NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

STATE OF ALASKA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE ALASKA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS
(Ordered chronologically)

1. Was it a violation of the U.S. Constitution, Amendments IV, V, and/or XIV, for the State of Alaska (SOA) to seize, deprive, use as evidence, and forfeit Haeg's property, used as his primary means to provide a livelihood, by utilizing affidavits containing known, prejudicial false statements and/or by tampering with evidence?

2. Was it a violation of the U.S. Constitution, Amendments IV, V, and/or XIV, for the SOA to seize, deprive, use as evidence, and forfeit Haeg's property, used as his primary means to provide a livelihood during a short business season, without a prompt postseizure hearing, notice of a prompt postseizure hearing, and/or notice of right to bond property seized?

3. Was it a violation of the U.S. Constitution, Amendments IV, V, VII, and/or XIV, for Haeg's property to be seized, deprived, used as evidence, and/or forfeited without notice in the charging information that the SOA would seek to forfeit property and/or without notice Haeg had an interest in property that was subject to forfeiture in accordance with the applicable statute?

4. Do Alaska Statutes *12.35.020, 12.35.025, 16.05.190, 16.05.195, 8.54.720(a)(15); Alaska Administrative Codes 5 AAC 92.140(a) and 5 AAC 84.270(14);* and/or the Alaska Rules of Criminal Procedure violate the U.S. Constitution, Amendments IV, V, VI, and/or XIV, because Haeg didn't receive a prompt postseizure hearing and/or notice of such a hearing and the statutes/codes/rules didn't require this and/or notice before forfeiture that Haeg's property may be forfeited?

5. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the SOA to break Haeg's plea agreement (PA)?

6. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, for the SOA to be allowed, without explanation or justification, to increase the severity of already filed charges?

7. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for properly received, accepted, and admitted material evidence to be removed from the official court record of Haeg's case?

8. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for Haeg's statement and other agreements, made for a failed PA, to be used against Haeg at a subsequent trial, sentencing, and appeal?

9. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the SOA, at Haeg's trial, to intentionally, intelligently, and knowingly give and/or accept false testimony about evidence locations material to their case against Haeg?

10. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, for the SOA to knowingly give and/or accept false testimony that they didn't know why Haeg had given up guiding before he was convicted or sentenced and/or for Haeg not to receive credit for the year guiding he gave for a PA?

11. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, for Haeg's first attorney (Cole) to fail to appear in response to a subpoena and/or for Haeg's second attorney (Robinson) to tell Haeg nothing could be done about the failure?

12. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, when Judge Murphy specifically used false testimony knowingly presented by the SOA as justification for Haeg's sentence; sentenced Haeg to punishment not allowed by law; and/or failed to inform Haeg of his right to appeal his sentence?

13. Was it a violation of the U.S. Constitution, Amendments V, VIII, and/or XIV, for Haeg to be or remain convicted of unlawful acts by a guide: hunting same day airborne because the Alaska Court of Appeals (COA) ruled activities conducted under the state sponsored Wolf Control Program (WCP) were governed by Title 16 and/or constituted "hunting" under Alaska law?

14. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, to not stay Haeg's appeal so he could conduct a post conviction relief (PCR) proceeding claiming ineffective assistance of counsel (IAOC) and/or to not order that Haeg's PCR be held in Kenai, Alaska?

15. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, when the COA ruled there wasn't enough evidence in the record of Haeg's case to establish IAOC?

16. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, for Haeg to be denied a return of property hearing until he risked his life for it; for Magistrate Woodmancy not to be recused from Haeg's case; and/or for Haeg to not be provided an opportunity to cross-examine adverse witnesses, to present evidence or witness testimony, and/or to argue orally during his return of property hearing?

17. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for Haeg not to be allowed to supplement the record used in deciding his appeal with official proceedings before the Alaska Bar Association (ABA) and/or the Alaska Commission on Judicial Conduct?

18. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the SOA to be given 12 months to file their appellee brief; for correction of Haeg's sentence to be delayed until it harmed Haeg; and/or to not stay Haeg's license suspension/revocation pending appeal?

19. Was it a violation of the U.S. Constitution, Amendments V and/or XIV, for the COA to fail to apply Waiste v. State 10 P.3d 1141 (Ak 2000) when deciding Haeg's appeal?

20. Was it a violation of the U.S. Constitution, Amendments V, VI, and/or XIV, for Haeg's 3 attorneys to intentionally deprive Haeg of constitutional rights?

21. Was it a violation of the U.S. Constitution, Amendments IV, V, VI, VIII, and/or XIV, for Haeg's prosecution, conviction, sentence, and/or appeal to be tainted by systemic corruption within Alaska's judicial system?

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JURISDICTION

On December 1, 2008 the ASC denied Haeg's Petition for Hearing, filed after the September 10, 2008 COA judgment and its September 26, 2008 denial of Rehearing. Under 28 U.S.C. § 1257(a) this Court now has jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution:

Amendment IV- "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation,"

Amendment V – "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;"

Amendment VI – "In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Amendment VIII – Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV - Section 1. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution of the State of Alaska:

Article 1, Section 1 – Inherent Rights – "This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Article 1, Section 7 - Due Process – "No person shall be deprived of life, liberty, or property, without due process of law."

Article 1, Section 9 - Jeopardy and Self-Incrimination – "No person shall be compelled in any criminal proceeding to be a witness against himself."

Article 1, Section 11 - Rights of Accused – "In all criminal prosecutions, the accused shall have the right to informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Article 1, Section 14 - Searches and Seizures – "The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation,"

ALASKA ADMINISTRATIVE CODES INVOLVED

5 AAC 84.270. Furbearer trapping - Trapping seasons and bag limits for furbearers are as follows…

5 AAC 92.039(h) In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title. (AS 16 includes all hunting).

5 AAC 92.110(m) A wolf population reduction or wolf population regulation program established under this section is independent of, and does not apply to, hunting and trapping authorized in 5 AAC 84 - 5 AAC 85.

5 AAC 92.140. Unlawful possession or transportation of game (a) No person may possess, transport, give, receive, or barter game or parts of game that the person knows or should know were taken in violation of AS 16 or a regulation adopted under AS 16. (b) Repealed 8/12/90. (c) Repealed 8/12/90. (d) Notwithstanding (a) of this section, it is an affirmative defense to the crime of unlawful possession or transportation of game, if the person who possesses and transports game or parts of game taken in violation of AS 16 or a regulation adopted under AS 16 is doing so for the sole purpose of salvaging that game or parts of game as required by 5 AAC 92.220, immediately salvages that game or parts of game from the field and immediately surrenders that game or parts of game to a representative of the state located at the nearest office of the Department of Fish and Game (ADF&G) or Department of Public Safety (DPS).

UNITED STATES CODES INVOLVED

28 U.S.C. § 1257(a) State courts; certiorari (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATUTES INVOLVED

AS 8.54.720(a)(15) person licensed under this chapter to knowingly violate a state statute or regulation prohibiting waste of a wild food animal or hunting on the same day airborne; (d) In addition to a disciplinary sanction imposed under AS 08.54.710, a person who commits an offense set out in (a)(15) of this section is guilty, (1) for a first offense, of a misdemeanor and is punishable by a fine of not more than $30,000 or by imprisonment up to one year, or both; (2) for a second or subsequent offense, of a class C felony. (f) In addition to the penalties set out in (b) - (e) of this section and a disciplinary sanction imposed under AS 08.54.710, (3) the court shall order the department to suspend the guide license or transporter license for a specified period of not less than three years, or to permanently revoke the guide license or transporter license, of a person who commits an offense set out in (a)(15) or (16) of this section.

AS 12.35.020. Grounds For Issuance. A search warrant may be issued if the judicial officer reasonably believes any of the following: (1) that the property was stolen or embezzled; (2) that the property was used as a means of committing a crime; (3) that the property is in the possession of a person who intends to use it as the means of committing a crime, or in possession of another to whom the person may have delivered it for the purpose of concealing it or preventing its being discovered; (4) that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime; (5) that either reasonable legislative or administrative standards for conducting a routine or area inspection with regard to air pollution are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

AS 12.35.025. Seizure of Property. (a) Property described in AS 12.35.020 may be taken on a warrant from (1) a house or other place in which it is concealed or may be found; (2) the possession of the person by whom it was stolen, embezzled, or used in the commission of a crime; (3) a person who is in possession of the property; (4) the possession of a person to whom the property has been delivered for the purpose of concealing it or preventing its being discovered, or from a house or other place occupied by that person or under that person's control. (b) When property is seized under this chapter, the peace officer taking the property shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavit, and a receipt for the property taken, or shall leave the copies and the receipt at the place from which the property was taken.

(c) The return of the warrant to the court shall be made promptly and shall be accompanied by a written inventory of the property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one other person as a witness. (d) The inventory required by (c) of this section shall be signed by the peace officer under penalty of perjury under AS 09.63.020 . The judge or magistrate shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

AS 16.05.190. Seizure and Disposition of Equipment. Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter or a regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter or a regulation of the department shall be seized by any peace officer designated in AS 16.05.150. Upon conviction of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in violation of this chapter or a regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. If sold, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter or a regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any.

AS 16.05.195. Forfeiture of Equipment. (a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, and all fish and game or parts of fish and game or nests or eggs of birds taken, transported, or possessed contrary to the provisions of this title or AS 08.54, or regulation adopted under this title or AS 08.54, may be forfeited to the state (1) upon conviction of the offender in a criminal proceeding of a violation of this title or AS 08.54 in a court of competent jurisdiction; or (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or AS 08.54 or a regulation adopted under this title or AS 08.54. (b) Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action. (c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them or nests or eggs of birds taken, transported, or possessed contrary to the provisions of this title or a regulation adopted under it. (d) It is no defense that the person who had the item specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use. (e) Forfeiture may not be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser. (f) An item forfeited under this section shall be disposed of at the discretion of the department. Before the department disposes of an aircraft it shall consider transfer of

ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

AS 22.15.060. Criminal Jurisdiction. (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

AS 22.20.022. Peremptory Disqualification of a Judge. (a) *If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge* of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action.

FEDERAL RULES INVOLVED

Federal Rules of Criminal Procedure 7(c)(2) Criminal Forfeiture. No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

Federal Rule of Criminal Procedure 32.2. Criminal Forfeiture (a) Notice to the Defendant. A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.

