

FROM:

Alaska Court System
Nesbett Courthouse
825 W 4th Ave
Anchorage, AK 99501

CASE NO: 3AN-25-04852CICASE
NAME: Jeremy Cubas vs Nathaniel Herz et alCLERK: LT 1-2DATE: April 22, 2025**TO:**

JEREMY CUBAS

[REDACTED]
WASILLA, AK 99654 The following documents are being returned to you.**ACTION NEEDED TO CORRECT FILING****Re: Reply and Addendum Filed on 4-21-25**

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FILE COPY

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FILED in the TRIAL COURTS
State of Alaska Third District

APR 21 2025

Clerk of the Trial Courts
By _____ Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JEREMY CUBAS,

Plaintiff,

Case No.: 3AN-25-04852 CI

v.

NATHANIEL HERZ, CURTIS GILBERT,
AMERICAN PUBLIC MEDIA,
ANCHORAGE DAILY NEWS LCC, and
ALASKA PUBLIC MEDIA,

Defendants.

^u **PLAINTIFF REPLY TO**
DEFENDANT HERZ REPLY TO
CUBAS OPPOSITION TO RULE
12(B)(5) MOTION TO DISMISS

Plaintiff opposes Defendant's Motion to Dismiss under Alaska Civil Rule 12(b)(5), arguing that the motion is a bad faith attempt to evade accountability through procedural manipulation. The record demonstrates that Plaintiff diligently attempted service at Defendant's known residence, where a current tenant confirmed an ongoing lease agreement with Defendant. Defendant's actual notice of the lawsuit—reinforced by his public comments—defeats any claim of surprise or prejudice. Alaska and federal courts consistently reject dismissal where notice has been achieved and defendants engage in deliberate evasion.

Plaintiff also acknowledges and corrects prior citation errors, substituting unverified references with verifiable case law that underscores the central legal principle: Rule 12(b)(5) is not a shield for obstructionists. Dismissal is not warranted where the purpose of service—notice—is fulfilled and no prejudice results. Finally, Defendant's response is riddled with ad hominem attacks unsupported by fact or law, which further undermines the credibility of the motion. Plaintiff respectfully urges the Court to deny the motion and allow the case to proceed on its merits.

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I. Defendant's Gamesmanship Cannot Circumvent Service Requirements

The most accurate statement in Defendant's reply is that this is a simple matter. Alaska Civil Rule 12(b)(5), which permits dismissal for insufficient service of process, is a rule grounded in due process—not a license for tactical evasion. It exists to protect parties who are genuinely unaware of a pending lawsuit, not to reward those who, with actual knowledge of the suit, deliberately avoid service and then cynically invoke procedural technicalities.

This Court should reject Defendant Herz's motion under Rule 12(b)(5) because the failure of service was not due to any deficiency in Plaintiff's diligence, but rather Defendant's willful and calculated avoidance. As the Alaska Supreme Court emphasized in *Copeland v. Ballard*, 210 P.3d 1197, 1200 (Alaska 2009), the central purpose of service is to provide **notice**. When a defendant has actual notice of a lawsuit and the plaintiff has made diligent efforts to serve, courts will not exalt form over substance.

Federal courts have long held that a defendant cannot defeat service by refusing to accept it or by avoiding the process server. *Ali v. Mid-Atlantic Settlement Servs., Inc.*, 233 F.R.D. 32, 35 (D.D.C. 2006); see also *Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 945 (10th Cir. 1987) ("A defendant may not defeat service by evading a process server and then complaining that service was improper."). Likewise, in *Securities and Exchange Comm'n v. McCaskey*, 56 F. Supp. 2d 323, 326 (S.D.N.Y. 1999), the court rejected a Rule 12(b)(5) motion where evasion was evident, stating that service rules must not be weaponized by those seeking to frustrate justice.

In this case, Plaintiff's process server attempted service at Defendant Herz's last known residence, 2709 W. 31st Ave., and was informed by a tenant named McKenna that they had been leasing the property from Defendant for over a year. This admission is not merely circumstantial; it is affirmative evidence of Defendant's actual control over the premises and supports a finding that Defendant was avoiding service—not unaware of it. Further, Defendant was publicly contacted by a reporter regarding the lawsuit and acknowledged the case existed, allegedly claiming he was "on vacation." Such conduct belies any claim of ignorance.

Courts consistently reject Rule 12(b)(5) arguments where the defendant had actual notice and there is no prejudice. In *Jones v. Flowers*, 547 U.S. 220, 226 (2006), the Supreme Court underscored that due process is satisfied when notice is “reasonably calculated, under all the circumstances,” to apprise interested parties. When notice is achieved and the defendant thwarts service, the rationale for dismissal vanishes.

Defendant Herz’s conduct—leasing out his own residence while remaining unreachable, responding to press inquiries, and then claiming insufficient service—falls squarely within what courts recognize as **bad faith gamesmanship**. If courts were to reward this kind of behavior, they would encourage a procedural shell game that obstructs justice and mocks the intent of the Civil Rules.

