IN THE COURT OF APPEALS FOR THE STATE OF AK
IN ANCHORAGE, AK

DAVID HAEG Appellant, vs. STATE OF AK, Appellee.	)	Court of Appeals No. A-09455

District Court No. 4MC-S04-024 Cr.

APPEAL FROM THIS DISTRICT COURT
FOURTH JUDICIAL DISTRICT AT McGrath
MARGARET MURPHY, JUDGE MURPHY

REPLY BRIEF OF APPELLANT

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Of the State of Ak
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APPELLATE COURTS

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Deputy Clerk

VRA CERTIFICATION. I certify that this document & its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding & disclosure of the information was ordered by the court.

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U.S. ATTORNEY RULES USAM TITLE 9 (Witness Immunity)

718 Derivative Use Immunity.…The Supreme Court upheld the statute in *Kastigar v. United States*, 406 U.S. 441 (1972). In so doing, the Court underscored the prohibition against the government's derivative use of immunized testimony in a prosecution of the witness. The Court reaffirmed the burden of proof that, under *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964), must be borne by the government to establish that its evidence is based on independent, legitimate sources: This burden of proof, which we affirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony. Kastigar, supra, at 460.

719 Informal Immunity Distinguished From Formal Immunity: … The principles of contract law apply in determining the scope of informal immunity. *United States v. Plummer*, 941 F.2d 799, 802 (9th Cir. 1991); …*United States v. Camp*, 72 F.3d 759 (9th Cir. 1996) Grants of informal immunity that do not expressly prohibit the government's derivative use of the witness's testimony will be construed to prohibit such derivative use. Plummer, supra.

724 Expiration of Authority to Compel: The letter of authority specifically extends the authorization to compel the witness to testify to any ancillary proceeding. This is

intended to cover the witness's testimony at a trial or trials following his or her immunized testimony before a grand jury, thus avoiding the necessity of a second application…

725 Use of Immunized Testimony by Sentencing Court: If the witness for whom immunity has been authorized is awaiting sentencing, the prosecutor should ensure that the substance of the witness's compelled testimony is not disclosed to the sentencing judge unless the witness indicates that he or she does not object. This is intended to avoid a claim by the witness that his or her sentence was adversely influenced by the immunized testimony.

726 Steps to Avoid Taint: Prosecution of a witness using evidence independent of his or her immunized testimony will require the government to meet its burden under *Kastigar*, *supra*, of proving that the evidence it intends to use is not tainted by the witness's immunized testimony. In order to ensure that the government will be able to meet this burden, prosecutors should take the following precautions in the case of a witness who may possibly be prosecuted for an offense about which the witness may be questioned during his/her compelled testimony:

1. Before the witness testifies, prepare for the file a signed and dated memorandum summarizing the existing evidence against the witness and the date(s) and source(s) of such evidence;
2. Ensure that the witness's immunized testimony is recorded verbatim and thereafter maintained in a secure location to which access is documented; and
3. Maintain a record of the date(s) and source(s) of any evidence relating to the witness obtained after the witness has testified pursuant to the immunity order.

ACGOV - IMMUNITY

Immunity operates on the theory that a witness who suffers no adverse legal consequences from testifying is, necessarily, not incriminated by such testimony. See *People* v. *Campbell* (1982) 137 Cal.App.3d 867, 873 ["An immunity must give protection equivalent to that which attends the refusal to testify about matters which incriminate."].

USE IMMUNITY - "Use immunity" essentially prohibits the prosecution from using the witnesses testimony against him in any criminal proceeding.

The most common type of "use" immunity is known as "use and derivative use immunity." See *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."; *People* v. *Campbell* (1982) 137 Cal.App.3d 867, 872 ["'Use' immunity protects a witness only against the actual use of his compelled testimony and its fruits . . . "; *People* v. *Hunter* (1989) 49 Cal.3d 957, 973, fn.4; *People v. Cooke* (1993) 16 Cal.App.4th 1361, 1366 ["Use immunity does not afford protection against prosecution, but merely prevents a prosecutor from using the immunized testimony against the witness."]. NOTE**:** A witness who has been granted "use and derivative use" immunity can be compelled to give testimony concerning the subjects covered by the immunity because such this type of immunity sufficiently protects the witness against self-incrimination. See *Kastigar* v. *United States* (1972) 406 US 441, 453 ["We hold that such immunity from use and derivative use is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege."]; *People* v. *Cooke* (1993) 16 Cal.App.4th 1361, 1366 ["Use immunity provides sufficient protection to overcome a Fifth Amendment claim of privilege."].