Federal Rule of Evidence 410 - Inadmissibility of Pleas, Plea Discussions, and Related Statements - Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

STATE RULES INVOLVED

Alaska Rule of Appellate Procedure 215 Sentence Appeal. (a) Appellate Review of Sentence. (2) *Defendant's Right to Appeal Sentence on Grounds Other Than Excessiveness.* A defendant may appeal a sentence of any length on grounds other than excessiveness, including but not limited to: illegality of the sentence; erroneous findings by the trial court that affect the statutory range of sentences to which the defendant is subject; and procedural errors in the sentencing proceeding. (3) *Prosecuting Authority's Right to Appeal Sentence.* The prosecuting authority may appeal a sentence of any length as provided in AS 22.07.020. (4) *Where Appeal is Taken.* An appeal

under subparagraphs (a)(1)-(3) must be taken to the court of appeals. (5) *Right to Seek Discretionary Review for Excessiveness. A defendant may seek discretionary review of an unsuspended sentence of imprisonment which isn't appealable under subparagraph (a)(1) by filing a petition for review in the supreme court under Appellate Rule 402.* A defendant who is filing a sentence petition and a sentence appeal, or a sentence petition and a merit appeal, must follow the procedure set out in paragraph (j).

(b) *Notification of Right to Seek Review of Sentence. At the time of imposition of any sentence of imprisonment, the judge shall inform the defendant (1) of the defendant's right to appeal or petition for review of the sentence under paragraph (a)*; (2) that the appellate court may reduce or increase the sentence, and that by appealing or petitioning for review of the sentence under this rule, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal or review the defendant has been twice placed in jeopardy for the same offense; and (3) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant in an appeal or petition for review.

Alaska Rules of Appellate Procedure Rule 217. Appeals from District Court. (d) The appellant's brief shall be served and filed within 20 days after notice of the certification of the record has been served. *The appellee's brief shall be served and filed within 20 days after service of the brief of the appellant.* The appellant may serve and file a reply brief within 10 days after the service of the brief of the appellee.

Alaska Rule of Criminal Procedure 32.5 Appeal From Conviction or Sentence--Notification of Right to Appeal. *A*

person convicted of a crime after trial shall be advised by the judge or magistrate: (a) that the person has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Appellate Rule 217) from the date shown in the clerk's certificate of distribution on the judgment appealed from by filing a notice of appeal with the clerk of the appellate courts; and (b) that if the defendant wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent the defendant on the appeal.

In addition, at the time of imposition of any sentence of imprisonment, the judge or magistrate shall advise the defendant as required by Appellate Rule 215(b). (Added by SCO 1136 effective July 15, 1993; amended by SCO 1184 effective July 15, 1995; and by SCO 1226 effective January 22, 1996)

Alaska Rule of Criminal Procedure 42(e). Motions*:* (1) If either party desires that an evidentiary hearing be held, that party shall request an evidentiary hearing on or before the date a reply is due. (3) *If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing.*

Alaska Rule of Evidence 410: Inadmissibility of Plea Discussions in Other Proceedings. (a) *Evidence …of statements or agreements made in connection with any of the foregoing pleas or offers, isn't admissible in any civil or criminal action, case or proceeding against the government or an accused person who made the plea or offer if: (i) A plea discussion does not result in a plea of guilty or nolo contendere…***Commentary** To foster negotiations *the rule provides that nothing that is said during plea bargaining may be used against the accused in any proceeding, whether*

criminal, civil or administrative. Thus, the accused is free to discuss the case without resort to hypothetical statements of fact and without fear that a slip of the tongue may be devastating at a later trial or other proceeding.

FACTS

In the 1990's a very divisive controversy developed concerning wolf predation management in Alaska. Lawsuits, ballot initiatives, and propaganda eventually halted prior management. Resulting ungulate (moose, caribou, sheep, etc) decline led to severe shortages for human use, causing great hardship for those who depended on ungulates to put food on the table.

Pressure built and an experimental Wolf Control Program (WCP) to restore ungulates, limited to part of Game Management Unit (GMU) area 19D and authorizing aerial wolf shooting from October 2003 to March 2004, was implemented by the Alaska Board of Game (BOG). This seven-member board is governor appointed, legislature confirmed, and passes law managing wildlife. Opposition tried stopping this experiment – citing ineffectiveness.

On February 7, 2004 Master hunting guide Haeg and registered hunting guide Zellers were solicited by the SOA for a 19D WCP team. Haeg wasn't licensed to guide hunts in 19D *but was licensed in 19C, with a hunting lodge there.*

About February 28, 2004 a BOG member told Haeg:

> "In the first 4 months only 4 of the 55 wolves required have been taken; if more wolves aren't taken in the remaining 2 months the WCP may be judged ineffective and shut down for good; you must kill more wolves to prevent this; *if you end up taking wolves outside the area just mark their GPS coordinates as being taken inside the area."*

On March 26, 2004 Trooper Gibbens claimed finding evidence Haeg aerially shot wolves *"in 19C",* also stating:

> "Based on my experience, there is a clear economic incentive for Haeg… to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for [Haeg] to harvest with clients."

Gibbens GPS coordinates placed all evidence in 19D. From March 29 to April 2, 2004 the false 19C evidence location (and that Haeg had a hunting lodge in 19C) was used in all affidavits to obtain warrants seizing Haeg's property. Apx.U. Haeg was using the airplane and other equipment as primary means to provide a livelihood when seized. No postseizure hearing or notice of postseizure hearing was given. No notice was provided the SOA would seek property forfeiture and/or of statutes authorizing forfeiture. During seizure the SOA responded *"never"* when Haeg asked when he could get the property back because he needed it for his livelihood.

April 9, 2004 attorney Cole was hired and told Haeg:

> "Because of program harm the Governor will bring immense pressure on your [Haeg's] judge and prosecutor to make an example of you; *nothing can be done about the falsified evidence location*; a PA to hunting/guiding charges is best; you [Haeg] can't bring up the SOA encouraged you to take wolves outside the WCP area and then claim they had been taken inside; give up a year of guiding, statement, kill map, and fly in witnesses for a PA requiring a 1-year license loss."

Cole never told Haeg a hearing was available to protest being put out of business or that Haeg could bond property out, even after Haeg specifically asked; never told Haeg of forfeiture notice right, notice of forfeiture case, notice of statutes authorizing forfeiture, and/or items for forfeiture; and never told Haeg WCP law prevented hunting/guiding violations.

On April 23, 2004 Haeg provided the SOA an evidence location map and on June 11, 2004 a statement. *Prosecutor Leaders and Gibbens taped Haeg's testimony evidence location was 19D, not 19C.* Cole told them Haeg already gave up the PA guide year. On June 23, 2004 Zellers, after Haeg's implicating statement, cooperated and gave a statement. Leaders and Gibbens taped Zellers testimony evidence location was 19D, not 19C.

On November 4, 2004 an information was filed in accordance with the PA scheduled to be finalized in court on November 9, 2004. Apx.V. On November 8, 2004 Haeg sent the court and SOA a letter of his intended testimony the next day: That the SOA, to ensure success, encouraged him to take wolves outside the WCP area but claim they were taken inside; he had already given up a year guiding, statement, and cooperated in every way for the PA; and his actions did not help his business. Apx.W. On November 8, 2004 1 PM, just after letter receipt, Leaders filed an amended information violating the PA by increasing severity of charges and by using Haeg's PA statement. Apx.V. Although Haeg had already flown in PA witnesses from Illinois Cole said the only way to enforce the PA "was to call Leaders boss." The PA never concluded and Haeg wasn't allowed to testify about the SOA's WCP instructions or PA reliance. *On or after November 8, 2004 Haeg's*

written statement vanished from the official court record – yet proof documenting submission remained. Apx.X.

On November 11-22, 2004, during attorney/client meetings, Haeg taped Cole:

> "Leaders can use your statement against you; the only PA enforcement available is calling Leaders boss; it is legal and ethical for Leaders to break the PA after the statement and year guiding given for it; I can't piss Leaders off because I have be able to make deals with him in the future; you should be charged with hunting/guiding violations; the [SOA] encouraging you to take wolves outside the area and then to mark them inside isn't a defense; and there is no way to get property back prior to trial."

On December 3, 2004 Haeg fired Cole and on December 10, 2004 hired attorney Robinson, who stated:

> "The PA and everything given for it was a waste; your PA statement can be used against you; you can't bring up the SOA encouraged you to take wolves outside the WCP area and then claim they were taken inside; the false evidence locations can't be protested; you will lose at trial because Cole has given Leaders everything but I have no doubt we will win on appeal since the information wasn't supported by affidavit the court didn't have jurisdiction; *you must never tell the court of the PA or all you have done for it because this would admit you voluntarily submitted to jurisdiction;* go to

> trial *and don't put on evidence because it's a waste of money;* Zellers can testify against you."

Robinson never told Haeg due process required when business property is seized, deprived, or forfeited and never kept Leaders from using Haeg's statement.

On March 31, 2005 Robinson motioned Haeg couldn't be charged with hunting/guiding violations because WCP law prohibited this. Apx.Y. Robinson's May 6, 2005 reply, supported by Haeg's affidavit, claimed Leaders shouldn't use Haeg's statement in the information. Apx.Z. The DC May 9, 2005 denial, without knowledge of the false evidence locations, never addressed Haeg's statement use. Apx.E.

On May 17-18, 2005 Judge Murphy verbally granted the SOA's protection order:

> *Judge Murphy*: "[Y]ou [Robinson] can't argue as a matter of law he [Haeg] was not hunting." Apx.F.

At July 26-29, 2005 trial Robinson said because Haeg's statement was being used Haeg must testify to present favorable evidence. Robinson never revealed the SOA's case was based on false evidence locations. Leaders argued, unopposed, that since Haeg killing wolves where he guides benefited his business, Haeg be found guilty of hunting/guiding violations.

Leaders solicited and accepted Gibbens trial testimony the evidence was in 19C:

> Leaders, "Those wolf kills that you investigate there, they were where?" Gibbens, "19C"

Gibbens, immediately confronted on cross-examination at Haeg's insistence, admitted the evidence he just testified was in 19C was really in 19D.

> Gibbens, *"I'll correct that if you like. Those four kill sites are in the corner of 19D."*

Robinson told Haeg nothing could be done about Gibbens false testimony because the "good boy network of Troopers, prosecutors, and judges take care of their own."

On July 29, 2005 Haeg was convicted.

On August 24, 2005 the court allowed sentence enhancement because Haeg's failed PA required it. Apx.G.

Sentenced September 29-30, 2005. Haeg subpoena/plane ticketed Cole to sentencing. Apx.AA. Haeg typed up 56 questions for Robinson to ask Cole about the PA and what Cole told Haeg. Apx.BB. Cole didn't appear and Robinson told Haeg, "Nothing can be done".

> Leaders sentence argument was: "[T]he great economic benefit Haeg received from killing wolves where he guides."

The SOA testified they had no idea why Haeg gave up guiding the previous year.

Robinson refused to ask Zellers, Hilterbrand, Stepnosky (witnesses present when PA failed) or Haeg typed questions about Haeg's failed PA, Cole's advice,

reliance on the PA; why the PA failed; refused to question Leaders about Haeg's PA; and never revealed Leaders case was based upon Haeg's PA cooperation and upon evidence moved from 19D to 19C. No objection to the 2 AM sentencing and nothing of all already given for the failed PA – statement, year guiding, and witnesses flown in.