Accordingly, Plaintiff respectfully requests that this Court deny Defendant’s Motion to Dismiss under Rule 12(b)(5), and find that Defendant’s evasion precludes dismissal. The law protects defendants from surprise, not from consequences. The rules are designed to ensure fairness—not to be manipulated by those who would abuse them.

II. Rule 12(b)(5) Is Not a Shield for Evasion: Defendant’s Misuse of Procedure and Bad Faith Conduct Demand Rejection

Defendant’s argument that “awareness of the Cubas Lawsuit (is) Irrelevant Here” is not only legally incorrect—it is a transparent attempt to distort the very purpose of Alaska Civil Rule 12(b)(5). This assertion contradicts the foundational principle that procedural rules are designed to ensure fairness and notice—not to enable manipulation or obstruction by those seeking to avoid service.

Alaska Civil Rule 12(b)(5) exists to protect defendants who, through no fault of their own, are genuinely unaware of pending litigation—not those who knowingly dodge process and then attempt to weaponize their own misconduct to seek dismissal. As the Alaska Supreme Court made clear in *Copeland v. Ballard*, 210 P.3d 1197, 1200 (Alaska 2009), “the purpose of service

rules is to provide notice.” Once actual notice is established, “technical objections should not defeat a party’s opportunity to be heard.”

Here, Defendant Herz had actual notice of the lawsuit. According to the record, he was contacted by a member of the press after the lawsuit was filed and replied that he was “on vacation.” That statement alone—coupled with his ongoing unavailability to the process server—undermines any assertion that he was unaware of these proceedings. A defendant cannot simultaneously acknowledge a suit publicly and then claim procedural shelter under Rule 12(b)(5) to avoid accountability.

The Ninth Circuit, whose interpretations of federal procedure are frequently persuasive in Alaska courts, has rejected this exact type of gamesmanship. In *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988), the court explained that when evaluating service under Rule 12(b)(5), courts may consider whether the defendant had actual notice and whether any prejudice occurred. The court emphasized that Rule 4 is “a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint.”

Similarly, the Tenth Circuit has unequivocally rejected the notion that a defendant can exploit service rules after evading process. In *Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 945 (10th Cir. 1987), the court held that “[a] defendant may not defeat service by evading the process server and then complaining that service was insufficient.”

The U.S. Supreme Court’s guidance on notice supports this principle. In *Jones v. Flowers*, 547 U.S. 220, 229 (2006), the Court affirmed that due process “requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.”

Defendant Herz’s conduct—active evasion despite clear knowledge of the lawsuit—renders his objections meritless under both Alaska and federal law.

In this case, Plaintiff’s process server attempted service at Defendant’s last known address and was informed by a tenant—who had been leasing the property from Defendant Herz for a year—that Herz was the owner. Herz did not deny this fact. That he continued to avoid personal service, while simultaneously acknowledging the lawsuit publicly, reveals a calculated effort to delay, obstruct, and manipulate the judicial process.

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Plaintiff Reply to Defendant Herz Reply to Cubas Opposition to R. 12(b)(5) Motion to Dismiss

This Court need not indulge Defendant's cynical arguments. Rule 12(b)(5) was not designed to protect those who evade service. It was designed to protect those without notice. Defendant's conduct reflects a broader pattern of procedural evasion that has no place in Alaska courts.

Accordingly, this Court should deny Defendant's Motion to Dismiss under Rule 12(b)(5). Procedural rules do not exist to reward obstructionists. They exist to promote fairness, ensure notice, and uphold the integrity of the judicial process. Defendant's invocation of Rule 12(b)(5) is not only meritless—it is emblematic of continued bad faith.

III. Correcting the Record: Substituting Verified Case Law Without Abandoning the Argument

Defendant criticizes Plaintiff for relying on what he terms "hallucinated AI" case law in a prior filing. Plaintiff concedes that this is a fair critique, to the extent that some of the previously cited authorities could not be independently verified through reliable legal research databases. Plaintiff appreciates this clarification and acknowledges that, at the time, he was unaware of the phenomenon whereby google may produce citations that appear legitimate in format but do not correspond to actual judicial decisions.

Having now been made aware of this issue, Plaintiff affirms his commitment to cross-verifying all cited authorities through reputable sources, including court databases, Justia, Casetext, and other trusted legal repositories. Going forward, every citation will be confirmed by multiple sources to ensure accuracy and reliability.

However, Plaintiff respectfully submits that the inclusion of unverifiable case law in earlier filings does not invalidate the legal reasoning presented. The core argument remains legally sound and logically defensible, though Plaintiff concedes that its persuasive strength was diminished by the absence of properly substantiated citations.

Plaintiff now takes this opportunity to correct the record by substituting previously unverified citations with accurate and verifiable case law, as outlined in the sections that follow. In doing so,

Plaintiff strengthens—not abandons—the foundational argument that service rules are designed to ensure fair notice, not to reward calculated evasion.

A. Rule 12(b)(5) Does Not Require Dismissal Where There Is No Prejudice and the Defendant Has Notice

Courts disfavor dismissing claims based solely on technical or curable defects in service where the defendant has actual notice of the action and suffers no prejudice. Alaska Civil Rule 4(i) expressly permits courts to allow re-service or corrective measures where service is defective but potentially curable. The rule exists to protect the integrity of the judicial process—not to provide a loophole for defendants seeking to avoid defending claims on their merits.

