies (legally) which bothered them.
18. When CCO Hallmark arrested the defendant on June 3rd 2005, her only concern was to question me as to how my website was operating, and from where.

19 When that arrest was made on June 3rd 2005 - at the request of the prosecutor - CCO Hallmark also seized a bunch of pornography (movie jackets, etc) from the defendant. Since the arrest was supposedly for Stalking, the DOC had no business stealing business materials from the defendant. This and her line of questioning, goes to show her true motivation, as she had stated that she found it bothersome that I could still continue to sell these movies after I was divorced. This belief mirroring the beliefs of the prosecutors office and my wife's divorce attorney Lisa Fasano, who now controls the actions of the prosecutors office, as she's now married to Chambers, who in turn is Eric Richey's senior associate.

20 → It's apparent that Eric Richey and Melissa Hallmark disagree with me being able to continue marketing in Canada, but I'll remind this court, I am a Canadian citizen, who operates a legal business out of B.C. Canada, and they have ruled that I can continue to sell my movies in Canada, and elsewhere.

21 Me selling my business movies cannot be misconstrued as a threat, as under the definition it states "by use of threat" and my business (legal) cannot be construed as threatening.

22 Looking at the definition listed under 9A.04.110(26) for threat, nowhere in the ten (10) definitions (a-j) does it state that me operating an adult business is threatening. In fact, the DOC has stated repeatedly that the State has no problems with me continuing to operate my business and selling movies. Although they say this privately, then sometimes say something different, later on.

23 For two years or more, the State Prosecutors Office has stated that they filed Stalking charges against me because I had Stalked (followed), and that they hadn't retaliated against me for owning this legal website. But as soon as soon as the two appeals seemed to be over, where they felt safe, they started singing a different tune. And as soon as my release was imminent, the prosecutor calls CCO Hallmark and instructs her to deny the defendant from releasing to his county of origin, which is an unlawful act, as the law states otherwise. This being a veiled attempt to delay my business from restarting. Which is where this started, back on June 3rd 2005, when the prosecutor asked the CCO to arrest me to stop my business from being on the air.

In looking at the definitions cited, the first definition states that the person must be threatening, as defined, in an attempt to influence. CCO Hallmark's decision had been made on March 27th 2009, an entire month prior to the letter, and therefore there was no way it could influence something that had already happened. "Attempts to Influence" is a present-tense definition, and not past-tense. As you cannot influence something that has already transpired.

Furthermore, given the recent changes in the law, stemming from the budget deficit of 9.3 billion, the state legislature signed a law which eliminated community custody for nonviolent offenses, so therefore, it would be impossible to influence Hallmark's decision, as it had already been made, and the state legislature had ruled that it was to release all offenders on their Earned Release Date (ERD, or commonly known as Early Release Date), which means there is nothing to influence.

Again, the alleged crime doesn't meet the criteria of the definition, and as such, the defendant motions for Dismissal.

Should the court not grant the Dismissal, the defendant herein motions for the assignment of legal counsel, so that this case can proceed ahead as quickly as possible. As the defendant needs to motion for Conflict of Interest with the Public Defenders Office, and motion for the appointment of Private Counsel. And additionally motion for a Change of Venue and motion to Disqualify the Whatcom County Prosecutors Office.

The defendant will reserve the balance of argument for the hearing that is noted to the docket, herein.

This motion is herein submitted Pro Se, on this 5th day of May 2009.



Marlow Todd Eggum

Exhibit-Q

WHATCOM COUNTY PROSECUTING ATTORNEY
DAVID S. McEACHRAN

CHIEF CRIMINAL DEPUTY
Mac D. Setter

ASST. CHIEF CRIMINAL DEPUTY
Warren J. Page

CRIMINAL DEPUTIES
Craig D. Chambers
Elizabeth L. Gallery
David A. Graham
Eric J. Richey
James T. Hulbert
Rosemary H. Kaholokula
Ann L. Stodola
Jeffrey D. Sawyer
Anna Gigliotti
Shane P. Brady
Shannon Connor
Christopher D. Quinn
Sharon L. Fields
David E. Freeman

Whatcom County Courthouse
311 Grand Avenue, Second Floor
Bellingham, Washington 98225-4079
(360) 676-6784 FAX (360) 738-2532
COUNTY (360) 398-1310

CHIEF CIVIL DEPUTY
Randall J. Watts

CIVIL DEPUTIES
Karen L. Frakes
Daniel L. Gibson
Royce Buckingham

CIVIL SUPPORT
ENFORCEMENT DEPUTIES
Angela A. Cuevas
Dionne M. Clasen

APPELLATE DEPUTIES
Kimberly Thulin
Hilary A. Thomas

SENIOR ADMINISTRATOR
Kathy Walker

March 11, 2008

Marlow Todd Eggum
#879587, Unit B-226
McNeil Island Corrections Center
P.O. Box 88-1000
Steilacoom, WA 98388

Re: Claim for Damages against Whatcom County (lawsuit)

Dear Mr. Eggum:

I am in receipt of your letter dated March 5, 2008 and I have had an opportunity to consult with my clients concerning your one time offer of \$350,000. Based on my understanding of the facts I am going to have to respectfully deny your offer. I do not believe that Whatcom County has in any way damaged or injured you and thus I respectfully deny your claim. Certainly you have the remedies that you have suggested in your letter and that is your option. However, I do not believe there is a claim and therefore my client is not taking advantage of your offer.

Sincerely,


RANDALL J. WATTS
Chief Civil Deputy
Prosecuting Attorney

RJW:tz

Exhibit-R

FILED

MAY 13 2010

WHATCOM COUNTY CLERK

By: _____

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

WASHINGTON STATE, PLAINTIFF,

CASE: 04-1-00500-3

VS.

MARLOW T. EGGUM, DEFENDANT.

MOTION(S) FOR,

1. LFD'S
2. D.V. EVAL / TREATMENT
3. STATUTE OF LIMITATIONS

RE: CIVIL LAWSUIT AGAINST

STATE, STATE EMPLOYEES

Submitted, May 10th 2010

Marlow Todd Eggen

1. LEGAL FINANCIAL OBLIGATIONS (LFO's)

On February 7th 2005, this court (Judge Ira Uhrig) sentenced the defendant to pay approximately \$1,100 in LFO's, and under the 2005 cause number the court ordered an additional \$1,500 in LFO's, for a total of approximately \$2,600 in LFO's.

As this court is now aware, the defendant is a pornographer, and judge Ira Uhrig has acknowledged this while simultaneously refusing to recuse himself from the 2009 case.

As a pornographer, the superior court ordering \$2,600 in LFO's equates to the court ordering the defendant to sell 130 pornographic movies in order to satisfy the debt, as this is how the defendant makes a living, and how he pays his financial obligations.

The defendant has one steadfast rule, which is: Any fines or fees or debts created by the superior court or legal system within Whatcom County shall be paid through sales generated from within Whatcom County.

The court (Uhrig) ordering the defendant to sell 130 pornographic movies within Whatcom County seems to be incongruent with his (Uhrig's) Imagery Restraint Order which attempts to restrain the defendant from selling his imagery. As such, the court needs to make a decision on which one it wants.

2. DOMESTIC VIOLENCE EVAL

On February 7th 2005, this court also ordered the defendant to complete a Domestic Violence Evaluation and comply with any treatment ordered, with this being ordered even though the defendant had just spent \$1,200 having an evaluation done, whereas that eval showed the defendant had a D.V. score of zero with no treatment being the conclusion.

Since the court had ignored the \$1,200 D.V. report, the provider suggested that in order to open the court's eyes, perhaps the defendant should just comply rather than fight it, and pay for it by selling two sex movies per group session (to D.V. abusers undergoing treatment) to pay for the cost of these sessions, even though they were not recommended by the eval provider.

This motion falls in line with the preceding motion on LFO's. Does the court want the defendant to sell 2 movies per week to cover these costs, as currently ordered? Or does the court want to modify the J's.

3. STATUTE OF LIMITATIONS, LAWSUIT

On February 7th 2005, judge Ira Uhrig allowed the prosecution (Eric Richey) to renege (breach) on a plea agreement, whereas the prosecution had agreed to return some illegally-seized imagery in exchange for a guilty plea (Alford plea).

The defendant states that it was illegally-seized property because divorce attorney Mrs. Lisa Fasano-Levitt (a newlywed at the time) had sexually-induced prosecutor Craig Chambers to obtain an illegal search and seizure warrant on her behalf, and obtain through seizure the movies she had previously denied during the divorce proceedings (over a 1 1/2 year period), and Chambers accepted the offered sex from newlywed Mrs. Levitt (Fasano) and obtained Fasano's search & seizure warrant through prosecutor Eric Richey. And then prosecutor Eric Richey and Fasano obtained said illegal warrant of seizure through judge Ira Uhrig, on or about November 9th 2004

The defendant also states that it was illegally-seized property because the property seized had absolutely nothing to do with the crime being charged, and as such it violated RCW 10.79.015 (Grounds for Issuance of Warrant) as well as 4th Amendment protections against unreasonable searches and seizures made by the government (or state employees, as is the case).

It should be noted, that in seeking a search and seizure warrant from judge Ira Uhrig, prosecutors Eric Richey and Craig Chambers and divorce attorney Mrs. Lisa Fasano-Levitt had stated under oath that no one other than the defendant would have this imagery (a movie jacket "allegedly" found at the Nuthouse Bar & Grill) and that assertion is completely false. I'm a pornographer, and I sell these movies, and have been doing so since 1995, so this singular movie jacket could be any one of thousands sold.