[I]t prevents the use of the witness's testimony to locate physical evidence linking him to a crime, obtain investigatory leads, or "search out other testimony to be used in evidence against him." See *Counselman* v. *Hitchcock* (1892) 142 US 547, 564; *Kastigar* v. *United States* (1972) 406 US 441, 460 ["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."]; *People* v. *Campbell* (1982) 137 Cal.App.3d 867, 873, fn.4. As the Court of Appeal explained, "'Use immunity' precludes punishment for the compelled disclosures by cutting the causal link between the incriminating testimony and its use through the exclusion of the compelled testimony or any evidence derives from it. It operates as an exclusionary rule." *People* v. *Campbell* (1982) 137 Cal.App.3d 867, 873-4; ["(T)he privilege forbids compelled disclosures which could serve as a 'link in a chain' of evidence tending to establish guilt of a criminal offense . . ."]; *People* v. *Quartermain* (1977) 16 Cal.4th 600, 616-20. NOTES: Immunized statement not admissible for impeachment: A witness's statement obtained under a grant of use immunity cannot be used to impeach the witness if he is charged with a crime and if his testimony at his trial is inconsistent with his immunized testimony. See *New Jersey* v. *Portash* (1979) 440 US 450. Use of non-evidentiary information: It is not clear whether, or to what extent, the prosecution can be non-evidentiary information that was obtained as the result of use immunity. Examples of non-evidentiary information would include information that helps the prosecution explain evidence that had been unintelligible; information that "may expose as significant facts once thought irrelevant (or vice versa); information indication which witnesses to call and in what order; information used to develop opening and closing arguments. See *U.S.* v. *North* (D.C. Cir. 1990) 910 F.2d 843, 857-8. In any event, the Court of Appeal has ruled that the correct "test" for determining the scope of use immunity is whether the "defendant could be tried as if he had not made the immunized

statement." *People* v. *Gwillim* (1990) 223 Cal.App.3d 1254, 1270. For example, if the witness tells officers that several rings stolen in a jewelry store robbery are buried in his back yard, both the witness's statement and the rings that were discovered as the result of the statement cannot be used as evidence against the witness.

NEGOTIATED IMMUNITY AGREEMENTS - Immunity agreements are often negotiated between the prosecution and witness as part of a plea or sentence bargain. For example, the witness may be a co-defendant in the case but, because of his minor role in the crime, lack of criminal history, or other considerations, it is decided to grant him immunity or a reduced sentence.

Determine the nature of the witness's testimony - There is, however, a procedure to protect the interests of both sides. The law provides that all information transmitted by the witness to a prosecutor for purposes of exploring a grant of immunity is automatically given use and derivative use immunity.

Combined state and federal use immunity: The United States Supreme Court has ruled that a witness who testifies under a grant of immunity in a state court is automatically granted use and derivative use immunity in federal courts to the extent that the witness's testimony incriminates him in a federal crime. See *Murphy* v. *Waterfront Commission of New York* (1964) 378 US 52, 79 ["(W)e hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him . . . (T)o implement this constitutional rule . . . the Federal Government must be prohibited from making any such use of compelled testimony and its fruits."]; *Nelson* v. *Municipal Court* (1972) 28 Cal.App.3d 889.

Isolating immunized testimony: If a person who has been given use and derivative use immunity is subsequently charged with the crime under investigation or a related crime, the prosecution may be required to prove--by a preponderance of the evidence-that all of the evidence that was used against the person at a preliminary hearing or grand jury proceeding, or which the prosecution seeks to present at trial, was not obtained as the result of the immunized testimony. In other words, the prosecution must prove "that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony."