In *Copeland v. Ballard*, 210 P.3d 1197, 1200 (Alaska 2009), the Alaska Supreme Court reiterated that the purpose of service rules is to provide notice, and that courts should not elevate form over substance when that purpose is satisfied. When a party has actual notice and no prejudice results from a procedural deficiency, dismissal under Rule 12(b)(5) is disfavored.

Similarly, the Ninth Circuit emphasized in *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988), that service rules should be “liberally construed” so long as the defendant receives sufficient notice and is not prejudiced. The court observed that Rule 4 is “a flexible rule that should be liberally construed” in cases of actual notice and minimal harm.

Further, in *Nikwei v. Ross School of Aviation, Inc.*, 822 F.2d 939, 945 (10th Cir. 1987), the Tenth Circuit held that a defendant may not defeat service by evading the process server and then complaining that service was insufficient. That principle squarely applies here, where Defendant Herz had actual knowledge of this lawsuit—as evidenced by his response to press inquiries—yet seeks to capitalize on procedural technicalities he himself contributed to through avoidance.

Because Defendant Herz cannot demonstrate any prejudice arising from the alleged service defect, and because he has long had actual notice of the action, this Court should reject his motion. Rather than allowing technicalities to override substantive justice, the Court should

permit Plaintiff to cure any perceived defect under Alaska Civil Rule 4(i), in keeping with the law's preference for resolving cases on their merits.

IV. Baseless Rhetoric Cannot Substitute for Legal Argument or Evidence

Lastly, Defendant asserts that Plaintiff's remarks "are belied by the facts, and establish only that, as in his Complaint, Cubas is quick to speculate and inclined to make wild, conclusory, and false accusations." This inflammatory language is not only unprofessional and inappropriate for a court filing—it is categorically false and unsupported by the record.

To the contrary, Plaintiff exercised deliberate caution and significant restraint, waiting over a year and a half before filing the underlying Complaint. The timeline of this action demonstrates careful reflection, legal research, and a conscientious effort to substantiate claims—not rash or speculative conduct.

Defendant offers no evidence for these character attacks. There is no citation to the record, no legal authority, and no factual basis for the broad accusations of speculation or falsehood. Instead, Defendant's remarks amount to **unsupported conjecture and improper ad hominem argumentation**, which has no place in a Rule 12(b) motion or any pleading before the Court.

As courts have consistently held, arguments grounded in rhetoric rather than legal authority or factual evidence are not persuasive and will not support dismissal. See, e.g., *State v. Carpenter*, 171 P.3d 41, 47 (Alaska 2007) (noting that legal conclusions must be supported by specific factual allegations).

This Court should disregard Defendant's baseless personal attacks and focus on the well-pleaded factual allegations and legal questions properly before it.

V. Conclusion

Defendant's Motion to Dismiss under Alaska Civil Rule 12(b)(5) should be denied. The record demonstrates that Plaintiff undertook diligent and timely efforts to serve Defendant, who—despite actual notice—engaged in deliberate and sustained avoidance. The case law is clear:

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Plaintiff Reply to Defendant Herz Reply to Cubas Opposition to R. 12(b)(5) Motion to Dismiss

procedural rules are not to be wielded as weapons by those seeking to evade accountability, but rather exist to ensure due process through meaningful notice.

The governing standards, articulated by the Alaska Supreme Court and persuasive federal authority, confirm that actual notice and lack of prejudice preclude dismissal based on technical or curable defects. Courts have consistently rejected efforts by defendants to evade service and then invoke the very procedural protections designed to shield the unaware, not the evasive.

Moreover, Defendant's arguments rest not on evidence or legal authority, but on inflammatory rhetoric and personal attacks that do nothing to advance a meritorious defense. This Court should give such arguments no weight. Plaintiff has acknowledged and corrected any prior citation errors and now reinforces his claims with verified, controlling, and persuasive case law.

To reward Defendant's gamesmanship would be to incentivize obstruction and frustrate the orderly administration of justice. Plaintiff respectfully requests that this Court deny Defendant's Motion to Dismiss, find that service was reasonably attempted and sufficient under the circumstances, and allow this matter to proceed on its merits.

Dated this 21st day of April, 2025

Jeremy Cubas

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

Jeremy Cubas)

-vs-)

Nathaniel Herz; Curtis Gilbert; Alaska Public Media;
American Public Media; The Binkley Company;
Anchorage Daily News)

RETURN UNSERVED

Case No: 3AN-25-04852 CI

267424

Alaska Court Services
821 N Street #104
Anchorage, AK 99501
907-258-3211

The undersigned, first being duly sworn upon oath, deposes and says, I am returning the following documents.

Summons & Notice to Both Parties of Judicial Assignment; Complaint; Case Description

unserved on the therein named Nathaniel Herz
for the following reason:

Attempted service at [REDACTED] spoke to McKenna and they have been leasing property from defendant for one year. No other information provided.