On September 29-30, 2005 Haeg was sentenced to 570 days jail, $19,500.00 fine, $100,000.00 property forfeiture, and 5-year license revocation (no credit for PA year). Apx.H. Judge Murphy's specific on-record sentence justification without stay:

> "[S]ince the majority if not all the wolves were taken in 19C – in the area where you were hunting".

No sentence appeal notification was given. Robinson said sentence couldn't be appealed and never protested justification or license revocation.

On October 14, 2005 Robinson filed points of appeal: court didn't have "subject matter jurisdiction". Apx.CC.

Robinson's taped conversations after sentencing:

> "No one will care about 2 AM sentencing when you couldn't think straight; Gibbens and Leaders weren't charged with perjury because of the fold…the old boy system - the group they protect and don't do anything against…made up of prosecutors, cops, judges, and magistrates; Murphy lied and was a law enforcement type of judge and she's not the independent, judiciary type that

> you're suppose to have; Cole didn't appear because his testimony wasn't relevant to your guilt (Haeg, "I was already found guilty and subpoenaed Cole to my *sentencing* to minimize my sentence with all I did far a PA I never got"); nothing other than subject-matter jurisdiction is worth appealing; you couldn't sue anyone until your conviction is reversed."

In February 2006 Haeg fired Robinson and found documentation in Robinson's file that Cole never intended on obeying subpoena to sentencing. Apx.DD.

About March 15, 2006 Haeg contacted attorney Osterman and tape-recorded everything. After file review Osterman stated:

> "Cole and Robinson sold you out to the SOA; Leaders and Gibbens committing perjury to falsify evidence locations must be raised on appeal; you didn't know they [you own attorneys] were goanna set it up so that their [the State's] dang dice was always loaded…they were always goanna win; the COA will reverse when they see the sellout; how come no one tried to enforce the PA; need to bring up all you did for the PA; we need to bring up they used your statement; they [Cole and Robinson] conspired to keep Cole from testifying; what Leaders did was stomped on your head with boots. He went way, way, way to far and he violated all the rules that would normally apply and your attorneys allowed him, at that time, to commit these violations; a motion to

suppress [evidence] would've succeeded; [Haeg's] is the strangest damn case I've ever seen - I mean talk about a pile up here - this is a pile up man…I'm standing there going what the hell happened here?"

On March 20, 2006 Haeg hired Osterman.

Weeks after being hired Osterman stated:

"We can't use the false [evidence] location because the COA wouldn't be willing to give you that much justice; the SOA not having evidence might be worse for you; the COA will tell you go to hell, laugh like hell, and throw out your appeal if you complain about the moved evidence; you shouldn't find out why they [Cole and Robinson] sold you out because they might have had a valid reason; if you attempt to expose the sell out your appeal will be thrown out; it wasn't wrong he [Cole] didn't make it to your sentencing; Robinson is the old he-wolf that basically runs things around here…has lots of political pull… and heads up the criminal section of the Bar; I didn't use the perjury because judges don't care; nothing is there [briefed] of the sellout because we're appealing the merits – not dissatisfaction with your other lawyers; nobody cares attorneys lie to clients; proving they [Haeg's attorneys and SOA] conspired isn't goanna help you; if you fire me the COA will never let you represent yourself; the COA could give a shit less that you gave up a years guiding and statement for a PA they

> broke; I'm not putting anything in the brief that will affect their [Cole and Robinson] lives; I'm not goanna get them [Cole and Robinson] to go to prison; it was time you realized this might be a life-changing event and to try to fix the errors and not have it change life was very dangerous; the issues we raised on appeal – *it may not be there per se*."

Haeg fired Osterman on May 23, 2006.

Haeg filed fee arbitration against Cole, who testified April 12 – July 12, 2006:

> "You had no right to a prompt post-seizure hearing; the law doesn't allow seized property to be bonded out; your statement wasn't used; I told you I could file a motion to enforce the PA; you didn't want to enforce the PA because it would cost a lot of money; you didn't want to risk enforcing the PA; there was no PA; I didn't tell him [Haeg] about suppressing evidence because I didn't think it was a good idea; I didn't testify [at Haeg's sentencing] because I wouldn't be a good witness; the Governor would've brought immense pressure on [Haeg's] judge and prosecutor to make an example of him."

Cole didn't dispute testimony he couldn't enforce the PA because he "needed to be able to make deals with the prosecution" after Haeg's case.

Witnesses present when the PA failed testified Cole said the PA couldn't be enforced other then "calling Leaders

boss" and that he "couldn't piss Leaders off"; Haeg wanted the PA enforced at any cost or risk. Zellers testified he cooperated and gave a statement because Haeg's PA statement implicated him.

> *Haeg*: "If Brent Cole had not had me give my statement to the prosecution would you have ever done so?"
>
> *Zellers under oath*: "No."
>
> *ABA arbitrator Metzger*, "You decided to cooperate with law enforcement authorities. Is that right?"
>
> *Zellers under oath*: "Based on the fact that Mr. Haeg had already cooperated with the law enforcement."

Cole's one witness, Fitzgerald, testified neither Haeg's nor Zellers statements were used; Zellers cooperated and gave a statement because of Haeg's PA statement.

> Haeg*:* "Would you have had Tony Zellers give a statement to prosecution … if Brent Cole had not have me first give a statement implicating Tony?"
>
> Fitzgerald: "[C]ertainly the fact that you had already gone to the State was a factor in the decision made with regard to whether Mr. Zeller's was goanna follow suit."

Fitzgerald's prior testimony at Zellers January 13, 2005 sentencing:

> "[H]ad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he government was free to do whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers and Mr. Haeg…"

On May 24, 2006 Haeg filed to represent himself and on June 21, 2006 COA remanded for DC hearing. Magistrate Woodmancy was assigned. On June 26 and June 30, 2006, citing apparent bias, Haeg filed affidavits to recuse him to no effect. Apx.EE.

At Haeg's August 15, 2006 representation hearing Osterman testified Cole and Robinson didn't act in Haeg's interest or direction; he could see why Haeg thought there was a conspiracy to harm him; what Cole and Robinson did to represent Haeg was wrong; and he wouldn't do anything that would affect Cole and Robinson. Apx.FF.

After ruling Haeg had delusions of conspiracy, the DC ordered psychiatric evaluation before allowing self-representation. On August 24, 2006 Dr. Tamara Russell, a leading psychologist, determined there was almost certainly a conspiracy between Haeg's attorneys and the SOA to deprive Haeg of a fair trial. Apx.GG. On September 18, 2006 the SOA filed a 14-page *opposition* to Haeg representing himself. Apx.HH. On October 5, 2006 DC granted self-representation.

Haeg immediately filed numerous motions for return of property, to stay appeal pending PCR, to correct illegal sentence, to stay license suspension/revocation and to supplement record. Apx.II. COA denied or refused to address all. Apx.A, J, K, & O.

On February 5, 2007 COA remanded to DC for return of property/statutes unconstitutional hearing – only after Haeg stated since no hearing was being provided he would just physically go get his property back from impound. On March 13, 2007 DC denied allowing witness confrontation, witness or evidence presentation, and/or oral argument during Haeg's hearing. Apx.L. On April 12, 2007 COA denied Haeg's Petition for Review of DC denial of effective hearing Apx.M and on May 25, 2007 the ASC denied Haeg's Petition for Hearing of the DC denial. Apx.N.

On July 23, 2007 the DC denied Haeg the return of property and ruled statutes were constitutional. Apx.P. On August 17, 2007 DC denied Rehearing. Apx.Q. Haeg appealed and the COA combined this appeal (A-10015) with his criminal appeal (A-9455).

About February 26, 2008 Jackie Haeg found Haeg's PA statement, submitted November 8, 2004, *was missing from the official record while paperwork documenting submission remained.* Apx.X. On March 7, 2008 Haeg emergency motioned the record be reconstructed before his reply brief was due on March 17, 2008. On March 26, 2008, *after Haeg's reply brief was already submitted,* the COA reconstructed the record. Apx.R.

On September 10, 2008 the COA rendered adverse judgment in A-9455/A-10015. Apx.A. On September 26, 2008 they denied Petition for Rehearing. Apx.C. On

December 1, 2008 the ASC denied Haeg's Petition for Hearing. Apx.D. On December 2, 2008 the SOA asked Haeg be immediately incarcerated, regardless if he wished to appeal to the United States Supreme Court. On January 26, 2009 the SOA presented evidence Haeg had no right to ask for review by the Supreme Court, his chance of being heard by the Supreme Court was very low, Haeg's appeal was years old and punishment was overdue, and there was no limit on how long Haeg could wait to ask for review. Haeg argued Ak Appellate Rule 206(a)(1) required imprisonment be stayed, he had a right to ask for review no matter what the odds were the Supreme Court would hear him, and Supreme Court Rules 13 and 15 placed specific time limits for him to ask for review. Haeg was ordered to prison on March 2, 2009, over his objections that since he represented himself he would be unable to effectively file his petition, motions, corrections, or replies. Apx.S. The Court refused Haeg's request specific reasons be given for denying stay. On January 30, 2009, four months after oral arguments and just four days after Haeg was ordered to jail the ASC issued an adverse decision in Haeg's arbitration appeal. Apx.T.

ARGUMENT

Questions (1) and (9): It's unconstitutional for Haeg's conviction and property seizure/forfeiture to be obtained using affidavits and testimony known to be false by the SOA - falsifying evidence locations from 19D to 19C. Apx.U. Twice Leaders and Gibbens taped themselves being told (during Haeg/Zellers PA statements) the affidavits were false – that the evidence was located in 19D and not in 19C. Gibbens GPS coordinates proved this. Yet Gibbens, with Leaders solicitation and acceptance, later testified at trial the evidence was found in 19C:

> Leaders, "Those wolf kills that you investigate there, they were where?" Gibbens, "19C"

Gibbens, immediately confronted on cross-examination, admitted the evidence he just testified was in 19C was really in 19D.

> Gibbens, *"I'll correct that if you like. Those four kill sites are in the corner of 19D."*

The SOA knowingly presented false testimony to Haeg's judge and jury, the same false testimony on all affidavits seizing Haeg's property, which was then used as evidence and forfeited.