Please take note: My records indicate a worker at the Nuthouse Bar and Grill turned over (to Janice? or who?) only the outside cover (jacket) and the movie cassette wasn't inside. The defendant asserts that the movie "found" was actually purchased by either Janice or Fasano through an unknown third person, because the defendant had informed Lisa Fasano that he intended to sell \$5,000 worth of movies at the Nuthouse's parking lot to pay for attorney fees incurred in the 2004 case.

In Richey's complaint to Uhrig, Richey states that the defendant and his wife had made these type sex movies with a black man, and nowhere in that complaint did Richey or Fasano mention that these movies were publicly offered for sale or trade over a ten-year period, and apparently judge Uhrig didn't have the presence of mind to ask any of the complainants about "how the movies came to be, in the first place?"

Had those questions been asked by Uhrig, and had the complainants answered truthfully (that the defendant operated a website selling these movies, since 1995), then Uhrig would have had to deny the search and seizure warrant. And more so, had Fasano or Richey disclosed that they were seeking a warrant to seize movies previously turned down in the divorce, then Uhrig would have had no choice but to deny the search warrant.

These facts lead the defendant to believe that judge Ira Uhrig was acting in-concert with Richey, Fasano and Chambers,

This is even more evident when you witness Uhrig allowing a Breached Plea Deal and doing nothing to correct it, and then tossing the illegally-seized goods from the criminal court to the divorce court and with Uhrig doing both the passing & the catching, as it was Uhrig who signed Fasano's Imagery Restraint Order on March 4th 2005, just a few days after the February 7th 2005 breached deal.

In November of 2009, prosecutor Dona Bracke, acting on behalf of Richey, Fasano, and Chambers, stated (in essence) that: The defendant couldn't file a civil lawsuit against Whatcom County and the parties named herein, because the prosecution had been able to keep the defendant incarcerated while the 3-year statute of limitations expired, and it was "their belief" that the 3-year deadline had expired.

Taking Bracke's argument, it would be her position that the State of Washington and the Whatcom County Prosecutors Office could continue to make illegal and unlawful seizures of property (amounting to sexual-bribery) and not be held liable for it, just as long as the prosecutors office was able to obtain a sentence in excess of the 3-year statute limitation, thus denying the defendant the ability to file a suit in a timely manner.

The defendant would argue that the 3-year "clock" doesn't start ticking until after "proof / evidence of a crime has been discovered", and in this case evidence of a crime is still (currently) being discovered. So "when" does the clock start? On November 9th 2004, the date of the illegal seizure? Or in May of 2006, when the defendant was informed Mrs. Lisa Fasano-Levitt (a newlywed woman) had screwed Craig Chambers to get her a seizure warrant? Or does the clock start when the Wash. State Bar Assn. affirms that Fasano and Chambers started their sexual liaison at the same exact time as my arrest and said seizure?

I'll address these issues further, in court during oral argument, but before I do I need to address (partially) who would be the defendants in said civil lawsuit.

The primary individuals would be Richey, Fasano, Chambers, and judge Ira Uhrig, because it was Uhrig who signed the unlawful order to raid my residence, and seize my property.

To point out the obvious Conflict of Interest in hearing this motion:
Here we have a primary defendant, judge Ira Uhrig, being asked to make a determination on whether or not I can file a lawsuit against him (and others), also bearing in mind that Uhrig would be personally liable for damages if it was proven before a jury that he had signed this illegal Warrant, outside the scope of his lawful statute authority.

On March 5th 2008 I gave formal notice that I intended to file suit against Whatcom County and the persons named herein (and others), and on March 11th 2008 Chief Civil Deputy Attorney for Whatcom County Randall J. Watts wrote back stating he was denying any proposed settlement offer (after consulting the parties concerned). So the defendant has standing from this date, as well as from the current date, as evidence of wrongdoing is still being uncovered as we speak.

I mention this fact(s) because I was scheduled to release from McNeil Island on June 3rd - 13th 2009, and I had made arrangements for the Hester Law Group (Tacoma) to represent me and file a lawsuit upon my release, and Eric Richey stated he'd just continue arresting me so I'd be unable to hire (pay for) an attorney to sue him.

Isn't this what Dona Bracke had stated? in essence.

OMNIBUS ISSUES

Recently, judge Uhrig denied my request for a T.R.O., I guess, citing that I had three prior convictions for related crimes. I need to correct judge Uhrig, as that isn't the case.

On November 19th 2003, I made an Alford plea to G.M. stalking in Lynden, solely to have opposition counsel acknowledge that I do in fact retain the legal right to continue selling my swinger movies. In short, I "purchased" the rights to my movies (which I own regardless) in exchange for a G.M. criminal record and a \$100, ⁰⁰ fine. There was no admission of guilt, nor was there a jury conviction, so say it as it is, which is, I purchased "my own movies" in exchange for a G.M. plea.

That infuriated Fasano, Cartwright and Rose, when they learned that I did in fact retain the legal right to continue selling my sex movies, and that "started the ball rolling" to what's happening today.

Immediately following that Mrs. Lise Fasano-Levitt sexually bribes Chambers to have me re-arrested, and to get him to obtain the illegal warrant to seize my movies (through Uhrig), and I agree to plea guilty (to a falsified dogpiled charge) solely in exchange for the return of the illegally-seized movies, and prosecutor Richay (and Fasano) renege on the deal, breaching the deal in front of Uhrig, who doesn't correct the error. The "ball continues to roll".

At this juncture, we don't have two convictions (two crimes), what we have is two renege deals, one following the other, back to back.

And because Uhrig didn't correct the reneged plea deal, and because he didn't return the illegally-seized property, I then proceeded to quite literally shove my website and movies (sales) down Whatcom County's throat, and it'd take Eric Richey and Lisa Fasano (and Chambers) four months to drum up enough false accusations to be able to re-arrest me. And that'd be the 3rd case (from 2005/05-1-01004-3).

Was there a conviction or admission of guilt in the 2005 case?

Not exactly.

What happened was, Eric Richey had nothing, so he started falsifying charges, going from one count to eventually twenty counts (thereabouts) and when he couldn't get me to plea out, he "threatened to kill me" if I didn't take "his offer". Is a defendant's plea voluntarily made when his life is being threatened?

Look at the sustenance of counts one & two, stalking Janice and a coworker of hers, when it was prosecutor Eric Richey and Fasano instructing Janice and her coworker to continue working by the defendant's jobsites. That's "Reverse-Stalking" induced and caused by the prosecutor, and it's illegal, not to mention dangerous. Richey then has countered that there was other "stalking sightings at the church", but Richey fails to point out that the church is Eggum's church, not Janice's, and it was Richey and Fasano instructing Janice to attend Eggum's church in Bellingham.

[Which was Uhrig's church, and Uhrig was aware I was a member of that church, as I built the stage he played his sax on, and seen him regularly there].

As I close this motion, I'd like to ask the court (Ulrich) if he's aware (been informed) that I own a sex tape of Lisa Fasano getting laid by someone else, someone other than her "current husband" prosecutor Craig Chambers? And that that tape is safely in Canada where it was transported immediately after purchase.

Point being: Is there any correlation between me owning that tape and being able to market/trade it (legally) upon my release this past June, in correlation to these current charges? I've yet to hear anyone in the court (prosecutors office) address it. But it is the reason they've recused themselves due to conflict.

That being said, if they've Conflicted Out due to this, then why hasn't Ulrich?

Before continuing, I believe there needs to be some sort of hearing to discuss all these issues, and perhaps an Evidentiary Hearing is in order (which I've requested and been denied) by Ulrich).

In any case, I want Ulrich to consider this: My background; "My Record" if you will:

I'm an ex-military aviator, an attack helicopter combat-pilot having served honorably with the 3rd Infantry Division, college educated, worked as an ARCO-BP refinery inspector for years, sold real estate in Whatcom County for 10 years, and don't have any record (to speak of) prior to my separation, with my current record being renewed deal upon renewed deal, snowballing on itself, and you've got my bail set at \$500,000?
Absurd.

In closing I have a suggestion to the court: Sooner or later the issue of returning my movies to me is going to come up, and the state seems to believe it has all (100%) of my movies, therefore the state isn't going to return them, but the state doesn't have 100% of my movies. I've suggested to the Prosecution a one-for-one trade, whereas the state returns to me one movie for every movie I'm able to produce. I can not only produce (reproduce) the 39 movies they've stolen illegally, I can also produce another 100 movies they haven't seen (don't have). So I'll produce 139 (different) movies and the state agrees to return the 39 they've illegally stolen from me.

At some stage the court is going to realize that it is only digging its hole even deeper. That being if the state is concerned with me selling adult entertainment.

The state of Washington and Whatcom County need to get out of my bedroom and out of my sex life.

Submitted, this May 10th 2010

Mark J. Jolly

With regard to my "criminal record", there needs to be a hearing to correct the record. If there are three priors, it needs to be clarified that these are not convictions, nor pleas of guilt, but plea deals that are being renegeed upon by the prosecution.

In closing, I've previously pointed out that Judge Ira Uhrig has acted in collusion with attorney Lisa Fasano and/or the prosecutors office in seizing imagery (illegally) from me while violating my 4th Amendment Protections against Unreasonable Seizures by State Employees, and then tossed it from one court to the next (criminal to civil) so Fasano could get it. Destroy it. And Uhrig has also signed an illegal restraint order which attempts to restrain my business (but does not as it operates from Canada, outside his jurisdiction).

Let me be clear to Judge Ira Uhrig here: Do not think for one minute that I'm going to sit quietly in court during a trial and let you preside over that trial while railroading me as you have (established your record with me). If there's no pre-agreement on sentencing ceilings under 17 months, I'll continue to disrupt any trial until you either recuse yourself, or hold the trial without me, thus denying me my right to a fair and impartial hearing. So - as such, I'd suggest a motion/hearing to clarify some of these issues (before a mistrial, wasting court's time).