For example, the testimony of prosecution witnesses could be reduced to writing, tape recorded, or video taped before the immunized testimony was given. This should enable the prosecution to prove that such testimony was, in fact, independent of the immunized testimony.

Another idea is to isolate the immunized testimony by making sure that all investigators and prosecutors who were involved in obtaining such testimony have nothing to do with any subsequent investigation or prosecution of the immunized witness. These investigators and prosecutors should conduct themselves in a manner that would allow them to testify that they never spoke with the immunized witness, they were not present when other officers or prosecutors spoke with the immunized witness, that they were not told what the immunized witness testified to, they had not seen any transcripts of the immunized witness's testimony, they had not read any reports in which such testimony was mentioned, and they had not talked to anyone about the content of such testimony.

Kastigar v. *United States* (1972) 406 US 441, 446. *U.S.* v. *Bernal-Obeso* (9th Cir. 1993) 989 F.2d 331, 334-5.

People v. *Campbell* (1982) 137 Cal.App.3d 867, 873 ["An immunity must give protection equivalent to that which attends the refusal to testify about matters which incriminate."].

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; *Kastigar* v. *United States* (1972) 406 US 441, 460 ["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."]; *People* v. *Campbell* (1982) 137 Cal.App.3d 867, 873, fn.4.

Prudhomme v. *Superior Court* (1970) 2 Cal.3d 320, 326 ["(T)he privilege forbids compelled disclosures which could serve as a 'link in a chain' of evidence tending to establish guilt of a criminal offense . . ."]

In any event, the Court of Appeal has ruled that the correct "test" for determining the scope of use immunity is whether the "defendant could be tried as if he had not made the immunized statement." *People* v. *Gwillim* (1990) 223 Cal.App.3d 1254, 1270.

People v. *Morris* (1991) 53 Cal.3d 152, 191; NOTES: The existence of an immunity agreement or plea agreement with a prosecution witness, and the circumstances surrounding the agreement, are "highly relevant" to the issue of witness's motivation for testifying and the witness's credibility. See *People* v. *Allen* (1986) 42 Cal.3d 1222, 1255. The determination of whether the witness testified truthfully should be made by the court, not the prosecution.

Murphy v. *Waterfront Commission of New York* (1964) 378 US 52, 79 ["(W)e hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him . . . (T)o implement this constitutional rule . . . the Federal Government must be prohibited from making any such use of compelled testimony and its fruits."]; *Nelson* v. *Municipal Court* (1972) 28 Cal.App.3d 889.

Daly v. *Superior Court* (1977) 19 Cal.3d 132, 145 ["It is true that use and derivative use immunity, unlike transactional immunity, does not purport to interfere with any prosecution based on evidence which is not derived directly or indirectly from the immunized testimony. But the very existence of such testimony may present serious problems of proving its complete independence from evidence introduced in the criminal proceeding."].

State's Appellee Brief Fails to Refute Haeg's Constitutional Violations.

1. The State claims Haeg raises issues in his brief that are not clearly identified. [Ap.Br.1-4] Haeg's brief clearly identifies the issues. [At.Br.1-20.]

2. The State claims Haeg's appeal is inadequately briefed. [Ap.Br.1-4.] Haeg used every page to cite specific errors & the law proving error. [Ap.Br.1-20.] Haeg had to shorten his first brief because the State objected it was too long. [At.Ex. 241-242]

3. The State claims Haeg admitted at trial he & Zellers killed wolves outside the WCP area. [Ap.Br.2.] This was a direct result of Haeg's letters, statement, & map showing locations of all wolves taken from air by Haeg & Zellers, given for a Plea Agreement (PA), & the trial courts failure to rule on Haeg's request to enforce *Evidence Rule 410* & the right against self-incrimination, in order the statement not be used against Haeg. [Tr.281, 331-32, 1319-20; Ap.Ex.35-36, 69-80; At.Ex. 243-285.] Because this testimony & Zellers's testimony was a direct result of Haeg's statement, given for a PA, the State is barred from using it in their brief, just as the State was barred from using it, even though they did, against Haeg at trial.