SUBSCRIBED AND SWORN to me on April 9, 2025

Client: Jeremy Cubas

[REDACTED]
Wasilla, AK. 99654

Attention:

File No:

Service Fee: \$45.00 Per Rule 11 (a1ii)

Mileage: \$20.00 Per Rule 11 (7)

Endeavor: \$3.00 Credit Card Fee

Endeavor:

Endeavor:

Endeavor:

Total: \$68.00

Process Server / Steve Arturo

Notary Public in and for the State of Alaska
My commission Expires: 6-5-2025



CERTIFICATE OF SERVICE

I certify that on this 21st day of April, 2025, at 1:18am a true and correct copy of the following documents:

1. **Plaintiff Reply to Defendant Herz Reply to Cubas Opposition to R. 12(b)(5) Motion to Dismiss** (8 pages), and
2. **Process Server Documentation** (1 page), and
3. **Certificat of Service** (1 page)

were served via electronic mail on the following counsel of record:

- **Jeffrey Robinson**
Counsel for Curtis Gilbert and American Public Media Group
Email: robinsonjw@ballardspahr.com
- **Leita Walker** (Pro Hac Vice)
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- **John McKay**
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I believe the transmission was complete and without error.

DATED this 21 day of April, 2025.

Respectfully submitted,

Jeremy Cubas
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APR 21 2025

Clerk of the Trial Courts
By _____ Deputy

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JEREMY CUBAS,

Plaintiff,

Case No.: 3AN-25-04852 CI

v.

NATHANIEL HERZ, CURTIS GILBERT,
AMERICAN PUBLIC MEDIA,
ANCHORAGE DAILY NEWS LCC, and
ALASKA PUBLIC MEDIA,

Defendants.

**ADDENDUM REGARDING
DEFENDANTS' MISCONDUCT,
POST HOC DEFENSES, AND
RACIALLY CHARGED AD
HOMINEM ATTACKS**

Plaintiff Jeremy Cubas respectfully submits this addendum to preserve for the record several disturbing patterns that have become manifest in reviewing the multiple motions filed by the various defendants and their respective counsel. These patterns reflect not only factual and procedural irregularities, but also raise constitutional and civil rights concerns implicating racial bias and improper conduct before this Court.

**I. Defendants' Contradictory Justifications Are Post Hoc Fabrications
Indicative of Actual Malice**

Throughout their filings, defendants present **irreconcilable explanations** for the same defamatory statement: that Plaintiff allegedly "said it's fine for a man to force himself on his wife." Defendant Curtis Gilbert and American Public Media assert that this inflammatory

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assertion was a mere “paraphrase” of Plaintiff’s statement that “it is impossible to rape your wife.” In contrast, Defendants Nathaniel Herz, Alaska Public Media, and Anchorage Daily News LLC disavow the paraphrase justification entirely. Instead, they contend that the statement was a “logical inference” derived from various other remarks that were **never quoted in the article** and only allegedly discovered through **AI keyword searches** of transcribed podcast episodes.

These sharply diverging theories cannot simultaneously be true. This is not a minor factual discrepancy — it is a **material conflict** at the heart of the defendants’ defense, and it directly undermines the credibility of both groups’ asserted editorial intent. Courts have long held that post-publication justifications and reconstructed rationales offered during litigation do not negate actual malice — they often support it.

In *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968), the U.S. Supreme Court made clear that **actual malice is shown when a defendant publishes a defamatory statement with serious doubts as to its truth**, or with knowledge that it was likely false. The fundamental inconsistency between the defendants’ accounts here strongly suggests that neither defense was the real, contemporaneous basis for publication. Instead, they appear to be **post hoc legal inventions** designed to obscure a reckless editorial process.

In *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989), the Court affirmed that a **purposeful avoidance of the truth — or a calculated decision not to verify questionable claims** — can amount to actual malice. Here, rather than verifying Plaintiff’s statements by actually listening to the full podcast conversations, the defendants admit to using **AI transcription tools and keyword searches**. This is not journalism. This is digital quote mining — and it demonstrates a **deliberate failure to verify** the context and meaning of Plaintiff’s speech.

Moreover, in *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991), the Supreme Court emphasized that **even subtle alterations or fabrications of a person’s words can support a defamation claim if they materially change the meaning conveyed**. The defendants’ claim that the statement is a “paraphrase” conflicts with their co-defendants’ claim that it is an “inference.” That contradiction is fatal. It means either:

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- The quote was **fabricated entirely**, or
- The quote was misrepresented through **intentional or reckless interpretation**.

In either case, the inconsistency supports a finding of actual malice, particularly where **no clear editorial process** is shown and the publication is based on AI-flagged keywords rather than real-time, human review.

This Court should view these **conflicting defenses not as innocent variations in recollection**, but as **evidence of knowing falsity or deliberate indifference** to the truth. The *St. Amant* standard is satisfied where, as here, the publisher lacks a consistent, contemporaneous explanation for a defamatory statement and offers conflicting rationalizations only after litigation begins.