Exhibit-S

1
2 **DECLARATION OF COUNSEL**

3 I, Andrew Subin, hereby declare, under penalty of perjury, that the foregoing facts are
4 true and correct:

5 1. I am an attorney representing the defendant in this matter.

6 2. Trial is currently scheduled for June 21, 2010.

7 3. The defense cannot be ready for trial on June 21, 2010, and hereby requests that
8 the case be continued until September 13, 2010, for the following reasons.

9 4. On June 1, 2010, I received an additional 333 pages of discovery. I have not had
10 an opportunity to even begin to review this new material.

11 5. The victim interviews have been completed and defense counsel received the
12 transcripts of these interviews on June 1, 2010. Mr. Eggum had moved to be allowed to be
13 present at the interviews to assist defense counsel. The court denied the motion, but said that Mr.
14 Eggum could have an opportunity to review the transcripts with his attorney prior to trial. A
15 continuance is necessary to allow Mr. Eggum the opportunity to review the interview transcripts
16 with counsel and determine additional investigation needs, if any.

17 6. Mr. Eggum has requested a copy of the warrant application for the search warrant
18 that was executed at his home on 11/8/2005. We are still waiting for a copy of this transcript.

19 7. There are 3 evidentiary motions filed by the defense that are awaiting hearing.
20 These are (1) a motion to suppress letters that were improperly seized by the Department of
21 Corrections; (2) a motion to suppress letters the defendant wrote to his pastor; and (3) a motion
22 to suppress letters wherein defendant is exercising constitutional rights. It would be beneficial to
23 both parties, and much more efficient for the court, to resolve these issues prior to trial rather
24 than at the start of trial. Mr. Eggum has repeatedly requested pre-trial hearing on these issues,
25

1 requests that the prosecution joins. Despite repeated requests and efforts to schedule a pre-trial
2 evidentiary hearing before Judge Uhrig, we have not yet resolved these significant pre-trial
3 issues. A continuance is necessary to allow the court to resolve these suppression issues prior to
4 trial. The resolution of these issues in advance of trial will allow for a more streamlined and
5 much shorter trial.

6 8. Several issues are still being investigated by the defense at this time. These
7 include the following:

8 a. In 2009, Mr. Eggum filed a complaint with the Washington State Bar
9 Association against prosecution witness Elizabeth Fasano. In a letter dated February 5, 2010, the
10 WSBA dismissed Eggum's complaint; referring to over a hundred pages of documents that Mr.
11 Eggum was never permitted to see because they were "sealed." Mr. Eggum believes that the
12 documents presented to the WSBA by may contain information that will impeach statements
13 made by Ms. Fasano when she was interviewed in the present case. A continuance is necessary
14 to allow Eggum to obtain a court order directing the Washington State Bar Association to unseal
15 these documents and provide copies for use in Mr. Eggum's defense.
16

17 b. In 2005, alleged victim Janice Gray underwent a court-ordered
18 psychological examination. She was examined by Dr. Larry S Freedman, M.D., and diagnosed
19 with Borderline Personality Disorder. The defense needs additional time to obtain a copy of Dr.
20 Freedman's evaluation of Janice Gray, to interview Dr. Freeman, and to obtain an expert
21 psychiatric witness to assist the jury in evaluating the veracity of someone who has been
22 diagnosed with borderline personality disorder.
23

24 c. In her pre-trial interview, alleged victim Janice Gray denied that she ever
25 signed a consent form, or a release allowing images of her to be marketed and sold. The defense

1 believes that these forms are currently being held by the Odyssey Publishing Group, owners of
2 Emerald Bay Publishing, publishers of the magazines "Foreplay" and "Discreet." A continuance
3 is necessary to allow the defense time to subpoena these consent forms or releases in order to
4 impeach Ms. Gray's testimony at trial.

5 d. Several witnesses have described how video jackets (covers to DVD
6 boxes) with Janice Gray's image on them were found in various places in Lynden, allegedly
7 placed there by Eggum as part of a pattern of harassment. Mr. Eggum needs additional time to
8 obtain copies of these video jackets, which have not yet been provided in discovery.

9
10 9. Mr. Eggum, being fully advised of his speedy trial rights, agrees to waive these
11 rights to obtain the requested continuance.

12 10. Mr. Eggum respectfully requests that his trial be continued from June 21, 2010 to
13 September 13, 2010 to allow him adequate time to complete trial preparation.

14 Signed at Bellingham, Washington, this 2nd day of June 2010.

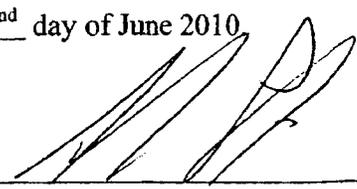
15
16 
17 _____
18 Andrew Subin, Attorney for Defendant
19
20
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25

Exhibit-T

SCANNED

FILED

2009 MAY 12 AM 11:23

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

Washington State, Plaintiff,

Case No: 09-1-00486-5

v.

2nd SUPPLEMENTAL BRIEF
RE: DISMISSAL

Marlow Todd Eggum, Defendant.

On May 6th 2009, Susan Lay, Correctional Records Manager for the Department of Corrections (MICC), in conjunction with Correctional Unit Supervisor Cossette and Corrections Counselor Denzer (present at this hearing) made a determination that Community Custody was not a part of Count-III within the defendant's Judgement & Sentence, and therefore, CCO Melissa Hallmark did not have the authority to approve (or deny) of the defendant's address, which was what the defendant had asserted.

As such, CCO Hallmark had no decision-making ability in which to influence, and as such, by definition of the alleged crime, no crime exists.

This Supplemental Brief is herein submitted on this 10th day of May, 2009.



Marlow Todd Eggum



Exhibit-U

Eggum – 11/09/2004 search warrant transcript

Eric Richey [ER]: This is Eric Richey from the Whatcom County Prosecutor's Office. Today is the 9th of November 2004. I'm here with Judge Uhrig and Ray Oaks and we're here to request a search warrant and an arrest warrant for Marlow Eggum.

JUDGE: OK, I'll put you under oath. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you god?

RAY OAKS [RO]: Yes, I do.

ER: Detective Oaks, are you investigating a crime at this point?

RO: Yes, I am.

ER: And what is that crime?

RO: Its become kind of a combination stalking / harassment.

ER: Is this a continuation of a on stalking on Janice Gray?

RO: That's correct.

ER: Alright. Have you learned about some recent stalking activity by Marlow Eggum?

RO: Yes, I have.

ER: And could you describe that?

RO: Let's see. I, um, on the 4th of November I was assigned to follow up on the harassment incident regarding Janice Gray and it was reported that her husband, Marlow Todd Eggum was harassing her, her employer, and her employer's wife. He was suspected of leaving pornographic videotape at the employer's residence on their front porch. I went and talked to the employer and he gave me a videotape that he said his wife found underneath a piece of furniture on the front porch and I viewed the tape and it showed – the videotape was of a black male and a white male simultaneously and separately having sexual intercourse with a white female that had a similar appearance to the victim, Janice Gray.

ER: Could you describe this area where it was found, the area of the county.

RO: Sure, its off East Wiser Lake Road, it's a fairly rural area in an upper middle class neighborhood with probably acre lots, back off the road, so it isn't really normally accessible unless you really had an intent to go into those residences.

ER: And does this videotape have any significance to Janice Gray?

RO: Yes, it did. She, um, Janice had said that her husband was, um, basically forcing her to have videotapes taken of her having sex with other males in the past and now um every time that she is dating somebody or involved with someone, the tapes start showing up, for instance she believes he's trying to get her fired at her work by giving these tapes to his employer's wife, um, this morning the employer said that his wife's pressuring him to fire her when she went out with . . .

ER: Let me stop you for a second, let me back up. This videotape, you mentioned that she had been videotaped in the past. Was it similar in any nature to the one that was found?

RO: Yes, exactly so. She said that when she saw the tape she said that that scenario was similar or quote the same as what her husband was having her act out in the past.

ER: OK. You already indicate that this videotape was not of her.

RO: Right. Then we found out that it wasn't her but it was a woman who looked similar to her. That's correct.

ER: So after that, was anything else found that was interesting?

RO: Yes. Janice had gone out to dinner with a man that she is seeing to the Nuthouse Grill in Lynden on I believe it was Thursday night, last Thursday night. And after that a videotape was found at the or a video cassette holder was found at the Nut Grill depicting on the cover a um picture of a ocean scene and on the back a picture of a black male nude form the waist down and a picture of a female superimposed over that wearing a red blouse. And that was found in a white, hard plastic or was part a white hard plastic videocassette holder. Also, and Janice told me her daughter told her that the suspect knew that she was at the Nuthouse Grill that night.

ER: OK, let me ask you a little bit more about that. Was that videocassette box recovered?

RO: NO it wasn't. IT was actually thrown out at the Nut Grill.

ER: SO who told you about it?

RO: I heard about it from the manager of the Nuthouse Grill.

ER: OK. Has a video box, a similar video box been recovered?

RO: Yes.

ER: Where was that found?

RO: That was found in the front yard of the victim Janice's, the sister of the man that Janice was going out with. So when he finds it, well, and it was found by that woman's son in the front yard on top of a pile of leaves. And it was found open, the videocassette box was found open, it was clean on the inside, there was no leaves or anything on top of it. The leaves had been falling off the trees continually for the last couple days and there was no rain in it and it had rained two days prior. It was set in an open location where anybody would see it as they were walking up to the house.