See Evidence Rule 410, *Kastigar v. U.S*, supra, *Counselman v. Hitchcock*, 142 U.S., 547, 564 (1892), *U.S. v. Irvine*, 756 F.2d 708, 710 (9th Cir. 1985), *Surina v. Buckalew* 629 P.2d 969 (Ak 1981), *Closson v. State* 812 P.2d 966 (Ak 1991), *People* v. *Campbell* (1982) 137 Cal.App.3d 867, 873, *Daly* v. *Superior Cour*t supra, *U.S. v. Salemme*, 91 F.Supp.2d 141 D. Mass., 1999, USAM, & ACGOV.

During Haeg's representation hearing the State *admits* Haeg's immunized statements, made for a PA, were used against Haeg at trial, & then tries to justify this constitutional & *Evidence Rule 410* violation. [At.Ex.29 & Ap.Ex.35-36]

The State *continues* to use Haeg's immunized statement, in their 9/8/06 opposition, against Haeg in this very appeal, "*In June 2004 both hunters were interviewed by the troopers & admitted they knew nine wolves were shot from the airplane while outside the permit area*." [At.Ex.286-87.] None of Haeg's attorneys, except Robinson in an obscure reply, objected to the court that the prosecutions case *was based nearly entirely on Haeg's immunized statement.* [*See* all record, especially Ap.Ex.69-70; At.Ex.284-85.] *Not one attorney objected to all the highly prejudicial letters sent to the court & the prosecution for the PA.* [*See* all record; At.Ex. 218-19, 246-280; Tr. 1390-91, 1437-38] These, combined with the map and Haeg's statement, made a subsequent fair trial and sentencing impossible.

4. The State claims Haeg did not provide a single record cite. [Ap.Br.3.] Haeg provided over 200 different cites to the record. [At.Br.1-20 & At.Ex.288-99.] The State claims Haeg provided minimal pertinent legal authority. [Ap.Br.3.] Haeg cited 51 case authorities in his brief. The State cited 23 case authorities – less than half.

5. The State claims Haeg should not be allowed to raise ineffective assistance of counsel (IAOC) for the first time on appeal. [Ap.Br.4.] Not only is this proper, there is evidence in the record, the trial court refused to accept an application for PCR claiming IAOC, & this Court refused to stay Haeg's appeal to conduct an IAOC proceeding in the trial court – preventing Haeg from effectively pursuing IAOC in trial court. [At.Br.17-18 & At.Ex.300.] *See* State v. Jones, 759 P.2d 558, *& ABA Standard 22-2.2.*

6. The State claims there was no conspiracy to deprive Haeg of rights because Mark Osterman (Osterman) testified so. [Ap.Br.5.] This same testimony proved Osterman was committing perjury, defrauding Haeg of at least $24,000.00, had deprived Haeg of rights, & had conspired to do so. [At.Ex.8-203.] Osterman testified that before he was hired he told Haeg he charged $8000.00 per point of appeal with no upper limit. [At.Ex.8-9.] Upon cross-examination Osterman admitted that before he was hired he had told Haeg 3-4 thousand per point on appeal. [At.Ex.9.] Testimony proved Haeg had tape-recorded every conversation had with Osterman. [At.Ex.12-13, 79-80.] Testimony proved Osterman had agreed to a fixed sum of $12,000.00 for the entire appeal, but then charged Haeg $36,000.00 before the appeal was even finished. [At.Ex.34-36, 96-99.] Testimony proved Osterman would not take the action he had promised when he was hired because it would "affect the lives & livelihoods" of Haeg's first 2 attorneys. [At.Ex.14-15, 21-31, 36-44, 54-61, 73-83, 115-120, 130-132.] Osterman testified he had concerns about what Haeg's first attorneys had done. [At.Ex.23.] Osterman testified that what Robinson did was wrong & what Cole had done was wrong, "no 2 ways about it." [At.Ex.25.] Osterman testified it was IAOC to not advise a client regarding a PA. [At.Ex.25.] Osterman did not deny telling Haeg, "You did not know Cole was going to set it up so their [prosecutions] dang dice was always loaded. They were always goanna win." [At.Ex.26.] Osterman testified Robinson was the malpractice of one attorney that put Haeg in a bind. [At.Ex.26.] Osterman testified that Cole "committed the malpractice act, which was selling the farm." [At.Ex.26.] Osterman testified he could see why Haeg was angry at not receiving a single benefit from giving up a year of income & statement used