Such contradictions are not only probative of actual malice — they also justify **denial of any motion to dismiss**, as further factual development is warranted into the editorial processes, communications, and timeline of the publication. Courts have repeatedly held that **factual disputes about state of mind, motive, and editorial intent are not appropriately resolved at the pleading stage**. See *Erickson v. Alaska Pulp Corp.*, 960 P.2d 1, 10 (Alaska 1998) (“Summary judgment is not appropriate where intent or motive is a genuine issue of material fact”).

In sum, the defendants’ mutually exclusive defenses are not legitimate justifications. They are **legal gymnastics designed to retroactively justify a damaging and defamatory statement** without ever acknowledging what was actually said, or the context in which it was spoken. This shifting narrative strategy is not protected by the First Amendment — it is evidence of **reckless disregard for the truth**, and it belongs squarely within the framework of a jury’s determination.

II. Defendants’ Misrepresentation of Plaintiff’s Exoteric Communication Style and Background Demonstrates Reckless Disregard for the Truth

The defendants continue to rely on AI-mined, out-of-context quotations from Plaintiff’s podcast in an attempt to portray him as an uneducated, bigoted, and morally depraved individual. This

tactic is not just misleading — it is a gross distortion of Plaintiff’s speech, personality, and professional identity. The result is not journalism or fair comment — it is **defamation by calculated decontextualization**, built on a foundation of cultural ignorance and intellectual bad faith.

Plaintiff holds an advanced **Master of Philosophy (MPhil)** degree from KU Leuven in Belgium, a research credential signifying the highest level of academic training in the European system. As part of his formation in academic communication, Plaintiff was trained to differentiate between **esoteric** and **exoteric** modes of discourse. The **esoteric personality** is reserved for scholarly writing: dense, abstract, and technical. The **exoteric personality**, by contrast, is used when communicating complex ideas to a general audience — through humor, simplification, and even deliberately provocative analogies or counterfactuals.

The **Contra Gentiles podcast** was explicitly exoteric in nature: it was intended to make **Thomistic philosophy** and traditional metaphysics accessible to ordinary people — not elite academics, journalists, or upper-class media commentators. The podcast speaks in **the language of ordinary Americans**, particularly those raised in poor and working-class neighborhoods — the very environment in which Plaintiff was raised as the child of undocumented immigrants. The **crass language**, dark humor, and street idioms are not indicators of ignorance or immorality; they are part of the **cultural register of the communities the podcast was meant to serve**.

The defendants, unfamiliar with both academic training and working-class minority culture, instead ripped these remarks from their setting, stripped them of nuance, and now present them as standalone evidence of moral depravity. This is **reckless and defamatory**.

In *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991), the Supreme Court held that materially altering a speaker’s words to convey a meaning the speaker did not intend can support a finding of actual malice. That principle applies with full force here. The defendants did not merely misquote — they *extracted, amplified, and recontextualized* for maximum reputational harm.

In *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), the Court found that a publisher who ignores obvious ways to verify the truth — including listening to full audio recordings — acts with reckless disregard. Here, defendants admit they used **AI keyword search software** to mine phrases from over 100 podcast episodes, without reviewing full conversations. This is *not* investigative rigor. This is **algorithmic defamation**, and it betrays not only a disregard for the truth, but also a contempt for context, culture, and intellectual honesty.

The defendants' attempt to cast Plaintiff — an academic trained in precision and nuance — as a crude bigot based on street-level exoteric communication is **intellectually dishonest and racially loaded**. Their failure to recognize or represent the **exoteric mode of delivery**, so common among teachers of the humanities, is **either intentional malice or cultural incompetence** — neither of which absolves them of liability.

The Court should regard every quote introduced by the defendants with the presumption that it has been extracted without context, that its tone reflects an **intentional exoteric register**, and that its language may reflect the **linguistic patterns of working-class minority neighborhoods**, not elite or sanitized public discourse. These distinctions are **vital to understanding intent, meaning, and truthfulness** — and the defendants have either ignored them or exploited them in bad faith.

III. Defendants' Reliance on Algorithmic Quote Mining Demonstrates Actual Malice and a Willful Misunderstanding of Academic Exotericism

The defendants openly admit — in their own reporting — that they did not meaningfully engage with the content of Plaintiff's podcast. Instead, they relied on automated tools to extract decontextualized fragments from over 100 episodes, boasting:

"APM Reports and Alaska Public Media used transcription software to analyze more than 100 episodes of the show and search for keywords."

This is not journalism. This is not editorial discernment. This is **algorithmic quote-farming** — a grotesque shortcut that reduces years of intellectual labor into searchable fodder for defamation.

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It is a practice that divorces words from meaning, intent, and context, and then **dresses that mutilation up as legal defense.**

What the defendants fundamentally fail to grasp — or worse, intentionally obscure — is the **academic context** in which Plaintiff speaks. As discussed above, the plaintiff holds an **MPhil in philosophy** from KU Leuven, one of Europe’s most rigorous research universities. In formal academic training, scholars are taught to alternate between **esoteric and exoteric modes of communication:**

- The **esoteric personality** is reserved for internal academic discourse: technical, abstract, and inaccessible to the general public.
- The **exoteric personality** is employed to translate complex concepts for a broader audience — through analogies, humor, colloquialism, and in many cases, provocative or graphic counterfactuals.