This false testimony is material because Leaders justification for hunting/guiding instead of WCP violations was "Haeg's intent through the taking of was an intent to eliminate wolves that directly preyed upon the game populations that he hunted in order to better enhance is prospects as a guide." If Haeg wasn't killing wolves where he guided any intent to benefit his hunting business vanished. Judge Murphy, totally ignorant the locations were false, issued the seizure warrants, on May 9, 2005 ruled charges be hunting/guiding instead of WCP, and on May 18, 2005 even ruled Haeg *could not* argue because of WCP law he wasn't hunting:

> *"You can't argue as a matter of law he was not hunting."*

WCP convictions were limited to a $5000 fine and couldn't affect Haeg's business as 5AAC 92.039(h) and 5 AAC 92.110(m) specifically excluded WCP violations from hunting/guiding violations:

> 5 AAC 92.039(h) In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title. (*AS 16 includes all hunting*). 5 AAC 92.110(m) A wolf population reduction or wolf population regulation program established under this section is independent of, and does not apply to, *hunting* and trapping authorized in 5 AAC 84 - 5 AAC 85.

Haeg's conviction of AS 8.54.720(a)(15), a guide hunting same day airborne, was incredibly more severe:

> AS 8.54.720(a)(15) person licensed under this chapter to knowingly violate a state statute or regulation prohibiting waste of a wild food animal or *hunting on the same day airborne;*(d) In addition to a disciplinary sanction imposed under AS 08.54.710, a person who commits an offense set out in (a)(15) of this section is guilty, *(1) for a first offense, of a misdemeanor and is punishable by a fine of not more than $30,000 or by imprisonment up to one year, or both; (2) for a second or subsequent offense, of a class C felony*. (f) In addition to the penalties set out in (b) - (e) of this section and a disciplinary sanction imposed under AS 08.54.710, *(3) the court shall order the department to suspend the guide license or transporter license for a specified period of not less than three years, or to permanently revoke the guide license or transporter license, of a*

> *person who commits an offense set out in (a)(15) or (16) of this section.*

License loss destroyed the business and life Haeg and wife worked their whole lives for.

Compelling evidence of the pervasive taint/fruit of the poisonous tree the false testimony and affidavits had is Judge Murphy's specific on record justification for Haeg's severe sentence:

> "[S]ince the majority if not all the wolves were taken in 19C… to kill the wolves in the area where you were hunting."

This was after Gibbens had testified under oath to Judge Murphy this was completely false.

How can Haeg's conviction and sentence be constitutional when not a single wolf was taken where Haeg hunted?

Convictions obtained by false testimony known to the State violate the 14th Amendment. The SOA itself knowingly testified falsely in Haeg's case and both the prosecutor who elicited the testimony and the Trooper who gave it knew it was false when given. Prejudice is proven by Judge Murphy's sentence justification.

> Mesarosh v. U.S., 352 U.S. 1 (1956) "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony…the government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them."

> Mooney v. Holohan, 294 U.S. 103 (1935)" Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured…"
>
> Napue v. Illinois, 360 U.S. 264 (1959) "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process… "

Property and evidence obtained by a state with false affidavits is also unconstitutional.

> Mapp v. Ohio, 367 U.S. 643 (1961) "[A]ll evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state."
>
> Olmstead v. U.S., 277 U.S. 438, 485 (1928) Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise."

> U.S. v. Hunt, 496 F.2d 888 (5th 1974) "If affiant intentionally makes false statements to mislead judicial officer on application for search warrant, falsehoods render warrant invalid whether or not statements are material to establishing probable cause."

Question (2): It's unconstitutional for Haeg's property (including airplane), used as his primary means to provide a livelihood during a short yearly season, was seized, deprived, and forfeited without a prompt postseizure hearing, notice of a prompt postseizure hearing, or even notice of a prompt postseizure opportunity to bond out. This error was magnified by:

1. The affidavits used contained devastating false statements.

2. Haeg and wife had no other livelihood.

3. Their short season started the day of seizure.

4. The property seized was irreplaceable.

5. Haeg asked, as the property was being seized: "When can I get my plane back? I have clients coming in tomorrow and I have to set up bear camp." SOA: "*Never*"

This left Haeg believing there was no opportunity to protest being put out of business, or to contest the false warrants, before charges, conviction, or sentence.

6. It was 8 months before Haeg was charged, 16 months before trial, and 18 months before sentence.

Waiste v. State 10 P.3d 1141 (Ak 2000); "[T]*his court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing.* [D]ue process mandates heightened solicitude when someone is deprived of her or his primary source of income. *[G]iven the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, "within days, if not hours," the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier."* An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need… *to allow release of the vessel on bond,* and to afford a prompt postseizure hearing.

County of Nassau v. Canavan, 2003 N.Y. Int. 0139 (Nov. 24, 2003). While we disagree that due process mandates a hearing prior to the initial seizure, *we conclude that a prompt post-seizure hearing is required in all cases.*

See also Krimstock v. Kelly, 306 F.3d 40 (2d Cir. 2002); Kelly v. Krimstock, 539 U.S. 969 (2d Cir. 2003); Memphis Light, Gas and Water Div. v. Craft, 436 US 1 (1978); Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532 (1985); Mathews v. Eldridge, 424 U.S. 319 (1976); Fusari v. Steinberg, 419 U.

S. 379, 419 U. S. 389 (1975); Mullane v. Central Hanover Tr. Co. 339 U.S. 306 (1950); and Goss v. Lopez, 419 U.S. 565 (1975).

Due process required a prompt postseizure hearing (or at least notice of such a hearing) be held when Haeg's property, used as his primary means to provide a livelihood, was seized.

Question (3): It's unconstitutional that Haeg's property was forfeited without notice in any charging information the SOA would seek to forfeit property and/or without notice Haeg had an interest in property that was subject to forfeiture in accordance with the applicable statute. Apx.V.

Fuentes v. Shevin, 92 S. Ct. 1983, 407 U.S. 67 "*'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified.' ...* It is equally fundamental that the right to notice and an opportunity to be heard *'must be granted at a meaningful time and in a meaningful manner.'"*

U.S. v. Hall, 521 F.2d 406 (9th Cir. 06/18/1975) [T]*he court's actions, taken together, deprived Hall of the mandatory notice to which he was entitled and the concomitant opportunity to defend against a forfeiture."*

U.S. v Seifuddin, 820 F.2d 1074, 1076 (9th Cir. 1987) "'Criminal' forfeitures are subject to all the constitutional and statutory

procedural safeguards available under criminal law. The forfeiture case and the criminal case are tried together. *The forfeiture counts must be included in the indictment of the defendant...*"

Wiren v. Eide, 542 F.2d 757 (9th Cir. 1976) *"Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief…"*

Federal Rules of Criminal Procedure 7(c)(2) Criminal Forfeiture. *No judgment of forfeiture may be entered in a criminal proceeding unless…the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.*

Federal Rule of Criminal Procedure 32.2. Criminal Forfeiture (a) Notice to the Defendant. *A court must not enter a judgment of forfeiture in a criminal proceeding unless the …information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.*

Haeg received constitutionally inadequate notice before forfeiture.

Question (4): Alaska Statutes *12.35.020, 12.35.025, 16.05.190, 16.05.195, 8.54.720; Alaska Administrative Codes 5 AAC 92.140 and 5 AAC 84.270;* and Alaska Rules of Criminal Procedure are

unconstitutional because Haeg didn't receive a prompt postseizure hearing or notice of such a hearing and the statutes/rules/codes didn't require this or notice before forfeiture that Haeg's property may be forfeited.

> Von Neumann v. U.S. 660 F.2d 1319 (1981): See Lee v. Thornton, 538 F.2d 27, 31 (2d Cir. 1976) This court expressly relied on the Lee rationale to invalidate a California towing and possessory lien statute in Stypmann v. City and County of San Francisco, 557 F.2d 1338 (9th Cir. 1977). The court held that this statute couldn't withstand a due process attack because it didn't provide for a prompt post-seizure hearing to determine probable cause for the seizure.
>
> Jennings v. Mahoney, 404 U.S. 25, 92 S.Ct. 180, 30 L.Ed.2d 146 (1971); Wiren v. Eide, 542 F.2d 757 (9th Cir. 1976). [H]eld that a person whose driver's license was summarily suspended by an administrative agency couldn't challenge the validity of the applicable statute, even though the statute's constitutionality presented a "substantial question," *where the license suspension had been stayed pending completion of judicial review*.

Because Haeg wasn't informed of his right to hearing he never had a chance to protest or bond his property out 8 months before he was charged, 16 months before he was convicted, or 18 months before he was sentenced. Because there wasn't a hearing, false evidence locations went on unaddressed to destroy Haeg's livelihood. Finally, Haeg

never had constitutionally adequate notice the SOA would seek property forfeiture – so he could prepare a defense.

Questions (5) and (6): Its unconstitutional for the SOA to break Haeg's PA with no explanation or justification and/or after Haeg's following detrimental reliance:

1. 5-hour statement and its evidence. Apx.V, FF.

2. Entire year guiding given up. Apx.W, FF.

3. Witnesses flown in from Illinois unable to testify. Apx.

The SOA broke the PA by filing an amended information changing the already filed AS 8.54.720(a)(8)(A) charges to AS 8.54.720(a)(15)(A). Apx.V. The new charges required a minimum 3-year license suspension to permanent revocation while the PA and original charges required 1-year suspension. The SOA amended charges on November 8, 2004 at 1 PM and months earlier the PA had been scheduled for finalization in court on the morning of November 9, 2004.

It's unconstitutional to allow the SOA to break a PA after such detrimental reliance.

> U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975): "The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion."

> U.S. v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974) "[W]hen the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance."
>
> Stolt-Nielsen, 442 F.3d 177 (3d Cir. 2006): "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements—to the extent the agreements require defendants to sacrifice constitutional rights.
>
> Reed v. Becka (1999) 333 S.C. 676 [511 S.E.2d 396, 403]. [D]efendant who provides beneficial information to law enforcement can be said to have relied to his detriment.

It's unconstitutional for the SOA, without explanation or justification, to increase severity of already filed charges.

> United States v. Motley, 655 F.2d 186 (9th Cir. 1981): If the government increases the severity of the charges following a defendant's exercise of a procedural right, the sequence of events gives rise to an appearance of vindictiveness, shifting the burden to the government to prove that the decision to re-indict with more severe charges didn't result from any vindictive motive. "Instead, the prosecutor, to rebut the presumption, must show his decision to re-indict with more severe charges was

'justified by independent reasons or intervening circumstances which dispel the appearance of vindictiveness.'"

Atchak v. State, 640 P.2d 135 (Ak 1981): (O)nce a prosecutor exercises his discretion to bring certain charges against the defendant, neither he nor his successor may, without explanation, increase the number of or severity of those charges in circumstances which suggest that the increase is retaliation for the defendant's assertion of statutory or constitutional rights. The Alaska Supreme Court has consistently held that courts shouldn't hesitate to reverse a conviction when a substantial flaw in the underlying indictment is found, regardless of the strength of the evidence against the accused or the fairness of the trial leading to the conviction.