ER: When was that found?

RO: That was found last week on either Wednesday or Thursday.

ER: Have you recovered that?

RO: Yes, I have.

ER: Have you shown that box to Janice Gray?

RO: Yes, I have.

ER: And are those photographs, OK. Are there photographs on that videocassette box?

RO: That's right. The video, it's a white hard plastic videocassette box with a paper insert stuck in it in behind the plastic cover and on the cover there's a picture of Janice Gray, well Janice says its herself and her husband at their wedding reception. And also a picture of her

a little round picture of her face inset on the cover. Also on the cover are photographs that Janice says are of her engaging in sex with a black male. Um on the front and on the back there's a photograph of a black male naked from the waist down with pictures of her having sex with a black male superimposed over it.

ER: This location where its found, you say this area her friend, what, boyfriend's sister's house?

RO: Correct.

ER: Where is that located?

RO: That's located in the Bertrand area of Lynden, off Lynwood drive off Berkson road.

ER: What kind of neighborhood is that?

RO: That's small sub-development that has basically one entrance and one exit, its kind of a loop neighborhood with probably 70 houses.

ER: Is Marlow Eggum known to have a videocassette, or videotapes and pictures of Janice Gray?

RO: Yes. Janice has told me that he has numerous videotapes of her engaging in sex, her images, pictures of her engaging in sex, computer files of her, and nude pictures of her that she has seen at his residence in various locations.

ER: Does she know of anyone else that would hae those kinds of things?

RO: No.

ER: OK. What is it that you want to search for?

RO: What I'd like to search for is, um, any computer or peripheral computer devices used to store images, um videocassettes, um, DVD's, CD's, thumb drives that can be used to store these images, um, documents of dominion and control and some video equipment.

ER: Where do you want to look for these items?

RO: At a residence, at Donald Fisher's residence, or excuse me, at Marlow Todd Eggum's residence, 300 South 17th St. in Lynden.

ER: And can you describe that residence?

RO: It's a single story exposed aggregate and stone, kind of stone façade, with a white picket fence, screen door with the numbers on the front of the house.

ER: Do you have reason to believe that these items are located in this house?

RO: Yes, I do. Janice has told me that she has seen the computer in the living room and that she has seen the videotapes in locations throughout the house inside the master bedroom, in a hidden location inside a closet inside the master bedroom and some other locations.

ER: You mentioned that you'd like to look for images and videotapes, are you talking about only videos and images of Janice Gray?

RO: Um, possibly not because some of the, one of the videotapes if there's any other images of other people I'd want to tie those back to him.

ER: The videotape that you've already found at the boss's residence, does that appear to be a copy or an original?

RO: To me it appears to be a copy of a somewhat larger professionally produced video.

ER: Would you want to find the original of that as well?

RO: Yes, I would.

ER: Have you received any information about where in the house these items might be located?

RO: Yes, I have.

ER: And who did you receive that from?

RO: From Janice Gray.

ER: And can you tell us about those locations?

RO: Sure. Let's see. She mentioned a cupboard in the garage. A basement furnace room, a hidden closet in the bedroom that's got a false wall in it on the right hand side, a built in drawer in the closet in the master bedroom with cedar paneling, a crawl space in the attic area above the garage.

ER: I don't think I have any more questions about the search warrant. Your honor do you have any questions?

JUDGE: No. I think probable cause has been established ... (unintelligible).

OK. I've signed the warrant.

ER: Your honor, in addition to that I'm going to be asking for an arrest warrant because it violates the conditions of pretrial release. I have a motion and affidavit here as well as a bench warrant. Essentially, it seeks detention because the defendant has violated his conditions of pretrial release such as failing to conduct himself as a decent, upright, law-abiding citizen by continuing to keep committing the same crime of stalking. I have an affidavit as well as the motion I'll hand forward at this time.

JUDGE: OK

ER: And here is an order for a bench warrant.

JUDGE: OK. I've reviewed the documents. (unintelligible). I'll sign the bench warrant.

ER: OK, we'll go off the record.

Exhibit-V

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CLERK OF SUPERIOR COURT
WASHINGTON

M

IN THE SUPERIOR COURT FOR WASHINGTON STATE
FOR WHATCOM COUNTY

Marlow Todd Eggum, Appellant,

vs.

Washington State, Respondent.

Case No: 04-1-00500-3

MOTION

1. RETURN OF PROPERTY
2. SEXUAL BRIBERY
3. DAMAGES: RE: GEMINI ANGEL IMAGERY

Judge Ira Uhrig

On November 9th 2004, this court issued a search & seizure warrant at the request of the Prosecution, whereas that warrant was to search for, and to seize adult imagery that was in the appellant's possession at his residence, whereas that imagery being seized, was being seized in conjunction with a Stalking Arrest Warrant that was being served at the same time.

Under RCW 10.79.015 (Grounds for Issuance of a Search & Seizure Warrant), the Prosecution is prohibited from seizing anything that is not directly related to the crime currently under investigation, which in this instance would be Stalking.

Certainly the Prosecution would be prohibited from seizing property that someone within the Prosecutors office wanted, simply because they wanted it, as this would be a violation by the State, of the United States Constitution's 4th Amendment Protections against Unreasonable Searches & Unreasonable Seizures, not to mention a violation of the State's Constitutional Protections against the same, as well as a violation of RCW 10.79.015.

91

Under RCW 10.79.015, the State would be limited to seizing property that was **Stalking-Related**, in which that property was directly related to the crime that was being alleged, and this would mean that the Prosecution would be limited to searching for, and seizing, items such as; Binoculars, Listening Devices, Dark Clothing, Masks, etc, etc.

Under the parameters established under RCW 10.79.015, the Prosecution would not be entitled to search for and seize adult imagery that was in the appellant's possession, because that adult imagery was not a part of the alleged crime of Stalking. Imagery, adult imagery, and the crime of Stalking are totally unrelated, and as such, the seizure was unlawful.

Furthermore, in May of 2006 (some 19 months later), the appellant and his legal counsel would come to learn that this unlawful seizure was made by senior prosecuting deputy Craig Chambers (& Richey, as his front) on the behalf of divorce attorney Lisa Fasano (the appellant's wife's divorce attorney), whereas Chambers had used his clout as a twenty-year prosecutor within the county, to **obtain that unlawful search & seizure warrant**, that legal favor being done for Lisa Fasano **in exchange for sex** he received from her.

In May of 2006, defense counsel for the appellant was approached by someone within the Prosecutor's Office, and told that Lisa Fasano had been sexually bribing the Prosecution (Chambers), and that's why the appellant was having so much difficulty with the Prosecution.

Craig Chambers was approached by defense counsel, and questioned about the allegations being made, and Craig Chambers admitted to the **sexual liaison**, and further **admitted** that it had been **ongoing** for at **least two years**.

This evidence appears **under sealed declaration**, appearing as entry 51 & 51-A, of case 05-1-01094-3, which is the case that follows this one (immediately afterwards).

Backdating that two-years that Chambers admits that the sexual liaison was going on, the court can easily see that this liaison had started at, or around, May of 2004, because May 2006 minus two-years equals May 2004.

This corresponds precisely with the initial arrest on this matter, which was within two weeks of May 2004 (having been made on April 15th 2004). This explains why Lisa Fasano was in the Prosecutor's Office when the appellant had called the prosecution to see why he was receiving a Summons in the mail.

Additionally, when the appellant was re-arrested on November 9th 2004 (when the unlawful search & seizure warrant was served), the appellant was online at his adult website, and had been getting Instant Messaging (IMing) from someone using the screen name of sarahi@aol.com (as well as other screen names). To be even more specific, when the sheriff's office was knocking down the appellant's front door with Lisa Fasano's Search & Seizure Warrant in their hands, Lisa Fasano was online with the appellant ensuring the appellant was home (so he could be arrested on her behalf), so that the appellant would also know that it was her (Fasano) that had seized the imagery.

[FACT] Lisa Fasano's full given name is Elizabeth Sarahi Fasano, and so there can be little doubt as to who was online with the appellant at his adult website when her search & seizure warrant was being served for her. Fasano doesn't deny it either.

The State, nor the Prosecution, nor Chambers, is allowed to violate RCW 10.79.015, or violate the 4th Amendment, in exchange for sex. Or in exchange for money. Or in exchange for a favor of any sort. The act of doing so is defined as Bribery.

Bribery is defined as: Something, such as money or a Favor, offered or given to someone in a position of trust, to Induce Him to act dishonestly.

Under the definition of Bribery herein, and under the definition under bribery under RCW 9A.68.010 (Bribery), both Lisa Fasano & Craig Chambers are guilty of the crime of Bribery.

Lisa Fasano, Craig Chambers, and Eric Richey on their behalf, as their Frontman, may try to minimize this crime by stating that it's **Okay** now, because Chambers eventually ended up marrying Lisa Fasano (two years later), so that makes it all right. Nothing could be further from the truth. And the fact that Chambers accidentally impregnated Fasano and had to marry her, has no bearing upon the actions of April through November 2004.

Under King County case number 05-3-01618-7 (Keith Levitt v. Lisa Fasano), the court will see that Lisa Fasano was married to Dr. Keith Levitt on **May 3rd 2003**, and Levitt had not divorced Fasano or **Infidelity** until August 5th 2005, that divorce being the result of Dr. Keith Levitt becoming aware of the fact that his **newlywed bride was fucking the prosecutor, in order to obtain a search and seizure warrant, in order to seize the adult imagery that she had previously turned down during the divorce proceedings, because she had somehow thought that it would be illegal for the appellant to continue selling his sex movies, once the divorce was finalized.**

There can be no argument given that Lisa Fasano had not sexually induced Chamabers to obtain an arrest and search & seizure warrant on her behalf.