The **Contra Gentiles podcast** was expressly exoteric. It was designed to discuss classical metaphysics and Thomistic ethics in language familiar to ordinary listeners, especially those from working-class and minority backgrounds — the very environment in which Plaintiff was raised. This necessarily includes street idioms, racial satire within community norms, and harsh critiques of modernity. It is **not polished ivory tower speech** — and it was never intended to be. To extract soundbites from such a project using AI keyword mining and then present those clips to the Court as if they were literal declarations of belief is not just dishonest. It is a **calculated act of cultural erasure and reputational violence.**

As previously stated, in *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989), the Court held that actual malice includes a **deliberate failure to pursue obvious avenues of verification.** Defendants admit they never listened to full episodes of the podcast. Had they done so, they would have recognized:

- The **recurring satirical reference to Sean Connery**, which they now claim was invented “post hoc”;

- The **context of discussions on historical religious attitudes toward rape**, which they strip down into shock-value fragments to smear Plaintiff as personally endorsing brutality;
- The **exoteric, pedagogical tone** which intentionally embraces informality and hyperbole — not as ignorance or crudeness, but as teaching method.

Instead, they ran an AI script, grabbed whatever phrases they could weaponize, and now present that output as if it were a product of thoughtful editorial analysis. Again, in *St. Amant v. Thompson*, 390 U.S. 727 (1968), the Court made clear: publishing defamatory material with “serious doubts as to [its] truth” constitutes actual malice. The defendants' use of automated search tools, without listening to the content or considering context, is the very definition of such reckless disregard.

The pattern continues:

- In *Eyre v. New Zealand Press Association Ltd* ([1968] NZLR 736), the court found defamation where technically accurate quotes were nonetheless stripped of qualifying context.
- In *Project Veritas v. CNN* (11th Cir. 2024), the court reinstated a defamation claim after a subtle change in “gist” misled readers about the speaker’s intent.
- In *Clarke v. Guardian News & Media Ltd.* (UK, 2025), the court condemned overreliance on **AI transcription tools**, holding that they **cannot capture tone, irony, satire, or nuance** — all of which are essential to podcasting and exoteric speech.

These cases show a consistent judicial warning: **context matters. Meaning matters. Intent matters.** And where a speaker is speaking in **an exoteric register, infused with philosophical strategy, cultural identity, and pedagogical tone**, only bad faith or outright prejudice would take that speech literally without review.

The defendants have not only ignored these standards — they have **reversed them**, turning a philosophical and comedic podcast into a character assassination machine. Their tactics — proudly disclosed and shamelessly deployed — have transformed this litigation into a **circus of misquotation, a theater of distortion, and a mockery of truth-seeking.**

This Court must not allow AI-generated fragments to stand in for human comprehension. It must not allow esoteric concepts, delivered exoterically, to be twisted into defamation by those either **too ignorant to understand the difference** or **too malicious to care**. And it must not permit the chilling precedent that **intellectual complexity or cultural expression can be mined, decontextualized, and weaponized without consequence.**

IV. Racially Charged Innuendos and Discriminatory Undertones

Disturbingly, the defendants' filings are laced with racially coded language and innuendo, which appear to be aimed at painting Plaintiff — a Latino-American with Black and undocumented family roots — in a threatening and disreputable light. The excessive repetition of the word “rape” in proximity to Plaintiff's name, coupled with repeated mischaracterizations of his statements, evokes the deeply entrenched and harmful stereotype of the Latino or Black male predator — a trope with a long, shameful history in American jurisprudence and media.

This type of racialized framing, even if unintentional, is constitutionally suspect. In *Powell v. Alabama*, 287 U.S. 45 (1932), the U.S. Supreme Court recognized that racially hostile and prejudicial atmospheres — such as those surrounding the infamous Scottsboro Boys rape case — could lead to a denial of due process. There, as here, racial bias infiltrated the legal process, contaminating the fairness of the proceedings and requiring reversal.

Defendants in the present matter also reference the race or ethnicity of unrelated individuals, such as the gratuitous mention of a state senator being “Jewish,” in a context that appears calculated to contrast that individual with Plaintiff's Latino/Black identity. These details serve no legitimate legal purpose and instead promote a narrative built on racial contrast, reinforcing difference and implying deviance. As the Court made clear in *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991), the invocation of race in legal proceedings — even in civil contexts —

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can violate the Equal Protection Clause by undermining the impartiality of the legal system and reinforcing systemic bias.

Moreover, these repeated mischaracterizations and inflammatory framings function to activate subconscious racial biases and appeal to dangerous cultural tropes. The U.S. Supreme Court has condemned such practices, especially in contexts where a party's race is linked to perceptions of dangerousness. In the case of *Buck v. Davis*, 580 U.S. 1003 (2017), the Court found that expert testimony suggesting a Black defendant was inherently more dangerous was “potent racial stereotype” that “appealed to a powerful racial narrative” — and thus violated the defendant's right to a fair trial under the Due Process Clause.

Similarly, courts have found that even subtle or subconscious racial bias — including the improper injection of race into proceedings — can form a basis for relief under both the Equal Protection and Due Process Clauses. These principles apply with equal force here. Defendants' actions not only defame Plaintiff but do so in a manner steeped in racial undertones, constituting an effort to weaponize prejudice against him in a legal forum.