by the prosecution for a PA he never received. [At.Ex.27 & Ap.Ex.35-36.] Osterman testified Robinson & Cole had "screwed up your [Haeg's] case bad enough." [At.Ex.27-28.] Osterman testified the State used Haeg's immunized statement in violation of Haeg's rights, that this was prosecutorial misconduct, & that it was IAOC for Haeg's attorneys not to stop this. [At.Ex.30.] Osterman testified it was the State that broke the PA by filing an amended information. [At.Ex.31.] Osterman testified Haeg's attorneys had not acted in Haeg's interest or at Haeg's direction. [At.Ex.24.] Osterman testified he could see why Haeg thought there was a conspiracy. [At.Ex.23.] Testimony proved that Haeg's attorneys were in a "good old boys club" in which they would conspire to protect each other. [At.Ex.153-156, 158.] Testimony proved that Haeg's business attorney, who was a former criminal attorney, thought there was a conspiracy to deprive Haeg of his rights. [At.Ex.50, 56-57, 131-132.] Testimony evidenced that Osterman refused to advocate for Haeg by using any of the above IAOC by Haeg's first 2 attorneys – irrefutably proven by his refusal to put anything of their sellout in Haeg's brief. [At.Ex.36-44.] Testimony proved Osterman was representing Haeg's first attorneys instead of Haeg. [At.Ex.36-44.] The State does not refute there was a conspiracy between Haeg's attorneys, the State, and/or the trial court to deprive Haeg of rights. [*See* all record; Ap.Br.1-18; At.Br.1-20; At.Ex.1-212, 284-85, 301-49.]

7. The State claims no plain error was established in Haeg's case. [Ap.Br.5.] There is overwhelming evidence of plain error – intentional, known, & malicious perjury moving the evidence in the search warrant affidavits to Haeg's hunting guide GMU – so Haeg's property could be illegally seized and he could be charged with hunting, game, &

guiding violations – violating equal protection of the law; due process violations in depriving property used to provide a livelihood and then using it as evidence; unconstitutional statutes for the deprivation of property; due process violation in the deprivation of a binding PA; use of Haeg's immunized statements against him; intentional, known, & malicious perjury by the prosecution at trial to convict Haeg of hunting, game, & guiding violations; IAOC; malicious/vindictive prosecution; judicial misconduct; & conspiracy to do all of the above. *See Annotations to Criminal Rule 47.*

8. The State claims Haeg failed to cite any case law or authority that would justify staying Haeg's appeal to conduct a PCR proceeding claiming IAOC. [Ap.Br.5-6.] Haeg cited *State v. Jones*, supra & *ABA Standard 22-2.2*. [At.Br.17-18.]

9. The State claims Haeg never objected to any error in his case. [Ap.Br.6-7.] Haeg objected to error before, during, & after trial; before, during, & after sentencing; & during appeal. [Ap.Ex.69-70; At.Ex. 1-212, 284-85, 224-40, 284-85; Tr.418-20, 478-79, 1038-45, 1372, 1374, 1381, 1408-24, 1430; & A-10015.]

10. The State claims this Court should deny a review for plain error in Haeg's case. [Ap.Br.7.] This would be an absolute denial of everything this Court stands for – the guarantor of justice when error, especially plain error, prejudices a defendant.

See *Martin v. Sate*, 517 P.2d 1399 (Ak 1974) Op. No. 991, *Hammond v. State*, Op. No. 483, 442 P2d 39 (Ak 1968), *Burford v. State*, Op. No. 954, 515 P2d 382 (Ak 1973), *U.S. v. Frady*, 456 U.S. 152 (1982), *Namet v. U.S.*, 373 U.S. 179 (1963), the Court recognized that *even in the absence of an objection, trial error may require reversal of a criminal conviction on either of two theories: (1) that it reflected prosecutorial misconduct, or (2) that it was obviously prejudicial to the accused.* Id., at 186-187.