In this particular case, the criminal court (Uhrig) tossed the illegally-seized imagery from the criminal court, to the civil court (Snyder), where judge Uhrig stood in the back of the courtroom (with Fasano & the Prosecution) and watched as judge Snyder tossed the illegally-seized imagery to Lisa Fsano, where Fasano would destroy it. That's a violation of Law. That's a violation of Constitutional Law.

Under CR 2.3(e), the criminal court is mandated to return any evidence in its possession, unless (1) the defendant isn't the lawful owner of it, i.e. that the defendant was in possession of stolen property, and as such, this doesn't apply, and futhermore, the appellant is the lawful owner, and unless (2) there is a Statute prohibiting me from its possession, i.e. that the property in question would be child pornography, which it isn't, therefore it doesn't apply.

In this particular case, the court (Snyder) tossed the property to Lisa Fasano, and the sheriff's office had refused to inventory the property, as required by CR 2.3. The court cannot allow a private citizen (Fasano) to do an inventory of property, especially so, when that person has a conflict of interest.

There are numerous arguments as to why an individual citizen isn't allowed to inventory property that the State is **Responsible** for, and one of those reasons is about to show its head, as follows.

The Prosecution (State) seized 8 large boxes of property, and a lot of the property in question did not have any images of the appellant's wife on them. The fact that her image is in them, or not, is irrelevant, as the State hasn't the right to seize them anyway, more so when the State (Prosecution) accepted sex from Fasano in order to seize them.

As part of that seizure, the State seized a digital camera, and three or four **digital memory cards**, whereas the digital imagery contained within those cards was worth somewhere between \$20,000 to \$40,000, with those digital memory cards having imagery of a movie titled **Gemini Angel** (with someone else other than the appellant's wife on that imagery).

Without the **digital stills to advertise and promote** the sale of **Gemini Angel**, all the money spent in the production of Gemini Angel is wasted. Therefore, the State is responsible for the loss of \$20,000 to \$40,000, as the actors in that movie have already received their pay for their participation in that movie.

This is exactly why CR 2.3 doesn't allow for the State to seize property and then have it inventoried by third parties. Because the appellant herein now demands the return on those imagery cards, or in lieu of that, \$30,000 in damages for that portion (alone) of the illegally-seized property, which was seized in exchange for sex.

Therefore, the appellant herein motions this court for an order Returning the Property which was illegally seized, or in lieu of that, order that the Whatcom County Prosecutor is to pay the appellant \$30,000 in damages (solely) for the loss of Gemini Angel imagery.

This acceptance of \$30,000 is for this material only, and the appellant reserves the right, and herein gives Notice to the State, that upon his release, he is going to retain Legal Counsel with the intent of filing a lawsuit against the State, Richey, Chambers, and Fasano, and anyone else who has assisted in this property being stolen.

In continuing, I would also like to educate this court, that while this was the first unlawful seizure by Lisa Fasano (through the State, through sexual bribery), it wouldn't be the last.

In May of 2006, Lisa Fasano had her paramour, Craig Chambers, use his clout once again, to have a Whatcom County sheriff go over to the appellant's house and seize more imagery, and this time without any warrant whatsoever. And while this imagery is not currently in question, it does go to show the motive of Lisa Fasano, and why she had her legs up in the air, wrapped around Chambers, just months after becoming a **newlywed bride**, and it also goes to show what Chambers had in his hand while that payment was being tendered. That being an otherwise unlawful warrant that he had judge Mura sign. This will not be the last time that Mura's name will come into this.

C.A.9 (1979) United States v. Friedman, 593 F.2d 109

"Conspiracy" is established when there is an **agreement** to accomplish an **illegal objective**, coupled with one or more **overt acts** in the **furtherance** of **illegal objective** & requisite intent necessary to commit the underlying **substantive offense**, Government need **not** show an **explicit agreement**, but **criminal scheme** may be **inferred** from **circumstantial evidence** which is as probative as direct evidence.

Under the definition of Bribery under RCW 9A.68.010, given the exchange of sex for a warrant, there can be no doubt that Bribery occurred, whereas there was a **Conspiracy** between Lisa Fasano & Craig Chambers to **accomplish an illegal objective** (unlawful warrant) in the **furtherance of illegal purpose**, that being to retrieve the movies that she (Fasano) had passed up (declined) during the divorce process, and to shut down the appellant's website in the process. That's **criminal scheme**.

And the evidence of that is overwhelming, all of it direct, and all that is needed is circumstantial evidence, and this, far exceeds that. And, it's all admitted to, under the sealed declaration appearing at entry 51-A under cause 05-1-01094-3.

C.A.9 (1981) United States v. Traylor, 656 F.2d 1326

A person may **join a conspiracy** that has already been formed and is in existence and that **conspirator** (i.e., **Eric Richey**) will be bound by all that has gone on before him in that conspiracy.

This means that Eric Richey is as much guilty as Chambers or Fasano, regardless of whether or not he received any personal benefit (sex) from Lisa Fasano, and he too is guilty of same.

C.A. 9 (1984) United States v. Karr, 742 F.2d 493

To avoid **complicity in conspiracy**, one **must withdraw before** any overt act is taken in the furtherance of agreement.

It need not be pointed out that Eric Richey is a part of that conspiracy, and at no point in time has he ever made an attempt to withdraw from this scheme. If anything, he has driven it, acting as Fasano & Chambers frontman. That **guise is transparent**.

The question that I put to this court (Uhrig) is; does the court wish to join in this conspiracy? Because the Law makes no distinction as to who can join unlawfully in a conspiracy, and I believe it also allows judges to partake (Mura).

Wasn't judge Mura, it was actually judge Uhrig.

Question to the Court: On the dates that this court heard argument from Eric Richey, regarding not returning my property that was illegally seized, was the court (Uhrig) aware that Lisa Fasano & Craig Chambers were involved? Because Eric Richey was, and that has bearing upon what the court must do.

RPC 8.3(a) Reporting Professional Misconduct

A lawyer or a judge (Uhrig) having knowledge that another lawyer or judge has committed a violation of the rules of professional conduct (bribery, and conspiracy) that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should promptly inform the appropriate professional authority.

If the court looks at the transcripts from the sentencing hearing, and then the hearing after that, the court will see that not once does Eric Richey disclose the fact that Lisa Fasano & Craig Chambers had approached him to prosecute this case and to obtain that unlawful warrant. And throughout those hearing, Eric Richey mentions the name Lisa Fasano numerous times, almost as if it were her prosecution and not his (which is the case).

If the court recalls, on February 7th 2005, the defendant / appellant, the appellant had agreed to an Alford Plea of Guilty, **solely** in exchange for the return on the imagery that had been seized. Once that Plea had been made, Eric Richey **reneged** on the deal, refusing to return the property.

This court needs to look at the case law regarding CR 2.3(e), as this court violated that law when it tossed the property to the divorce court.

Washington State v. Alaway, 64 Wn.App. 796, 798, 828 P.2d 591 (1992)

A court may only refuse to return property no longer needed as evidence only if (1) the defendant is not the rightful owner; (2) the property is contraband; or (3) the property is subject to forfeiture pursuant to statute.

In looking at caselaw surrounding the return of property once a case has ended, in all that caselaw, nowhere in there is there a case whereas the criminal court tosses illegally-seized property from one court to another, with the judges acting in concert to that effect. That in itself is collusion towards a criminal scheme.

At this juncture, the appellant only seeks the return of all of his property, through a court order to that effect. If the respondent cannot comply with that order, after it is written, then the appellant will consider what action to take at that time.

But prior to arguing about the 8 boxes that were illegally-seized, this motion directly requests the return of the **imagery cards** that are in Lisa Fasano's possession, or a court order for \$30,000.

Additionally, at this stage, the appellant has motioned the court, and the appellant demands that the **Prosecution Respond in writing prior to the hearing**, so that the Prosecution goes on the record with their position, as the allegations herein are unlawful in nature, and subject to prosecution.

Should the prosecution not reply, the appellant's first motion will be for a continuation, and a court order, ordering the Prosecution to Reply, and thereafter, we can continue with this hearing.

The facts and statements contained herein are true and correct, with this statement / motion being signed at McNeil Island Washington on this 14th day of December, 2008.

A handwritten signature in black ink, appearing to read "Marlow Todd Eggum", with a long horizontal flourish extending to the right.

Marlow Todd Eggum

Exhibit-W

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF WHATCOM

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OCT 17 2011

Nielsen, Broman & Koch, PLLC

3
4 STATE OF WASHINGTON ,

5 Plaintiff,

No. 09-1-00486-5

6
7 MARLOW TODD EGGUM ,

8 Defendant,

COA No. 66554-5-I

COPY

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11 VERBATIM REPORT OF PROCEEDINGS

12
13 NOVEMBER 2, 2009 and DECEMBER 8, 2009

14
15 THE HONORABLE IRA J. UHRIG, JUDGE

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21 LAURA PEACH, CSR

22 OFFICIAL COURT REPORTER

23
24 WHATCOM COUNTY SUPERIOR COURT

25 BELLINGHAM, WASHINGTON

1 - o 0 o -

2 NOVEMBER 2, 2009

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4 THE COURT: Good morning, counsel.

5 MR. SUBIN: Morning, Your Honor.

6 MR. HILLMAN: Morning, Your Honor.

7 THE COURT: I wish Mr. Eggum was here with
8 us. We have been waiting for his arrival. The jail
9 has not yet brought him over. As I spoke to you in
10 chambers, we need to get started.