Question (7): It's unconstitutional to have properly admitted material evidence removed from the official court record. On November 8, 2004 Haeg submitted a 15-page statement to the court and SOA to familiarize the court with his PA testimony the next morning. Apx.W. This statement evidenced Haeg, for the PA, had:

"[A]*ssisted the Troopers in every way possible during their investigation… including rushing a map with kill locations to Mr. Leaders ASAP at his request*; *had given up guiding and this represented both Haeg and his wife's income;* and [the seized

> plane] *is the backbone of my ability to provide for my family.*"

This statement also evidenced just before WCP participation Haeg had been told by Alaska Department of Fish and Game and BOG that:

> "[T]he WCP might be terminated if more wolves were not killed; there was a big concern that since so few wolves had been taken in the previous 4 months the program would be seen as a failure and terminated; couldn't believe people were not poisoning the wolves out there and went on to explain exactly the poison that works best and how to obtain it; it is much more important for a pilot as good as you to be out killing wolves than to be here testifying at this meeting; *that I was told by a current Board of Game member that if we shot wolves outside the area to just report that they were taken inside the area.*; *that I felt under pressure to make the program a success*; and *I was feeling immense pressure from all sides to kill wolves.*"

In March 2008 Haeg's file was transferred to Kenai for his appeal use. About February 26, 2008 Jackie Haeg found the statement *was missing from the official record while paperwork documenting submission remained.* Apx.X. Haeg emergency motioned the record be reconstructed before his reply brief was due on March 17, 2008. On March 26, 2008, *only after Haeg's reply brief was already submitted,* the COA reconstructed the record. Apx.R. In other words admitted and compelling evidence, that Haeg's actions and intent at the BOG's urging were to

benefit the WCP, was likely removed from the record before Haeg's trial and sentencing and wasn't corrected even in time for Haeg's appeal use. And justification for hunting/guiding charges, conviction, and sentence was Haeg's actions and intent was to benefit his hunting/guiding business.

Because the SOA amended the information literally hours after receipt and before Haeg's testimony, no hint of the State's impropriety ever appeared, remained (after the letter disappeared), or was litigated. The SOA's actions prior to Haeg's WCP participation and during plea negotiations were never publicized – when animal rights activists were looking for anything to stop the WCP. The letter disappearance, combined with false evidence locations and Haeg's attorneys' refusals to bring any of this up, make a devastating injustice.

Question (8): It's unconstitutional for Haeg's PA statement and agreements, after PA failure, to be used against him. The PA required Haeg's statement. Leaders sworn grievance response:

> "It is true that part of plea negotiations with both Haeg and his codefendant Tony Zellers required each of them to provide truthful statements about their violations. Both Haeg and Zellers provided these interviews."

Zellers, because Haeg's statement implicated him, cooperated and gave a statement:

> *Haeg*: "If Brent Cole had not had me give my statement to the prosecution would you have ever done so?"

Zellers under oath: "No."

ABA arbitrator Metzger, "You decided to cooperate with law enforcement authorities. Is that right?"

Zellers under oath: "Based on the fact that Mr. Haeg had already cooperated with the law enforcement."

After PA failure Leaders used 5 pages of Haeg's statement in Haeg's *trial* information, starting with:

> "*David S. Haeg was interviewed in Anchorage on 6/11/04* and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews the timelines and events given were almost identical, *and a summary of the statements of the two men follows:"*

Without Haeg's statement there was *no* probable cause for over half the charges and little for the rest. *Alaska Rule of Evidence 410* and its commentary are clear no use of Haeg's PA statement was allowed after no PA was completed. See also *Federal Rule of Evidence 410*.

On May 6, 2005 Robinson protested statement use:

> "At the time the first amended information was filed there was no plea between defendant and the state. As is revealed in Mr. Haeg's affidavit, there were plea negotiations that took place between the parties before the filing of the information

> but the parties failed to carry out any PA. During the plea negotiations defendants made statements to the police that were recited by the prosecutor in his statement in support of the amended information.
>
> The significance of this fact is that defendant's statements made during plea negotiations that do not end in a PA are not usable in any judicial proceeding, including the filing of an information (See Evidence Rule 410). Yet the prosecutor used these statements in support of all three informations [SOA issued second amended information to fix a typo in the first amended information] in violation of the evidence rule." Apx.Z.

On May 6, 2005 Robinson had Haeg sign and submit a court affidavit that states:

> "1. I am defendant in the above captioned case. I have personal knowledge of the matters stated in this affidavit.
>
> 2. From June 2004 to November 2004 I was engaged in plea negotiations with the State's prosecutor Mr. Leaders concerning the filing of state game charges against me.
>
> 3. The plea negotiations came to an end on November 8, 2004. The prosecutor, at the last minute, back out of an agreement I thought was reached. The negotiations ended without a PA between myself and the state. The

> prosecutor thereafter filed an amended information
>
> 4. I appeared in court on November 9, 2004, for arraignment on the amended information that charges me with numerous violations of state game laws. I pleaded not guilty to all of the charges. The court scheduled a jury trial for me to stand trial on the charges.
>
> 5. During the plea negotiations, I gave statements to the police regarding accusations of game violations that are in the statements in support of the three informations filed by the prosecutor in my case. These statements from the prosecutor are used to establish probable cause that I committed the crimes alleged in the informations. Without a plea agreement between me and the State these statements shouldn't be used to establish cause to believe I committed any of the crimes charged." Apx.Z.

The court never ruled on this protest of PA statement use in its May 9, 2005 order. Apx.E.

During the August 24, 2005 status hearing the PA was also used to "enhance" Haeg's sentence:

> *Leaders* "[I]t became an issue in negotiation, prior to Mr. Robinson being involved, and we just maintained that position… if convicted of the wolf offenses we would use it as to enhance sentence."

> *Robinson* "I don't know how that could be part of any negotiations to the un-negotiated case."
>
> *Judge Murphy* "Well it was at one point."
>
> *Robinson* **"**Well it wasn't on the charges that he went to trial on which was -you know- the charges that you said were different and that he plead not guilty to. So there's no agreement to that."

Haeg's sentence was then "enhanced" after conviction of severe charges because of a PA promising minor charges Haeg never received.

4. The SOA, at Haeg's August 15, 2006 pro se hearing, admitted they used Haeg's statement at trial. Apx.FF.

Their September 8, 2006 opposition *during appeal* used it:

> "In June 2004 both hunters were interviewed by the troopers and admitted they knew nine wolves were shot from the airplane while outside the permit area."
>
> *This was after statement use was an issue on appeal.*

Overwhelming caselaw holds states cannot offer a PA to get a statement, and then, after PA failure, use the statement to prosecute. Allowing this would render the right against self-incrimination nearly meaningless.

> Kastigar v. United States (1972) 406 US 441, 453 "[Use and derivative use immunity] prohibits the prosecutorial authorities from using the compelled testimony in *any*

respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness."

Counselman v. Hitchcock (1892) 142 US 547, 564 "This total prohibition on use provides a comprehensive safeguard, barring the use of compelled testimony as an 'investigatory lead' also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures."

Daly **v.** Superior Court (1977) 19 Cal.3d 132, 145 "[T]he very existence of such testimony may present serious problems of proving its complete independence from evidence introduced in the criminal proceeding."

Leaders, in a sworn grievance response:

"Haeg is also mistaken in his belief that I wrongly used information obtained during plea negotiations to prosecute him in his criminal case. *It is true that part of the plea negotiations with both Haeg and his codefendant Tony Zellers required each of them to provide truthful statements about their violations. Both Haeg and Zellers provided these interviews.*

Because the information obtained from each of the defendants was essentially identical, it is understandable that Haeg believes that his statement given as part of plea negotiations was wrongly used against

him. However, this wasn't the case, the State relied on the information obtained from Zellers in prosecuting Haeg."

Yet Leaders information taking Haeg to *trial* stated:

> "*David S. Haeg was interviewed in Anchorage on 6/11/04* and Tony R. Zellers was interviewed in Anchorage on 6/23/04. During the interviews the timelines and events given were almost identical, and *a summary of the statements of the two men follows... During their interviews, Haeg and Zellers pointed out the location of the kill on a map… During their interviews, both Haeg and Zellers admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.*" Apx.V.

Leaders own charging information proves Haeg's PA statement was "wrongly used" and, to Haeg, seems Leaders committed perjury in his sworn grievance response.

<u>Question (10)</u>: Its unconstitutional for the SOA to knowingly use their false testimony that they didn't know why Haeg had given up guiding before conviction and/or for Haeg to not receive credit for the year guiding given for a PA. Leaders solicited and accepted Gibbens sentencing testimony the SOA didn't know why Haeg didn't guide:

> "The only hunting period that he opted not to guide would be that fall, '04, *for whatever reason that was."*

On September 29-30, 2005 Judge Murphy sentenced Haeg to a 5-year license revocation, without credit for the year already given for the PA. Apx.H.

Leaders agreed to give Haeg credit for the year guiding given before the court approved the PA, just as he promised and provided Zellers:

> Leaders sworn grievance testimony:
>
> *Leaders: "[T]he agreement called for a year suspension of Haeg's guide license"*
>
> Cole's arbitration testimony:
> *Cole*: I don't think he [Leaders] gave him [Haeg] credit for the year he got off. So he [Haeg] effectively got 6 years.
>
> *Shaw:* Have you had cases in which judges made the license suspension retroactive...
>
> *Cole:* Oh yeah.
>
> *Shaw:* ... to a date when somebody voluntarily stopped hunting?
>
> *Cole*: *And he [Leaders] was goanna do it in this case too.*

In addition to *Mesarosh v. U.S.; Napue v. Illinois; Mooney v. Holohan; and Giles v. Maryland;* supra, which prohibit states from knowingly using false testimony, the right against double jeopardy prohibits a defendant from paying twice for the same crime.

> North Carolina v. Pearce, 395 U.S. 711 (1969) "[T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it. *We hold that the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully "credited" in imposing sentence…"*

Also disturbing - if Haeg already paid for lesser charges how could he be convicted of, and sentenced for, harsher charges?

Question (11): Its unconstitutional for Cole's to fail to appear in response to a subpoena, airline ticket, and hotel reservation and/or for Robinson to tell Haeg nothing could be done about it. Haeg demanded Robinson subpoena Cole to Haeg's sentencing so he could be asked 56 questions, typed and given to Robinson, about the PA and all Haeg had paid for it. Apx.BB. After subpoena, airline ticket, hotel room, and witness fees were paid/delivered Cole failed to appear. Apx.AA. Robinson told Haeg, "Nothing can be done."

After firing Robinson and inspecting his file, Haeg found documentation proving Cole never intended on testifying. This was even copied to the court Apx.JJ. Yet Cole was never compelled to testify.