11. The State claims Haeg's attorneys waived the plain error in Haeg's case. [Ap.Br.7.] Plain error cannot be "waived" by a defendant's attorney & constitutional rights (violation of which are Haeg's claims of error) can only be waived if the individual himself makes an "intelligent, knowing, & voluntary waiver."

U.S. v. Heldt, 745 F.2d 1275, 1277 (9th Cir. 1984), *Henry v. State of Mississippi*, 379 U.S. 443, 451-452, *Martin v. Sate*, supra, *Hammond v. State*, supra, *Burford v. State*, supra, *Namet v. U.S., supra*.

The so-called "waiver" of Haeg's rights was anything but intelligent, knowing, and/or voluntary. Haeg asked every attorney how the State could use perjury to seize his property & to make a hunting, game, & guiding case against him; how the State take his property, used to provide a livelihood, before he was charged, convicted, *or even seen a judge*; how the State could break the PA after so much detrimental reliance on it; how the State could use his statement, made for a PA, against him; how the State could lie about why Haeg had given up guiding for a year, etc, etc. In every case Haeg's attorneys misled or lied to him so nothing would be done. The State is asking this Court to hold that a defendants constitutional rights can be maliciously stripped from him through subterfuge by his own attorneys – & that the defendant can do nothing about it. A citizen would be held hostage by his attorney – which is exactly what happened to Haeg. Without his knowledge or approval Haeg's attorneys conspired with the State violate and hide nearly every right that would guarantee Haeg fundamentally fair procedures. The U.S. Supreme Court has ruled it is the defendant who is "captain of the ship":

See Jones v. Barnes, 463 U.S. 745, 751 (1983), *Brookhart v. Janis*, 384 U.S. 1, 3 (1966), *Smith v. State*, 717 P.2d 402 (Ak 1986), & *U.S. v. Heldt* supra, *State v. Scott*, 602 N.W.2d 296 (Wis. Ct. App. 1999).

Haeg's attorneys raised plain error violations in the trial court – that Haeg's immunized statements were being used against him, that Haeg's binding PA was violated by the prosecution and still being used against him, & that perjury known to, & presented by, the prosecution was used to convict Haeg of hunting, game, & guide violations. [Ap.Ex.35-36, 69-70; At.Ex.225-26, 284-85; Tr.418-20, 478-79, 1038-45, 1437, 1441.]

After Haeg's property, used to provide a livelihood, was seized, he was to be provided due process, including notice of an opportunity to contest, "within days, if not hours" of seizure, &, if not, the property could not be kept, used as evidence, or forfeited. Haeg hired his first attorney *weeks* after seizure. How could they "waive" this plain error if they were not representing Haeg at the time? [Ap.Ex.1-8; At.Ex.350-373 & A-10015.]

See also Criminal Rule 37(c), *F/V American Eagle v. State*, 620 P.2d 657, *Waiste v. State*, 10P.3d 1141 (Ak 2000), *Stypmann v. City & County of San Francisco*, 557 F.2d 1338 (9th Cir. 1977), *Lee v. Thornton*, 538 F.2d 27 (2d Cir. 1976).

12. The State claims Haeg's counsel had no personal knowledge of the failed PA & the record on appeal is devoid of any objection by Haeg's counsel that the PA was violated. [Ap.Br.7.] Both claims are irrefutably false. [At.Ex.224-40, 284-85; Ap.Ex.35-36, 69-70; Tr.281, 796, 906-07, 1260, 1319-20, 1334-35, 1362, 1363, 1430.]

13. The State claims Haeg's counsel acknowledged the State has the discretion to make charging decisions. [Ap.Br.7-8.] Haeg's counsel filed many motions that the State did not have discretion to charge Haeg with hunting, game, & guiding charges. [Ap.Ex.9-27, 61-72 & Tr.21-80.] If a defendant relies upon a PA to his detriment, charges that violate the PA may *not* be filed.