11 There is a civil trial that is getting a late
12 start because whatever these delays are. The case
13 of Personal Restraint of Benn, B-E-N-N, 84 Wn. 2d.
14 168, under the authority of that case, I do not
15 believe that the defendant's presence is necessary
16 to argue this motion. I would prefer that he be
17 present. But we just have no additional time to
18 wait. We are already -- I regret having waited even
19 this long. But the case is clear that the defendant
20 does not have a right to be present during
21 in-chambers and bench conferences between court and
22 counsel. He does not have a right to be present on
23 a hearing for a motion for continuance and any one
24 of a number of motions that do not effect his
25 opportunity to defend the charge.

1 statement from a superior court judge sitting in
2 open court would be lawful authority or he could
3 present to the jury the idea that that gave him
4 lawful authority to release and publish those
5 videotapes.

6 So I think Mr. Eggum clearly enjoys the right
7 to call witnesses on his own behalf and if he wants
8 to tell the jury that he had lawful authority to
9 tell his wife that, his ex-wife that he was going to
10 be distributing pornographic videotapes and since
11 Your Honor had said to him in open court that he did
12 have the right to distribute those videotapes, I
13 think he has the right to call you as a witness to
14 tell the jury that he had the right to distribute
15 those videotapes and that there was nothing lawful
16 about that. That he had lawful authority to state
17 that he was going to do that.

18 With regard to the stalking charges, um,
19 harass for the purpose of the stalking charge is
20 defined in 10.14.020 and right in the definition of
21 harasses and in that statute says constitutionally
22 protected activity is not included within the
23 meaning and course of conduct. So, again, that
24 statute is not talking about a lawful authority to
25 distribute the videotapes but it is talking about

1 accused of making both towards his ex-wife and
2 others.

3 Again, on page three of the Affidavit of
4 Probable Cause, um, referring to a letter to Mr.
5 Richey, Eggum tells Richey that he should be more
6 concerned about how the defendant is actively
7 advertising for sale his homemade sexual movies of
8 Janice Gray to the inmates at the prison.

9 So I mean, the videotapes are really involved
10 in this case. They are referenced with regard to
11 almost every count. And, again, his legal right to
12 do that I think is going to be a central issue in
13 this case. It does not seem appropriate for Your
14 Honor to be ruling on whether he has a right to call
15 you as a witness or whether the State suggests on
16 the bottom of page four of their brief there would
17 be no basis for the defense to call Judge Uhrig,
18 even if the defense could convince the court that
19 the issue had some relevancy. Judge Uhrig's
20 opinions on the legality of the proposed act of
21 distributing sex tapes would be entirely irrelevant.

22 Well, we wouldn't intend to call you as an
23 expert witness on whether that was legal or not.
24 The point was that you had said to him that it was
25 and, therefore, his reliance on that statement, and

1 judge.

2 With regard to Mr. Richey being a victim in
3 the case, the State has referred to a couple of
4 cases where I guess it's not, um, it's not
5 automatically inappropriate for a judge to hear a
6 witness who is an attorney who has appeared before
7 him. I think that's what the case cited by the
8 State says. But Mr. Richey is more than just a
9 witness in this case. Mr. Richey is the victim in
10 one of the counts and I think that makes a
11 distinction. I think that the court's relationship
12 with Mr. Richey as someone who appears before him,
13 maybe not daily but certainly every week, um, that's
14 inappropriate, as well, for the court to be
15 presiding over a trial where Mr. Richey is a victim.
16 And I think that because he is a victim rather than
17 just a witness, that distinguishes the case that the
18 State has cited in this matter.

19 I think those are really the main reasons
20 that I would argue this morning.

21 THE COURT: Okay. Let's hear from the State.

22 MR. HILLMAN: Thank you, Your Honor. The
23 State is not saying that the tapes are not relevant
24 to the trial. They are going to be a piece of the
25 trial and part of the State's evidence. Whether it

1 personal relationship. So she is those to
2 investigations of a threat to apply to Ms. Gray and
3 it doesn't matter whether or not distributing the
4 videos in and of themselves would be legal or not.

5 Similarly, with the stalking, the fact that
6 the defendant's continually threatening to
7 distribute these videos to embarrass her, the fact
8 of distributing the videos may be constitutionally
9 protected conduct, but when you are using something
10 like that to harass or intimate or embarrass
11 somebody, it takes it out of the realm of
12 constitutionally protected conduct. That's why we
13 have the harassment statute.

14 And even if there was some relevance to Your
15 Honor's opinions or comments that you made during
16 the ruling, um, those are things that are set forth
17 in a transcript. They wouldn't be offered for the
18 truth of the matter asserted that your ruling is the
19 correct one, just that you made a comment during
20 court that led him to believe they might be lawful.

21 There is other cannons in the judicial
22 conduct that either prohibit or discourage judges
23 from testifying in cases, and I don't think the fact
24 that you made a comment during your ruling is
25 something that gives cause or rise to call the court

1 impartial.

2 I don't know what, if any, relationship the
3 court has with Mr. Richey other than he is a
4 prosecutor who appears in your court. I think
5 that's something that the court has to kind of
6 undergo a self examination and decide for itself
7 whether you can fairly decide over the case. Again,
8 just the fact he is a prosecutor who comes in here,
9 just that by itself doesn't create an appearance of
10 partiality.

11 THE COURT: Okay. Thank you. Brief
12 response?

13 MR. SUBIN: With regard to the question of
14 using a transcript of what the court said to
15 Mr. Eggum, um, the first of all, I think it would be
16 his right to have a witness appear for live
17 testimony rather than using transcript if that was
18 his choice in the presentation of his defense. And,
19 secondly, I think it would still be, um, unusual and
20 perhaps have an appearance of impropriety for the
21 court to be ruling on the admission or instruct the
22 jury on how to consider a transcript of your own
23 statements that were made in a different hearing. I
24 think that still has some of the same problems as
25 you presiding over a trial where you are going to be

1 transcript. I do not know the context. I just do
2 know what statements are attributed, somebody
3 attributed to me. It sounds to me even without
4 context that they were perhaps rhetorical or
5 hypothetical statements or even statements made in
6 furtherance of explanation of a ruling, but, again,
7 in a civil case with respect to the, I believe the
8 right to possession or the right to ownership of
9 some of the tapes, I know that Judge Snyder ruled in
10 that regard. And Judge Mura may have, as well. I
11 simply don't know. I haven't consulted with either
12 one of them to see what they recall, and I haven't
13 looked through the court records in the other cases
14 to see what rulings were or were not made.

15 In fact, it was only recently that I looked
16 at the additional, I guess the First Amended
17 Affidavit of Probable Cause with all of the
18 additional counts filed. It was until very recently
19 I thought it was just the one count, your original
20 count, and what seems clear to me also is that the
21 issue is not, as far as the charges that relate to
22 the distribution of the tapes, the issue for trial,
23 as I see it, will not be an issue of whether or not
24 Mr. Eggum does or does not have a right to
25 distribute any videos that are lawfully in his

1 possession so long as other laws are not being
2 violated.

3 The issue, I mean, as he has said in the
4 past, he is a businessman. As he has said in the
5 past, he is a pornographer. That's not the issue.
6 The issue as I see it is the allegations that the
7 State has made that the State has to prove beyond a
8 reasonable doubt that he, made a, I guess we call it
9 a declaration, that he would distribute a number of
10 these, I think it was a thousand, maybe it was a
11 thousand on two different occasions, if the State
12 employee, the employee of the Department of
13 Corrections did not act or refrain from acting in a
14 certain way. That is my recollection. This is all
15 borne out in the Probable Cause Affidavit. I am not
16 trying to quote from it by any means.

17 I believe the allegation involved something,
18 if you wish to call it a threat, if you wish to call
19 it, whatever you want to call it, an attempt to
20 intimidate, I don't care how it's characterized,
21 that's for the State to convince the jury but it was
22 the State doesn't have anything to do with his right
23 to distribute the videos. It is the other conduct
24 that the State is going to attempt to prove.

25 In any event, I did not at any point give

1 I believe the case law says that a judge, once the
2 issue is raised, the judge is to evaluate the nature
3 of the judge's involvement with that person on a
4 professional or personal level if there is one. I
5 have presided over many cases where there have been
6 witnesses who are employees of the prosecutor's
7 office. I believe I have presided over cases where
8 a deputy prosecuting attorney has been a witness. I
9 know I have presided over at least one case where
10 two district court judges were the State's only
11 witnesses and also the complaining victims in a
12 case. And the evaluation process is the same, the
13 judicial officer must evaluate his or her
14 relationship with the prospective witness, and in
15 this case, the witness is also a named victim.

16 So as concerns Mr. Richey, he does practice
17 in here once in a while. Whenever there is the
18 weekly criminal calendar, if I am on the rotation I
19 see him. Generally he is here. I see him on the
20 status calendar. I have done trials with him. I
21 cannot say how many. I don't know how long he has
22 been in the prosecutor's office in this county. He
23 was with district court in this county, I believe,
24 first and he was in district court during a time
25 when, for superior court.

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MR. SUBIN: Thank you, Your Honor.
(Hearing is adjourned).

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one.

THE COURT: Do you have a signed declaration?

MR. SUBIN: No. Mr. Eggum, I needed his signature on his declaration.

THE COURT: Okay. Is the State prepared to proceed on that or it was not really timely filed?

MR. HILLMAN: I am prepared to proceed on that, Your Honor.

THE COURT: Okay.

MR. SUBIN: And here is a copy with the declaration that Mr. Eggum has signed.