Haeg had a constitutional right to compel witnesses in his favor. Because Cole didn't appear the court was never informed of Haeg's detrimental reliance before the SOA broke the PA and/or Cole falsely told Haeg the only enforcement was "calling Leaders boss". Haeg never got

credit for the year already given for the PA or for his statement, without which there was no probable cause for over half the charges. Haeg was sentenced to nearly 2 years in jail, $19,500 fine, $100,000 forfeiture, $4500 restitution, and 5-year license revocation, effectively making a 6-year revocation.

Question (12): Its unconstitutional for Judge Murphy to specifically justify Haeg's sentence with false testimony knowingly presented by the SOA; to sentence Haeg to punishment not allowed by law; and to fail to inform Haeg of his right to appeal his sentence.

> Judge Murphy's on-record sentence justification: "[S]ince the majority if not all the wolves were taken in 19C – in the area where you were hunting"

This was the falsehood presented by the SOA to Judge Murphy on all search warrant affidavits, during Gibbens trial testimony, and afterward admitted by the SOA to be false. *And if Judge Murphy specifically used the false testimony as sentence justification, what was the jury's justification for conviction?*

Judge Murphy sentenced Haeg to a 5-year *revocation* of his guide license when the law allowed license revocation only if for life. See AS 8.54.720(a)(15). Revocation caused a $100,000 hunting camp loss because the federal landowner told Haeg to remove them since his license was revoked instead of suspended. A revoked license meant Haeg didn't have the license required for camp existence while a suspended license meant Haeg still had the required license.

Judge Murphy also failed to give the required notice Haeg could appeal his sentence. Apx.H.

See *Alaska Rule of Criminal Procedure 32.5 and Alaska Rule of Appellate Procedure 215 (b)*

Not appealing his sentence devastated Haeg. He lost $100,000 in hunting camps, never received credit for the year guiding given for a PA, and never got to compel Cole's testimony of PA injustice, violating due process and the equal protection of the law.

QUESTION (13): It's unconstitutional that Haeg be convicted of charges filed because activities under the WCP was governed by title 16 and/or was "hunting".

September 10, 2008 COA final judgment:

> "Why we conclude that Haeg could be convicted of unlawful acts by a guide: hunting same day airborne.
>
> Under the definition codified in AS 16.05.940(21), the term "hunting" isn't confined to the killing of animals for food or sport. Rather, "hunting" is defined as "[and] taking of game under AS16.05 – As16.40 and the regulations adopted under those chapters [of the Alaska Statutes]." The term "taking of game" includes more than simply the killing of game. As defined in AS 16.05.940(34), "take" means the "taking, pursuing, hunting…disturbing, capturing, or killing [of] game," as well as any attempt to engage in these acts."

> The predator control program that Haeg participated in was established under 5 AAC 92.110 – 125; these regulations were adopted by the Board of Game under Title 16, Chapter 5. Thus, Haeg's chasing and killing of wolves under this predator control program constituted "hunting" under Alaska law.
>
> *For these reasons, Haeg could lawfully be convicted of violating AS 08.54.72(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting."* Apx.A.

This ruling is in direct conflict with Alaska law and thus unconstitutional. Haeg was issued a WCP permit under 5AAC 92.039 [Chapter 5 of Title 16]:

> 5 AAC 92.039. Permit for taking wolves using aircraft (h) *In accordance with AS 16.05.783, the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title[Chapter 5].* [AS 16 covers all hunting]

This law specifically states permit methods and means *"are independent of all other methods and means restrictions in AS 16 and Chapter 5".* How can the COA rule Haeg, while "under" the permit, *was subject to the methods and means restrictions in AS 16 and Chapter 5?* And that because of this he "could lawfully be convicted of violating AS 08.54.72(a)(15), the statute that makes it a crime for a licensed guide to knowingly violate a statute or regulation that prohibits same-day airborne hunting"?

It is clear WCP permittees are not "hunting". It is clear the DC was wrong in its May 17-18, 2005 order that *Haeg could not argue at trial he was not "hunting."* It is clear the COA is wrong in its final judgment:

> "Haeg's chasing and killing of wolves under this predator control program constituted 'hunting' under Alaska law"

In addition, using 5 AAC 92.039(h) to prove the WCP was *not* hunting, the SOA has successfully defended lawsuits claiming since the WCP was "hunting" it violated the Federal Airborne Hunting Act. The COA ruling, if it stands, opens the door for a successful suit and means WCP participants are violating federal law.

Haeg is being denied equal protection of the law.

QUESTION (14): It's unconstitutional for Haeg's appeal not to have been stayed pending PCR and/or for Haeg not to be allowed PCR in Kenai, Alaska. Haeg filed many motions to stay appeal pending PCR – citing his inability to conduct both at the same time and authority, including COA, a stay was justified. Apx.II. Beginning on November 16, 2006 the COA, without justification, has simply refused:

> "Haeg also asks this court to stay his appeal until his post-conviction relief application is decided. But the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time. We therefore deny Haeg's request to stay his appeal." Apx.J.

The COA steadfastly refused to reconsider or provide justification.

> State v. Jones 759 P.2d 558 (Alaska App. 1988): "Jones also filed a direct appeal challenging his conviction and sentence and unrelated grounds. *The appeal was stayed pending resolution of the post-conviction procedure*"
>
> American Bar Association Standard 22-2.2: *When an application for postconviction relief is filed while an appeal from the judgment of conviction and sentence is pending, the appellate court should have the power to suspend the appeal until the conclusion of the postconviction proceeding or to transfer the postconviction proceeding to the appellate court immediately. The trial court or appellate court should exercise these powers to enable simultaneous consideration of the appeal, if taken, from the judgment of conviction and sentence and an appeal, if taken, from the judgment in the postconviction proceeding, where joinder of appeals would contribute to orderly administration of criminal justice.*

Three years of appeal without PCR claiming IAOC have already passed – and the COA final judgment was there wasn't enough record to prove IAOC – when Haeg has tapes proving this. With no justifiable reason the COA kept Haeg on a treadmill to nowhere for years for when even their own prior decisions held they shouldn't have. It may now take Haeg additional years in PCR. Almost no family can accomplish this – let alone wasting precious

judicial resources for two proceedings that should have been combined. More importantly, PCR would likely have settled Haeg's case without the current appeal.

> Adickes v. S.H. Kress and Co. 398 U.S. 144 (1970): "[T]he chief complaint isn't that the laws of the State are unequal, but that, *even where the laws are just and equal on their face, yet, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them."*
>
> Monroe v. Pape, 365 U.S. 167 (1961): *"[I]f the statutes show no discrimination, yet, in its judicial tribunals, one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another… the State has not afforded to all its citizens the equal protection of the laws."*

Nearly all witnesses required for PCR reside in the 3rd District near Kenai. Haeg can no longer afford to fly or keep witness housed in McGrath (4th District), which is $800 rt and $200 per night from Kenai. Yet the COA refuses to order PCR in Kenai.

> American Bar Association Standard 22-1.4. [P]*rovision should be made for transfer of a case to another court if that is appropriate for the convenience of the parties* or to guard against undue prejudice in the proceeding. (c) Neither a general rule favoring nor one disfavoring submission of a postconviction

application to the same trial judge who originally presided is clearly preferable.

Haeg is being denied equal protection of the law.

Question (15): The record proves IAOC. It proves.

1. All affidavits seizing evidence and property contained devastating false statements and Haeg's attorneys never protested, asked for property back, or motioned to suppress evidence when almost all evidence could have been suppressed.

2. Haeg never received a prompt postseizure hearing, notice of a hearing, or prompt opportunity to bond – even after Haeg asked to get his property back and Haeg's attorneys didn't protest when *Waiste v. State* proves constitutional violation.

3. The SOA, without justification or explanation, increased severity of already filed charges and Haeg's attorneys never protested.

4. The SOA violated Haeg's PA after great detrimental reliance and Haeg's attorneys never protested. The SOA used Haeg's PA statement against Haeg at trial and sentencing and Haeg's attorneys didn't stop this.

5. The SOA knowingly committed material trial perjury and Haeg's attorneys didn't do anything.

6. Haeg gave up a year of guiding and statement for a PA never received and Haeg's attorney's never required any benefit to Haeg.

7. Haeg subpoenaed Cole to testify, Cole never showed up, and Robinson never protested.

8. Haeg's attorneys never protested the judge's specific use of admitted perjury as justification for Haeg's sentence.

9. Haeg's attorneys never protested the illegal revocation of Haeg's license.

10. Haeg's attorneys never filed a sentence appeal.

11. Proves with all the above constitutional violations Haeg's attorneys' points of appeal were the court didn't have subject-matter jurisdiction. Apx.KK. Alaska law proves the court had subject-matter jurisdiction:

> AS 22.15.060. Criminal Jurisdiction. (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

Haeg was charged with misdemeanors in district court, irrefutably providing subject-matter jurisdiction.

12. Proves Osterman committed perjury; lied to Haeg to deprive Haeg of rights; defrauded Haeg of at least $24,000.00; wouldn't represent Haeg's interests because this would "affect the lives" of Haeg's first 2 attorneys; and was representing Haeg's first attorneys instead of Haeg. Apx.FF.

The performance of Haeg's attorneys was unreasonable and this performance gave rise to an absolute certainty that, had they performed adequately, the result of Haeg's case would have been different.

> Strickland v. Washington, 466 U.S. 668 (1984): [IAOC]… requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. [T]he proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.

Cuyler v. Sullivan, 446 U.S. 335 (1980): [D]efense counsel … *failed to resist the presentation of arguably inadmissible evidence.* Indeed, the evidence of counsel's *"struggle to serve two masters [couldn't] seriously be doubted."* Thus, *a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.*

Holloway v. Arkansas, 435 U.S. 475 (1978): "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to *refrain* from doing, *not only at trial but also as to possible pretrial plea negotiations and in the sentencing process.* It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but, even with a record of the sentencing hearing available, it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. *And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible.*"

Smith v. State, 717 P.2d 402 (Alaska 1986) Court of Appeals: "*The fact that Smith*

was legally entitled to persist in his plea of innocence is, in our view, determinative of his claim of ineffective assistance of counsel. We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions.

We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court…. Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement."

If the on-record evidence doesn't prove IAOC, why isn't Haeg allowed to stay his appeal to prove off-record evidence that is far more compelling?

Question (16): It's unconstitutional for the courts to delay providing Haeg a property hearing until he risked his life for it; for Magistrate Woodmancy not to be recused; and/or for Haeg not to be provided with an opportunity to cross-examine adverse witnesses, to present evidence or witness testimony, and/or to argue orally during property hearing. On July 7, 2006, in both the DC and COA and over many months, Haeg filed 16 motions for return of

property. Apx.II. Both courts denied hearing. The DC justification was the COA had jurisdiction and the COA justification the DC had jurisdiction. Haeg included these contradictory justifications to each, proving the contradiction. Chief Deputy Clerk Lori Wade confirmed COA receipt of DC denials. On November 6, 2006 frustrated Haeg finally filed an emergency motion stating since he was unjustly being denied hearing he would physically take his property back from the Troopers – in essence having to risk his life to get a hearing. Apx.II. The COA February 5, 2007 order (7 months after Haeg's first request) resulted:

> "[J]urisdiction in this case is remanded to the District Court for the limited purpose of allowing Haeg to file a motion for the return of his property which the State seized in connection with his case…conduct any proceedings necessary to decide this motion."