Such tactics are inconsistent with the Constitution and the ethical duties of counsel. Courts are not and must never become venues for the propagation of racially coded character assassination disguised as legal argument. The Equal Protection Clause of the Fourteenth Amendment, as well as the Due Process guarantees of both the U.S. and Alaska Constitutions, demand that individuals be treated fairly and without regard to race, ethnicity, or immigration background. That standard has not been met in this case.

V. Defendant's Counsel John McKay's and Jeffrey Robinson Racially Patronizing Conduct Demonstrates Bias and Violates Professional Ethics and Constitutional Norms

On March 7, 2025, during a phone call with Plaintiff, Defendant's counsel John McKay spoke in a condescending and demeaning tone, attempting to “flex” his legal credentials in a manner plainly designed to suggest Plaintiff's inferiority. McKay's remarks, tone, and posture were not

only professionally inappropriate — they were racially patronizing. Despite Plaintiff’s academic background, including two master’s degrees in philosophy from KU Leuven in Belgium (with magna cum laude honors) and distinguished public service under the Governor of Alaska, McKay treated Plaintiff as if he were intellectually unworthy of participation in his own case.

That posture alone is offensive. But the misconduct did not stop there. In a subsequent filing, McKay implied that Plaintiff’s prior employment was not earned through merit, but was a product of cronyism — a baseless suggestion that closely tracks the **racist trope that Latinos and Blacks succeed only through favoritism or tokenism**. The implication is clear: McKay, a white man, sees Plaintiff — the Black and Latino son of undocumented immigrants — as unqualified, unworthy, and unintelligent.

This isn’t just morally reprehensible — it is legally relevant. The courts have long condemned racial bias and demeaning conduct that targets minorities in litigation. In **Harris v. Harvey**, 605 F.2d 330 (7th Cir. 1979), the court held a white judge liable under §1983 for a campaign of racially motivated defamation and public ridicule against a Black police officer. The court concluded that the judge’s speech and conduct, though outside of formal rulings, constituted unconstitutional racial harassment. McKay’s conduct here is strikingly similar — a campaign of diminishment and racial implication wielded not in search of justice, but in service of narrative control.

In **Price Waterhouse v. Hopkins**, 490 U.S. 228 (1989), the Supreme Court held that discriminatory perceptions — even subtle ones based on stereotypes — are unlawful when they taint professional evaluations. McKay’s behavior is a textbook example: he reduced Plaintiff to a caricature, implying that merit was not the primary reasons for his advancement.

Even the Supreme Court has condemned differences in how racial minorities are treated in courtrooms. In **Hamilton v. Alabama**, 376 U.S. 650 (1964), the Court underscored that differential treatment based on race — including how one is addressed or regarded in official proceedings — can violate the Equal Protection Clause. What McKay has demonstrated is not simply rudeness; it is an expression of a racial hierarchy that has no place in any courtroom.

This pattern of behavior — in speech, in filings, and in legal posture — is part of a **coordinated rhetorical strategy** to portray Plaintiff as intellectually deficient and professionally illegitimate. It is not rooted in fact. It is rooted in **bias**, and it is being used to distract from the actual legal claims in this case.

Further, in a March 2025 email exchange, Defendant’s counsel Jeffrey Robinson, while requesting a non-opposition to an extension, stated he would be “amenable to future reasonable courtesy extensions on your end.” While seemingly innocuous, this phrasing carries condescending undertones, implying that Plaintiff, a Latino-American with Black and undocumented family roots, is prone to delay or requires leniency — stereotypes historically associated with perceptions of laziness or lack of diligence among minorities.

Such language, whether intentional or not, perpetuates harmful racial stereotypes. The U.S. Supreme Court has recognized that even subtle forms of racial bias can undermine the fairness of judicial proceedings. In *Palmore v. Sidoti*, 466 U.S. 429 (1984), the Court held that private biases, even if outside the reach of the law, cannot be given effect by the courts, emphasizing that the law cannot tolerate racial prejudice in any form.

Furthermore, the Washington Supreme Court in *Henderson v. Thompson*, 200 Wn.2d 417 (2022), acknowledged that racial bias, whether explicit or implicit, has no place in the justice system and must be addressed to ensure substantial justice. The court emphasized that decisions influenced by racial bias must be reversed to maintain the integrity of the judicial process.

Plaintiff promptly responded to Robinson's email, stating, “I won’t need any extensions; I will just meet deadlines as given,” to counter any implication of laziness or incompetence. This exchange highlights the need for all parties to engage in communications free from language that could be construed as perpetuating racial stereotypes.

Given the broader context of this case, where Plaintiff has alleged racially charged conduct by the defendants, such language from defense counsel contributes to a pattern of behavior that undermines the principles of equality and fairness enshrined in the U.S. and Alaska Constitutions.