Your Honor, with regard to the motion for reconsideration, it's not my practice or my style to go over something that has already been ruled on and, um, I just wanted to note this motion to reconsider in order to preserve my record. My declaration contains a couple of quotes from transcripts where Your Honor said, one where Your Honor said some things to Mr. Eggum in a different cause number; another from a different department of Whatcom County Superior Court who was acknowledging Mr. Eggum's belief that he couldn't have a fair trial in front of Your Honor. I just wanted to supplement the record with those items.

Mr. Eggum, I think, also wanted to make sure

1 Mr. Eggum, and his ex-wife used to attend. And,
2 again, I think that's just a situation where Your
3 Honor just has to decide can I fairly decide this
4 case if the pastor of the church were called as a
5 witness for the State and he has been listed as a
6 witness for the State.

7 I don't have anything to add beyond that.

8 THE COURT: It seems to be the only thing
9 that's new as I can recall.

10 Anything further?

11 MR. SUBIN: No. I think that is the only new
12 matter. Again, I was trying to preserve my record.

13 THE COURT: And that's noted. It says here,
14 item nine, Pastor Grant Fishbook, Christ the King
15 church is listed as a witness for the prosecution.
16 I didn't know he was listed as a witness. Pastor
17 Fishbook is also Judge Uhrig's pastor and I am aware
18 that Grant Fishbook and Judge Uhrig have discussed
19 this case. I am not testifying here. I am not a
20 fact witness. For what it's worth, I can assure
21 everyone that Grant Fishbook and I have not
22 discussed this case or any aspect of it.

23 THE DEFENDANT: Grant told me he did.

24 THE COURT: And I can tell I am not a fact
25 witness. I am not testifying. I did not attend

1 at for a trial date. But I will offer the
2 suggestion, if it's workable through staff and
3 whatnot, I have no, what shall I say, I'm sure I'll
4 recorded whatever I say, I have no ownership or
5 proprietary interest in this case. It doesn't
6 matter to me before whom it is heard. If we get
7 stacked up with other trial dates, as we often do,
8 and cases are scheduled in order of priority, I
9 suggest, I suggested it last week and suggested it
10 rather frequently and it's seldom something that is
11 made use of, but it has always been my position that
12 during a period of time when one or any of the
13 superior courts are, as the saying goes, if they are
14 left dark, if there is a judge who is at a
15 conference or on vacation or whatever, that it might
16 be worthwhile to look into seeing about getting an
17 elected judge pro tem or agreed judge pro tem to
18 hear the case and make use of an available
19 courtroom. And I don't know what my schedule is. I
20 know Judge Snyder, I believe, has some days when he
21 will be --

22 MR. SUBIN: There has been an affidavit filed
23 against Judge Snyder in this matter.

24 THE COURT: Let me finish my sentence.

25 MR. SUBIN: I'm sorry.

1 THE COURT: Some days in January when he
2 will, I think he will be in town but scheduled to be
3 out of the office, so there may be some days
4 available for trial in his courtroom. I don't know
5 the mechanics of getting that done. You have to
6 arrange for a reporter, so I can't say how likely
7 that is to happen or not happen but it certainly is
8 a possibility. Especially if counsel is interested
9 in getting this case to trial soon rather than being
10 bumped a time or two.

11 And if, I certainly understand Mr. Eggum made
12 it clear, he doesn't want me to hear the case. It
13 doesn't matter to me if I hear it or not. If
14 somebody else hears it, if everybody is agreed, I
15 think that's fine. However, with an elected judge
16 pro tem, each party has an affidavit and for a
17 non-elected judge pro tem the parties have to agree
18 on which person will be appointed, whether it's a
19 retired judge, whether it's a lawyer, but I would be
20 fine with that.

21 So about all I can say is I encourage the
22 parties to explore that as a possibility.

23 Let's move on with the other motions here.
24 We have limited time available. Do you want to do
25 the thing you addressed for authorization of funds

1 are on eight-millimeter type tape and the sheriff's
2 office doesn't have the equipment to copy them so
3 they have to send them out. The estimate could be
4 lower depending how many of the tapes they can fit
5 on to one DVD, which I think is what they are going
6 to copy it on to. If they can fit two on to one it
7 will be cheaper. But I did ask the sheriffs office
8 to explore that and they did give me an estimate
9 from a company that they found that has the
10 equipment to duplicate these tapes and it would be
11 in the area of \$700 as Mr. Subin said.

12 THE COURT: Sounds to me like it's necessary.
13 I'll authorize the expenditure.

14 MR. SUBIN: I didn't prepare an order.

15 THE COURT: Prepare it and circulate it and
16 I'll sign it.

17 MR. HILLMAN: I wasn't present and I don't
18 know if it was Your Honor or different judge ordered
19 that duplication and disclosure of those tapes, but
20 there is an order that requires that.

21 THE COURT: Okay.

22 MR. SUBIN: And, Your Honor, with regard to
23 the phone calls, um, and this is set forth in my
24 declaration, this involves over 62 hours of phone
25 calls on 11 CD's, 334 phone calls, um, I have got an

1 relevant for the jury. They are on CD. You can
2 listen to them and note at what time in the
3 recording a statement is made.

4 So I don't, the State doesn't have any need
5 or deem it necessary to have them describe
6 transcribed and I don't know if that's a good use of
7 public funds.

8 That's all I have.

9 THE COURT: Anything further?

10 MR. SUBIN: I think it would just be much
11 easier than trying to work through that 60 hours of
12 audio tape in front of a jury. And, you know, for
13 Mr. Hillman and his staff to pick out the points he
14 wants to use and plan to present only those, it may
15 very well be to put these in context and there are
16 other parts of the tapes that become relevant and
17 there may be other parts of the tapes that I want
18 the jury to hear, and these decisions may be stuff
19 that we are trying to make during the trial as to
20 which parts of the tapes are going to be necessary
21 to present to the jury or that we want to argue
22 should be played for the jury.

23 And I just think it's, from my perspective,
24 necessary to reduce that to a transcript to make it
25 just much easier and much more time effective when

1 see doesn't really assist that. I don't think there
2 has been a showing to authorize the funds for
3 preparation of a transcript. I'll deny that motion.

4 What's next?

5 MR. HILLMAN: Your Honor, the State did have
6 a Motion to Amend the Information.

7 THE COURT: Yes.

8 MR. HILLMAN: I provided Mr. Subin with that.
9 I'll hand forward to the court the State's Proposed
10 Amended Information.

11 As you know, this case was charged by the
12 Whatcom County prosecutor's office was the
13 prosecuting authority when it was first charged.
14 They recognized a conflict of interest and the
15 attorney general's office assumed the prosecution of
16 this case. And having reviewed the discovery, I
17 believe that the charges there accurately reflect
18 what the State can present evidence to the jury and
19 we would ask the court to re arraign the defendant
20 on the Amended Information. It does add some
21 additional counts and also alleges aggravating
22 circumstances for each count. I did provide
23 Mr. Subin with two copies of that today and I
24 previously, I think, had provided him with a copy by
25 e-mail.

1 THE COURT: Not guilty pleas are admitted.

2 MR. SUBIN: And, Your Honor, I just, or
3 Mr. Hillman, I don't think that there was an Amended
4 Affidavit of Probable Cause. Are we still relying
5 on the original Affidavit of Probable Cause?

6 MR. HILLMAN: Yes. And I believe that the
7 charges are all supported by the Affidavits that
8 were previously filed.

9 THE COURT: Okay. All right.

10 MR. SUBIN: And then, Your Honor, I think the
11 last thing that we wanted to discuss this morning,
12 and, again, Mr. Hillman alluded to it, um, we have
13 had some discussions about a motion to continue the
14 trial date. I think I put this in the form of a
15 defense motion to continue the trial date. I
16 haven't done anything in writing. I didn't know
17 whether you wanted this to appear on the normal
18 status date that we have for this or if we should
19 address this right now.

20 THE COURT: I'm happy to address it now. The
21 State said they have no objection to a continuance.

22 MR. HILLMAN: I prefer to know now rather
23 than later if there is going to be a continuance.

24 MR. SUBIN: Okay. We talked about a date
25 some time in March. I don't know if the court wants

1 beneficial for both attorneys involved and it would
2 also, I guess, it might be somewhat preferable for
3 Mr. Eggum from his standpoint.

4 I have said, this is the third or may be
5 fourth time, I understand he doesn't want me to hear
6 the case. If we can have it go to trial and pick a
7 fairly solid trial date, um, it takes care of the
8 case on the calendar and the calendars are always
9 busy and it gives Mr. Eggum what his goal is to not
10 have me hear the case. I think for both counsel it
11 would probably be a great benefit to know that you
12 have a trial date that you can pretty much count on.
13 All I can do is make that a suggestion.

14 And, also, if that date in March doesn't work
15 out there is the, well, I have to find out when the
16 spring judicial conference is. They keep moving it
17 around. And even if I don't attend, those are days
18 that usually we couldn't have trial scheduled, and I
19 will talk to the calendar clerk and my bailiff and
20 see if we can orchestrate the possibility of an
21 elected judge pro tem or a C elected judge pro tem
22 because we need, of course, a reporter and other
23 staff concerns need to be covered. I don't know
24 logistically how that will work out. I think it's
25 worth considering if the parties are interested.

1 your schedules are far different than those of local
2 prosecutors and public defenders. I'll do
3 everything I can to see if this works out.

4 I don't know. I should ask counsel, are both
5 of you willing to consider the possibility of a
6 judge pro tem or located judge pro tem?

7 MR. HILLMAN: I'm willing to consider it.

8 MR. SUBIN: Yeah. I think we are as well.

9 THE COURT: And it would have to be somebody
10 upon whom you both agreed. So we can, all I can say
11 is I can look into to see what I can find out.