When Magistrate Woodmancy was assigned to his case, Haeg filed affidavits on June 26 and June 30, 2006 to recuse Woodmancy, citing bias Woodmancy displayed as clerk during Haeg's trial. Apx.EE. Alaska law required recusal yet Woodmancy remained. *See* AS 22.20.022.

On March 13, 2007 Woodmancy verbally ruled, over objection,

> "There will be no evidentiary hearing - no cross-examination of adverse witnesses, no presenting evidence or witness testimony, and no oral argument, just a couple lines why you think you should get your property back." Apx.L.

Haeg asked for reconsideration and was refused.

> Goldberg v. Kelly, 397 U.S. 254 (1970): "The fundamental requisite of due process of law is the opportunity to be heard." In the present context these principles *require…an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.*
>
> *In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.*
>
> *[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots."*

Because Haeg presented material issues of fact *Alaska Rule of Criminal Procedure 42(e)* required an evidentiary hearing. Material issues of fact presented:

1. The property seized was Haeg's primary means to provide a livelihood.

2. The property was irreplaceable.

3. He and his wife had no other livelihood and their short season started the day of the seizure.

4. The seizure affidavits contained devastating false statements.

5. No prompt postseizure hearing was held/offered.

6. Haeg asked when he could get his airplane back because he had clients coming the next day and the SOA said "never" – leading non-lawyer Haeg to believe there was no opportunity to protest being put out of business.

7. When Haeg hired an attorney weeks later the attorney said there was no opportunity to protest.

On March 16, 2007 Haeg appealed Woodmancy's denial of effective hearing to COA. Denied April 12, 2007. Apx.M. Haeg filed ASC Petition for Hearing of Woodmancy's denial. Denied May 27, 2007. Apx.N.

Haeg has been denied due process and the equal protection of the laws.

QUESTION (17): It was unconstitutional for Haeg not to be allowed to supplement his appeal record. Starting on August 31, 2006, Haeg motioned numerous times to supplement his appeal record with official record developed during ABA proceedings against Cole, Leaders, and Fitzgerald and with official record developed during the Alaska Commission on Judicial Conduct investigation of Judge Murphy and Gibbens. Apx.II. Haeg claimed the evidence was vital to justice in his appeal. The COA denied all motions. Apx.J. Combined with the inability to stay appeal so the record could be supplemented through PCR, the injustice is very great.

Cole's ABA record:

> "Did we discuss a motion to suppress? No I don't think we did because I didn't think it was a good idea; there is no right to a prompt postseizure hearing because Alaska law doesn't allow return of property; I didn't have to show up [in response to the subpoena to Haeg's sentencing] because I didn't think I would be a good witness; his [Haeg's] statement wasn't used against him; the Governor would've placed enormous pressure on his prosecutor and judge to make an example of him; the tape recordings [made during Cole's representation] sound correct."

ABA record, recordings made when Cole represented Haeg:

> "BOG members encouraging you to go outside the WCP area isn't a legal defense; you gave up a year of guiding, flew in witnesses, and gave a statement for the PA; the PA only required a one year license suspension; the SOA broke the PA at the last minute by changing already filed PA charges to charges that were more severe not agreed to; the SOA used your statement to file charges violating the PA; the only thing that can be done to enforce the PA is call Leaders boss; I left a message and she hasn't got back to me; your statement can be used against you; it is legal and ethical for the SOA to break the PA after all you did for it; I can't do anything to anger them [SOA] because I have to be able to make deals with them [SOA] in the future."

Fitzgerald's ABA testimony:

> *Haeg:* "Would you have had Tony Zellers give a statement to prosecution … if Brent Cole had not have me first give a statement implicating Tony?"
>
> *Fitzgerald*: "[C]ertainly the fact that you had already gone to the State was a factor in the decision made with regard to whether Mr. Zeller's was goanna follow suit."
>
> *Fitzgerald*: "The last thing an attorney should do is make an enemy of a prosecutor… advocating for a client or trying to enforce a PA would make an enemy of a prosecutor. The SOA didn't use either Haeg's or Zeller's statements."

Fitzgerald's on record statement at Zellers January 13, 2005 sentencing:

> "[H]ad it not been for the cooperation, frankly of both Mr. Zellers and Mr. Haeg, there would have been additional holes in the case and my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he government was free to do whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers and Mr. Haeg…"

Commission on Judicial Conduct record:

Judge Murphy and Gibbens testified to the Commission Gibbens never chauffeured Murphy during

Haeg's case. Yet Murphy flew to McGrath [pop. 400] to conduct Haeg's case, Gibbens lives in McGrath, there are no car rentals in McGrath (and no roads to anywhere else), and Gibbens was Murphy's sole transportation every morning, noon, and night – *proved by the official taped record of Judge Murphy in Haeg's case*:

> "I have to get to the store because I need to get some diet coke and I'm going to commandeer Trooper Gibbens and his vehicle to take me because I don't have any transportation."

QUESTION (18): It's unconstitutional for the SOA to be given 12 months to file their appellee brief; for correction of Haeg's illegal sentence to be delayed until it harmed Haeg; and/or not staying license suspension/revocation pending appeal. Haeg filed appellant brief on January 22, 2007 and was ordered to correct it by February 20, 2007 – which he did.

Through motions, granted by COA, the SOA didn't submit their appellee brief until February 8, 2008 – *12 months* after Haeg filed his brief. According to *Alaska Rules of Appellate Procedure Rule 217* the SOA was to file their brief *within 20 days* of Haeg's. The SOA even motioned for more then 12 months and it was only Haeg's January 8, 2008 opposition, documenting the incredible breakdown in justice, which prevented this. Apx.LL.

On November 6, 2006 Haeg motioned the COA to fix the 5-year revocation of his guide license to a 5-year suspension. *AS 08.54.720(a)(15)* states licenses can be suspended for a number of years *or revoked for life*. Federal landowners required Haeg to promptly remove or destroy $100,000 in hunting camps if his license were revoked

instead of suspended. The rational was camp permits required Haeg be licensed, and a revoked license meant Haeg had no license. A suspended license meant Haeg still had the required license. The SOA didn't oppose, stating the error was because the prepared judgment form stated "revocation" instead of "suspension" next to the box Judge Murphy checked. Apx.H.

> November 16, 2006 COA ruling:
>
> "Haeg also asks this Court to modify the portion of his sentence that calls for revocation of his guide license. *We have the power to grant this kind of relief* only if the trial court had no legal authority to revoke Haeg's license, or if the trial court was clearly mistaken in deciding to impose a license revocation as opposed to a suspension. *In either event, we wouldn't grant such relief until we decided Haeg's appeal.*" Apx.J.

On November 27, 2006 Haeg filed Motion for Reconsideration, stating under oath that if his sentence were not promptly corrected he would lose the camps. Apx.II. The COA never ruled. On January 6, 2007 Haeg filed Motion of Ruling, again stating under oath he would be forced to burn down $100,000 in camps if the COA failed to promptly correct his sentence. Apx.II. The COA never ruled. On July 16, 2007, 9 months after first asking and long after the camps were gone, Haeg indicated he would seek restitution from the COA for their failure. Apx.II. Although Haeg never asked for it in his appeal brief (because the camps were already gone), the COA September 10, 2008 judgment corrected Haeg's sentence (nearly 2 years after Haeg asked) - *stating they had told Haeg that if he needed immediate relief he could've asked*

the DC – when their own order irrefutably proves this false, stating they had the power but would not exercise it. Apx.A.

On November 6, 2006 Haeg motioned to stay his license suspension/revocation, citing the DC had been asked and had refused; the SOA false affidavits and false testimony at trial; the DC specific use of the SOA false testimony as justification for Haeg's sentence without stay; the year of guiding Haeg never received credit for - given for a PA the SOA broke after the year was gone; and citing the SOA falsely claimed at sentencing they didn't know why Haeg had quit guiding for a year. Apx.II.

On November 16, 2006 the COA ruled Haeg must first ask the DC for a stay and, if they had, Haeg could "renew" his motion. Apx.J.

On November 27, 2006 Haeg again asked for a stay, again telling the COA he already asked the DC to stay his license suspension/revocation, it refused, and justification was the falsehood Haeg, "killed most, if not all, the wolves in 19C…where he hunts." Apx.H.

The COA's never ruled on Haeg's "renewed" motion.

On June 18, 2007 Haeg filed Motion for Ruling; on July 3, 2007 the COA's claimed it had already ruled on Haeg's prior motions Apx.O.; on July 16, 2007 Haeg showed no ruling was ever made on his many motions to stay his license suspension/revocation - with no response. On August 23, 2007 Haeg filed another Motion for Ruling. Apx.II. October 23, 2007 COA ruling:

"We again decline to stay the revocation/suspension of his [Haeg's] guiding license."

There was no prior ruling, no justification, and this was 11 months after Haeg first asked.

The above delays are unconstitutional. See *Adickes v. S. H. Kress and Co.* and *Monroe v. Pape* supra.

QUESTION (19): It's unconstitutional for the COA to fail to apply *Waiste v. State* 10 P.3d 1141 (Ak 2000) and/or to falsely claim Haeg relied principally on cases other then Waiste.

To deny property return the COA September 10, 2008 judgment claimed Haeg relied "primarily on the decisions in *F/V American Eagle v. State* and *State v. F/V Baranof*." The COA never mentioned Waiste. Yet in Haeg's February 20, 2007 opening brief, March 17, 2008 reply brief, August 18, 2007 Petition for Review, June 2, 2007 Motion for Return of Property, July 2007 Opposition, October 29, 2007 motion for Ruling (all used by the COA as briefing in deciding A-10015/A-9455) Haeg relied primarily upon Waiste v. State, citing it first, most often, and with nearly twice the direct quotes of other cases. Haeg very specifically pointed out the COA failure to apply Waiste in his September 19, 2008 Petition for Rehearing Apx.MM., which the COA then denied. Apx.C.

Waiste is the seminal case determining due process required when seized property is someone's primary means to provide a livelihood during a short season. Waiste holds *federal* and Alaska *due process requires a prompt postseizure hearing* and that the property *must be allowed out on bond.* Haeg didn't receive a hearing (not even notice of a hearing) and wasn't allowed to bond his property out. By not applying Waiste the COA denied Haeg the equal protection of the law and by falsely claiming Haeg relied principally upon other cases they deprived Haeg of due process.