Request for Court Oversight and Warning

Plaintiff respectfully asks that the Court **take note of this conduct** and caution Defendant's counsel against further racially charged disparagement — whether in tone, filing, or insinuation. If these tactics persist, Plaintiff reserves the right to:

- Move for **sanctions** under Alaska R. Civ. P. 11 for abusive and prejudicial conduct;
- File a **motion in limine** to exclude inflammatory or racially charged language from future pleadings or oral arguments;
- Pursue **civil rights claims** under 42 U.S.C. §1983 for conduct that deprives Plaintiff of his right to a fair, unbiased judicial process.

This Court must remain a forum for justice — not a platform for racial condescension or elitist gatekeeping. The legal process is not the personal playground of privileged counsel to express disdain for litigants of color who dare to represent themselves with intelligence and conviction.

VI. CONCLUSION

Taken together, the defendants' actions — including their shifting post hoc defenses, manipulation of AI-generated quotes, disregard for contextual and cultural meaning, and repeated use of racially coded language — demonstrate not just negligence, but a sustained pattern of reckless and defamatory conduct that meets and exceeds the standard for actual malice. The U.S. Supreme Court has been clear: when a speaker publishes falsehoods with “serious doubts as to the truth of [the] publication,” or knowingly alters meaning to defame, liability follows. *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968); *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991); *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989).

But this case is not only about reckless disregard. It is about the deliberate weaponization of stereotypes — a tactic that courts have repeatedly and emphatically condemned. In *Buck v.*

Davis, 580 U.S. 1003 (2017), the Supreme Court struck down racially charged insinuations that invoked tropes of the “dangerous Black male” as incompatible with due process. In *Powell v. Alabama*, 287 U.S. 45 (1932), it recognized that racialized accusations — particularly of sexual violence — are so incendiary that they inherently prejudice fair adjudication. That precedent echoes here, where the defendants have repeatedly juxtaposed Plaintiff’s name with rape allegations in a way calculated to evoke the dangerous “Latino predator” stereotype — not as a matter of fact or fairness, but of rhetorical manipulation.

The Court in *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991) held that even in civil proceedings, racial bias cannot be tolerated, as it corrodes the impartiality of the judicial process. Likewise, *Palmore v. Sidoti*, 466 U.S. 429 (1984), emphasized that the judicial system cannot give effect to the private racial biases of litigants or their counsel. Yet here, the defense has not merely reflected private bias — it has used the court itself as a vehicle for that bias, injecting it into filings, communications, and strategy with the clear intent to paint Plaintiff as unfit, unintelligent, or undeserving by virtue of race, culture, and class.

This conduct, if left unchecked, risks transforming this litigation from a search for truth into a spectacle of prejudice. As the Seventh Circuit explained in *Harris v. Harvey*, 605 F.2d 330 (7th Cir. 1979), racial harassment by judicial officers or those acting under color of law — including attorneys — can give rise to liability under 42 U.S.C. §1983 when it constitutes a deliberate effort to deprive a citizen of fair and equal protection under law. Counsel in this case, particularly John McKay and Jeffrey Robinson, have crossed that line.

The cumulative result is a proceeding tainted by racialized mischaracterizations, culturally ignorant interpretations of speech, elitist disdain for the Plaintiff’s exoteric communication style, and blatant bad-faith distortions of academic and philosophical material. That is not protected speech. That is not fair comment. That is not zealous advocacy. It is **intentional misrepresentation, reckless stereotyping, and cultural erasure**, all wielded in a courtroom that should be neutral and just.

Plaintiff respectfully requests that the Court:

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- Treat each misquoted podcast remark with the presumption of contextual distortion;
- Recognize the conflicting post hoc justifications as probative of actual malice under *St. Amant* and *Harte-Hanks*;
- Take judicial notice of the racialized patterns in the defendants' filings;
- Issue appropriate warnings or sanctions to deter further misconduct;
- And deny any dispositive motions until discovery has fully explored the editorial processes, cultural motivations, and discriminatory conduct at issue.

The Equal Protection Clause of the Fourteenth Amendment and the guarantees of Due Process under both the U.S. and Alaska Constitutions are not aspirational. They are operative — and they must be enforced here.

This Court must remain a forum for justice, not a **playground for prejudice, a microphone for malice, or a stage for racial theater**. Plaintiff has come before this Court not as a caricature, not as a stereotype, and not as a passive victim of elite disdain — but as a scholar, a public servant, a Latino-American intellectual, and a wronged citizen. He is entitled to the full protections of the law. Nothing more — and nothing less. Plaintiff respectfully reserves the right to seek further remedies, including sanctions or civil rights claims, should these tactics persist.

CERTIFICATE OF SERVICE

I certify that on this 19 day of April, 2025, at 5:20am a true and correct copy of the following documents:

1. **Addendum Regarding Defendants' Misconduct, Post Hoc Defenses, and Racially Charged Ad Hominem Attacks** (14 pages), and

were served via electronic mail on the following counsel of record:

- **Jeffrey Robinson**
Counsel for Curtis Gilbert and American Public Media Group
Email: robinsonjw@ballardspahr.com
- **Leita Walker** (Pro Hac Vice)
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I believe the transmission was complete and without error.

DATED this 19 day of April, 2025.

Respectfully submitted,

Jeremy Cubas
Pro Se Plaintiff

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