12 Okay. And how many days do you expect for
13 trial? I guess I should ask that. Do you have any
14 idea?

15 MR. HILLMAN: That's a good question.

16 THE COURT: It might be too early to really
17 know.

18 MR. SUBIN: It may be. I mean, I would say
19 probably a week.

20 MR. HILLMAN: I would agree with that. Yes.

21 THE COURT: Okay. Seems a reasonable
22 estimate.

23 MR. SUBIN: Okay. Your Honor, I'll circulate
24 the order regarding the videotapes and a new trial
25 setting order.

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CERTIFICATE OF OFFICIAL COURT REPORTER

STATE OF WASHINGTON)
) SS.
COUNTY OF WHATCOM)

I, Laura Peach, Official Court Reporter, County of Whatcom, State of Washington, do hereby certify that the foregoing pages comprise a true and correct transcript of the proceedings had in the within-entitled matter, recorded by me by stenotype on the days herein written and thereafter transcribed into being by computer-aided transcription, and constitute my record on this matter.

DATED THIS ____13th____ day of October, 2011.

COPY

Laura Peach, CCR
Official Court Reporter

Exhibit-X

EXHIBIT 2
LITIG. HISTORY REGISTER
1/16/10

FILED

FEB 16 2010

WHATCOM COUNTY CLERK

By: _____

IN SUPERIOR COURT OF WASHINGTON STATE

FOR WHATCOM COUNTY

WASHINGTON STATE, PLAINTIFF

CASE NO: 05-1-01094-3

vs.

MOTION, SETTING

EVIDENTIARY HEARING, *

MARLOW T. EGGUM, DEFENDANT.

(TRANSCRIPT ORDER)

JUDGE IRA UMBIG

UNDER CR 2.3(c)(e) AND WASH. STATE V. MARKS (114 Wn. 2d, 725)
THE DEFENDANT BRINGS FORTH THIS MOTION FOR AN EVIDENTIARY
HEARING, AS FOLLOWS:

SEARCHES & SEIZURES

" THE RETURN OF PROPERTY TO THE PERSON WHOM IT WAS ILLEGALLY-
SEIZED IS GOVERNED BY CR 2.3(e) AND RCW 10.79, 050, WHEREBY
THE COURT MUST HOLD AN EVIDENTIARY HEARING IF BOTH THE
STATE AND THE PERSON CAN OFFER EVIDENCE OF THEIR CLAIMED
RIGHT OF POSSESSION."

" AT THE HEARING, THE STATE HAS THE INITIAL BURDEN OF PROOF TO SHOW ITS RIGHT OF POSSESSION; IF THE STATE MEETS THE INITIAL BURDEN, THE PERSON HAS THE BURDEN OF COMING FORWARD WITH SUFFICIENT FACTS TO CONVINCE THE COURT OF THE PERSON'S RIGHT OF POSSESSION." END QUOTE FROM MARKS, COA RULING.

" A MOTION FOR RETURN OF PROPERTY MAY BE MADE AT ANY TIME, BUT A MOTION MADE AFTER AN INFORMATION IS FILED IS TREATED AS A MOTION TO SUPPRESS." [STATE VS. CARD, 48 Wn. App. 781, 786, 741 P.2d 65 (1987)]. END QUOTE, COA RULING,

" A MOTION UNDER THIS RULE IS IN THE NATURE OF A REPLEVIN ACTION AND GOVERNS THE DISPOSITION OF BOTH LAWFULLY & UNLAWFULLY SEIZED PROPERTY AFTER THE PROPERTY IS NO LONGER NEEDED FOR EVIDENCE." [STATE VS. PELKEY, 58 Wn. App. 610, 794, P.2d 1286 (1990)]. END QUOTE, COA RULING.

A PARTY FROM WHOM PROPERTY IS SEIZED RETAINS A PROTECTABLE INTEREST IN THE PROPERTY AND, ALTHOUGH A LAWFUL SEIZURE MAY AFFECT THE TIMING OF THE RETURN, IT DOES NOT AFFECT THE OWNER'S RIGHT TO ITS EVENTUAL RETURN. [STATE VS. CARD, 48 Wn. App. 788-89 P.2d (1987)]. END QUOTE, COA RULING,

" A COURT MAY REFUSE TO RETURN SEIZED PROPERTY NO LONGER NEEDED FOR EVIDENCE ONLY IF (1) THE DEFENDANT IS NOT THE RIGHTFUL OWNER; (2) THE PROPERTY IS CONTRABAND; OR (3) THE PROPERTY IS SUBJECT TO FORFEITURE PURSUANT TO STATUTE." [STATE VS. ALAWAY, 64 Wn. 796, 798, 828, P.2d 591 (1992)].

UNDER CR 2.3(C) STATES,

" A SEARCH WARRANT MAY BE ISSUED IF THE COURT DETERMINES PROBABLE CAUSE EXISTS, THERE MUST BE AN AFFIDAVIT, A DOCUMENT AS PROVIDED IN RCW 9A 72.085 OR ANY LAW AMENDATORY THERETO, OR SWORN TESTIMONY ESTABLISHING GROUNDS FOR ISSUING THE WARRANT, THE SWORN TESTIMONY (PROB. CAUSE) MAY BE ELECTRONICALLY RECORDED STATEMENT, THE RECORDING SHALL BE PART OF THE COURT RECORD & SHALL BE TRANSCRIBED IF REQUESTED BY A PARTY IF THERE IS A CHALLENGE TO THE VALIDITY OF THE WARRANT." END
QUOTE OF LAW.

IN THIS PARTICULAR CASE, THE DEFENDANT HAS CHALLENGED THE LEGALITY & VALIDITY OF BOTH THE SEARCH WARRANT AND THE PROBABLE CAUSE GIVEN, AND UNDER CR 2.3(C) - JUST CITED - THE DEFENDANT HAS REQUESTED THE TRANSCRIPT OF THE TESTIMONY GIVEN ON NOVEMBER 9TH 2004. THE DEFENDANT HAS MADE OVER 6 WRITTEN REQUESTS (MARSHA SCEVERS) OVER A 6 MONTH PERIOD, AND THE COURT HAS YET TO RESPOND IN WRITINGS, OR PROVIDE THE ORAL TESTIMONY TRANSCRIPT.

CR 2.3(C) STATES THE SUPERIOR COURT SHALL TRANSCRIBE THE ORAL TESTIMONY (IF REQUESTED, & CHALLENGED), AND THE WORD "SHALL" PROVIDES FOR NO DEGREE OF LEEWAY.

THE DEFENDANT HAS NOTICED THAT IN DEPUTY RICHEY'S AFFIDAVIT FOR BENCH WARRANT (SAME DATE, 11-9-04) THAT DEPUTY RICHEY PERJURED HIMSELF THROUGHOUT THE DOCUMENT IN ORDER TO OBTAIN AN OTHERWISE UNOBTAINABLE SEARCH & SEIZURE WARRANT, THAT UNLAWFUL WARRANT WAS SIGNED BY JUDGE IRA UHRIG, AND THE DEFENDANT BELIEVES THE JUDGE IS ACTING IN COLLUSION WITH RICHEY & ATTORNEY LISA FASANO-CHAMBERS TO COVER-UP THEIR ILLEGAL ACTIVITY, AS JUDGE UHRIG HAS INSTRUCTED JUDICIAL ASSISTANT MARSHA SCEVERS TO NOT PROVIDE THE TRANSCRIPT IMPLICATING HIMSELF IN THE ILLEGAL SEIZURE HE AUTHORIZED.

ON APRIL 15th 2004 THE PROSECUTOR (RICHEY & CHAMBERS) HAD THE DEFENDANT ARRESTED AT THE REQUEST OF DIVORCE ATTORNEY MRS. LISA FASANO-LEVITT, A NEWLYWED WOMAN, BEING MARRIED LESS THAN ELEVEN MONTHS, AND THEN SEVEN MONTHS LATER THOSE SAME PARTIES APPROACHED JUDGE IRA UHRIG REQUESTING AN ILLEGAL SEARCH & SEIZURE WARRANT (11-9-04).

NEWLYWED LISA LEVITT & DEPUTY CHAMBERS HAVE ADMITTED TO THE WASH. STATE BAR ASSOCIATION THAT CHAMBERS STARTED ACCEPTING SEX FROM LISA FASANO-LEVITT IN THE WEEKS JUST PRIOR TO HER GETTING HIM TO ARREST THE DEFENDANT ON APRIL 15th 2004.

THIS AMOUNTS TO SEXUAL-BRIBERY, A CRIME, IF IT CAN BE ESTABLISHED DURING AN EVIDENTIARY HEARING THAT MRS. LISA LEVITT (FASANO), DEPUTY CRAIG CHAMBERS, AND DEPUTY ERIC RICHEY PERJURED THEMSELVES BEFORE THE COURT (UHRIG) IN ORDER TO OBTAIN SAID ILLEGAL SEARCH WARRANT,

THE PURPOSE OF THIS EVIDENTIARY HEARING ISN'T THE RETURN OF PROPERTY, BUT RATHER TO DO TWO THINGS, (1) ORDER A TRANSCRIPT PREPARED OF THE SEARCH WARRANT HEARING OF NOV 9th 2004, AND (2) SET AN EVIDENTIARY HEARING DATE, AS REQUIRED BY MARKS UNDER CR 2.3, THEREBY ESTABLISHING THE FACTS SURROUNDING THE ILLEGAL SEIZURE.

HEREIN SUBMITTED TO THE COURT ON FEBRUARY 5th 2010,