<u>QUESTION (20)</u>: It's unconstitutional for Haeg's attorneys to have intentionally deprived Haeg of constitutional rights. Haeg's attorneys told him:

1. Nothing could be done about the SOA's falsification of material evidence locations on all seizure affidavits.
2. Haeg had no right to a prompt postseizure hearing and no right to bond his property out because "Alaska law" didn't permit this.
3. Haeg couldn't tell anyone the BOG told Haeg more wolves had to be killed or the WCP would be shut down and that if Haeg took wolves outside the WCP area to just claim they were taken inside the WCP area.
4. WCP law didn't protect Haeg from hunting/guiding violations.
5. There was no way to enforce his PA except to call Leaders boss; I can't piss Leaders off because I have be able to make deals with him in the future; it is legal and ethical for the SOA to break Haeg's PA after Haeg had given a years guiding, had flown in witnesses, and had given a statement for it.
6. The SOA could use Haeg's PA statement against Haeg after PA failure.
7. The court didn't have subject-matter jurisdiction because the information wasn't supported by affidavit.
8. For the subject-matter jurisdiction tactic to work Haeg must never tell the court there was a PA or all Haeg had done for it – because this would "admit" jurisdiction.
9. The jurisdiction tactic was so good Haeg shouldn't put on evidence at trial.

10. Nothing could be done to enforce a subpoena.

11. Haeg couldn't appeal his sentence.

12. Haeg being sentenced at 2 AM, after everyone had been up since 4 AM and said they weren't functioning, "didn't matter".

13. Nothing could be done about Gibbens perjury because "the good old boys network of Troopers, prosecutors, and judges will protect their own."

14. *Shaw v. Dept. of Administration, Public Defender Agency, 816 P 2d 1358 (AK 1991)* prevented Haeg from suing anyone.

15. The COA would "throw out" Haeg's appeal if he presented evidence his own attorneys sold him out.

16. A judge wouldn't care about the SOA's known perjury to convict/sentence Haeg for hunting/guiding violations.

17. Proving his attorneys conspired to deprive Haeg of a fair trial "isn't goanna help you."

18. It was time Haeg "realized this might be a life-changing event and to try to fix the errors and not have it change life was very dangerous."

Rights Haeg was deprived of by his attorneys:

1. The right against unreasonable searches and seizures.
2. The right against double jeopardy.
3. The right against self-incrimination.
4. The right to due process
5. The right to confront witnesses against him.
6. The right to compel witnesses.
7. The right to assistance of counsel.

8. The right to the equal protection of the laws.

Tape recordings prove it was *because* Haeg hired attorneys that he was deprived of these rights.

> Powell v. State of Alabama, 287 U.S. 45 (1932): "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. *He is unfamiliar with the rules of evidence.* Left without the aid of counsel *he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.* He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one."
>
> *State v. Sexton*, 709 A.2d 288 (N.J. Super. CT. App. Div. 1998): "Court found both prosecutorial misconduct and ineffective assistance *which created the 'real potential for an unjust result'."*
>
> See also Strickland v. Washington, Cuyler v. Sullivan, Holloway v. Arkansas, and Smith v. State.

QUESTION (21): It's unconstitutional for Haeg's prosecution, conviction, and sentence to be tainted by systemic corruption within Alaska's judicial system. Possible motivation for this:

> Alaska Department of Fish and Game trial testimony, "There was a tremendous amount of controversy surrounding it, and we wanted to do this in several other areas. And this was the one everybody was kind of watching. They only issued three permits. I mean it was very controlled. The program was not being as effective as hoped…very few wolves taken [before Haeg's participation]. [W]e don't know to the extent [Haeg's] conduct has jeopardized the program at this point. Anything has the potential to jeopardize predator management in our state. I mean there's a huge faction of people that send me hate mail, death threats. It doesn't end there. I mean people are very opposed to the taking of wolves…There's a lot of people watching this decision. We all are."
>
> Judge Murphy, "[T]hings you [Haeg] might not think of, *such as the politics involved. Such as the affects to the wolf kill program."*

Haeg, realizing he may be made an example of, possibly affecting his entire life, and because of his then total ignorance of the law, hired Alaska's very best attorneys. Cole was #1 wildlife/guide attorney, with Fitzgerald #2. Both testified to this expertise. Robinson was #2 criminal attorney in Alaska (#1 was unavailable and Fitzgerald represented Zellers). After Robinson every criminal attorney in Alaska, until Osterman, refused to represent Haeg. The common concern, "big state, small attorney pool." What are the ramifications if attorneys like these are shown to have "sold out" their own clients?

Haeg's additional attempts to secure justice – all without result:

1. Filed complaint of Gibbens perjury at trial. Given to Roger Rom, the same attorney defending the SOA's conviction of Haeg during appeal. Decision was proving Gibbens perjury would require a jury to believe Haeg told the truth during his PA statement when he told Gibbens the evidence locations were in 19D and not 19C, - and since Haeg was now a convicted criminal no jury would believe him. Yet Gibbens own GPS coordinates proved the evidence was found in 19D and Gibbens, after immediate cross-examination, admitted his testimony the evidence was in 19C was false - and that the evidence had really found in 19D (as Haeg claimed during his PA statement). This is by definition perjury– even without Haeg's testimony.

2. Keith Mallard, head of Trooper Internal Affairs – charged with investigating Trooper corruption, refused to provide an address to which Haeg could send a complaint and evidence – even when Haeg directly asked.

3. After a complaint of Gibbens perjury, State Ethics Board attorney David Jones ruled perjury wasn't unethical.

4. When "official" record tapes came up "blank" during fee arbitration the ABA refused to reconstruct the record – even though Haeg had made tapes at the same time with two other tape recorders. The now "blank" record was made when Cole and Fitzgerald committed perjury and conspiracy, which obtained a decision in Cole's favor.

5. The ABA still refused to act on Haeg's grievance complaint against Leaders after a March 2, 2007 news article documented a situation similar to Haeg's:

> **Rogers judge chastises prosecution, investigation. *'This is not Iraq'***
>
> By PHIL HERMANEK Peninsula Clarion
>
> "The defense has a constitutional right. This is not Iraq," said retired Anchorage Superior Court Judge Larry Card, who is serving as judge pro-tem in the trial.
>
> A debate rose to a crescendo pitch as Card told assistant district attorney Scot Leaders, in the nearly 14 years Card has been a judge, he has never seen as many discovery violations in a most-serious case — murder.
>
> "I find it shocking we have these numerous violations," Card said. He then reminded Leaders of Rogers' constitutional right to a fair trial.

6. Haeg sent evidence of the above to the entire Alaska Legislature, who stated they couldn't help because it concerned the judicial branch.

7. High level State meetings have taken place concerning the corruption in Haeg's case, meetings including Governor Sarah Palin, Department of Law, and Commissioner of Public Safety – all without result.

Most Disturbing

The FBI provided the most disturbing evidence of systemic corruption within Alaska's judicial system.

A virtual blackout of communication has resulted between the witnesses in Haeg's case and the FBI after Greg Kaplan, then U.S. Representative Don Young's Deputy Director, told FBI Special Agent Colton Seale that on January 8, 2007 Haeg tape recorded a conversation in which Seale stated there had been "a number" of FBI investigations into allegations of corruption within Alaska's judicial system "nearly identical" to Haeg's and that in every case "the investigation grew rapidly and implicated more and more people until a call came from [Washington] DC to pull the plug." Seale went on to say "I wouldn't know" when asked if the call came from U.S. Representative Don Young, U.S. Senator Ted Stevens, or U.S. Senator Lisa Murkowski.

This all happened before Stevens, Young, or numerous Alaska legislators were linked to corruption.

It wasn't thought possible this level of corruption could exist, requiring diverse agencies and organizations to be involved, until these Supreme Court cases were found:

> *Monroe v. Pape*, 365 U.S. 167 (1961): "Combinations, darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress … "

Adickes v. S.H. Kress and Co. 398 U.S. 144 (1970): "The arresting power is fettered, the witnesses are silenced, the courts are impotent, the laws are annulled, the criminal goes free, the persecuted citizen looks in vain for redress."

U.S. v. Price, 383 U.S. 787 (1966): "[T]here were organizations which committed outrages… for the purposes of intimidating and coercing classes of citizens in the exercise of their rights. [T]he time will come when retaliation will be resorted to unless the Government of the United States interposes to command and to maintain the peace; when there will be retaliation and civil war; when there will be bloodshed and tumult…"

Elkins v. U.S., 364 U.S. 206 (1960) " If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the Government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution."

U.S. v. Cronic, 466 U.S. 648 (1984): As Judge Wyzanski has written: *"While a criminal trial isn't a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."*

The perjury moving evidence was a knife stab in Haeg's back; the deprivation of business property before charge, conviction, and judgment was starving Haeg before battle; the lies of Haeg's attorneys was poison in Haeg's water; and the false promise of a PA to deprive rights was promising Haeg he wouldn't have to enter the ring to do battle if he would give up all his arms and armor - and afterward throwing him in naked to do battle with the gladiators.

How many others has this happened to? How many will it happen to if nothing is done?

Haeg and a growing number of others are beyond anger at the death of the United States Constitution by the very people charged and trusted to uphold it – using their fiduciary position, governmental authority, and ability to suppress appeals against the people who, ignorant of the law, the Constitution was supposed to protect from the government. We will not be held hostage within our own State so we may be stripped bare.

5. Haeg asks this court again consider the "missing" November 8, 2004 letter Apx.W., the entire transcript of Haeg's representation hearing Apx.FF., the May 18, 2008 Anchorage Daily News article Apx.MM., the letters/affidavits from concerned people Apx.NN., the brochure documenting a wonderful life destroyed Apx.OO., and then give careful thought that it is now years and a mountain of injustices later. Appeals are nearly exhausted yet the fire burning brighter and brighter within Haeg and others to breath life into the Constitution is the same fire that created it.

Conclusion

It has taken superhuman effort and sacrifice for Haeg and his family to make it through Alaska's judicial system to reach this United States Supreme Court. If this Court does not promptly lend its strength, authority, and wisdom to guide all of us we fear this breach in justice will rapidly widen until it consumes this great State. For those of us who have sworn an oath to protect the United States Constitution, and have the ability, must do so no matter how alone we are, no matter how sophisticated or great the attack is, and no matter what means we must use. We must not fail in bringing down the strongest and most terrifying of nightmares, like the one now before you, because if we can't what will happen to the less able that stand behind us?

Relief Requested

On bended knee, bowed head, penniless, and after five years of terrible storms with wife and daughters in tow, Haeg humbly begs this United States Supreme Court promptly accept this petition.

I declare under penalty of perjury the forgoing is true and correct. Executed on _____.

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