See Berger v. U.S., 295 U.S. 78 (1983), *Atchak v. State, 640 P.2d 135 (Ak 1981), U.S. v. Goodrich*, 493 F.2d 390, 393 (9th Cir. 1974), *In re Kenneth H.* (2000) 80 Cal.App.4th 143, 95 Cal.Rptr.2d 5, *Mabry v. Johnson*, 467 U.S. 504 (1984), *U.S. v. Goldfaden* (5th Cir. 1992) 959 F.2d 1324, 1328, *Smith v. State* supra, *Arnold v. State*, 685 P.2d 1261, 1267 (Ak 1984), *People v. Rhoden* (1999) 75 Cal.App.4th 1346, 1351-1352, *State v. Beckes* (1980) 100 Wis.2d 1, 7, *Butler v. State* (1969) 228 So.2d 421, 424, & *State v. Scott* supra.

14. The State claims Haeg's 5/6/05 motion & reply were "utterly devoid" of a request the State be barred from using Haeg's immunized statements. [Ap.Br.8.] Haeg's 5/6/05 affidavit & 5/6/05 motion are irrefutable proof Haeg requested that the State be barred from using his immunized statements. [Ap.Ex.69-70 & At.Ex.284-85.] The State claims this issue was never brought up prior to the conclusion of trial. [Ap.Br.8] As shown above this is irrefutably false.

15. The State claims the issue of Judge Murphy's inconsistent rulings was never brought up. [Ap.Br.8.] This is false. [Tr.21-26, 36-49.]

16. The State miss-quotes Judge Murphy's rulings on 5/9/05 & 5/17/05 to make them seem consistent - "Judge Murphy determined that *where* Haeg killed the wolves was an issue of *fact* for the *jury* to decide." [Ap.Br.8-9.] On 5/9/05 Judge Murphy ruled it was a *factual* issue if Haeg's *conduct* was wolf control or hunting/guiding, thus it was up to the *jury* to decide - so she could avoid ruling Haeg could not be charged with hunting, game, or guiding violations. [Ap.Ex.75-80.] On 5/17/05, to grant the State's protection order Judge Murphy then rules it was a *legal* issue for *her* to decide what Haeg's *conduct* was – & to grant the protection order she decided Haeg's conduct was hunting so Haeg was precluded from arguing it was not hunting. [Tr.21-51 & 921-922.]

Even the State, to defeat Haeg's 3/31/05 motion to dismiss, argued this was, "a *factual* issue that may constitute a defense at trial…*to be left up to the trier of fact &* is not a basis for pre-trial disposition of this case."[Ap.Ex.40-41.] Sixteen days later, the State was granted a protection order to prevent this very argument – *now* arguing it was a *legal* issue *not to be left up to the trier of fact*. [Tr.21.]

17. The State claims Cole did not have to testify at Haeg's sentencing in McGrath. [Ap.Br.9-10.] The State fails to consider - Haeg demanded Cole testify at sentencing in McGrath about his representation of Haeg; answer 56 questions including all he had Haeg do for a PA & then let the State break it by stating "there is nothing I can do but call Leaders boss" & "I can't do anything because after you are done I have to be able to make deals with Leaders", & including the State using Haeg's immunized statements against him; *Haeg paid Robinson to have Cole (Cole) successfully subpoenaed*; *Haeg paid Cole's witness fees; Haeg paid for Cole's plane ticket to McGrath; Haeg paid for Cole's hotel room in McGrath; & then Cole never showed up to testify*. [At.Br.1-20; Ap.Ex.35-36, 102-104; At.Ex.21-31, 34-44, 59-61, 73-77, 94-99, 108-21, 374-84 & Smith v. State, supra.]

The State fails to consider the letter Cole wrote Robinson, *stating Cole did not intend on being available to comply with the subpoena* – & that this letter was given to Judge Murphy before Cole failed to appear. [Ap.Ex.102-104.]

The State makes the claim "it appears that Haeg's attorney Robinson decided Cole's presence was irrelevant" – even though Haeg demanded Robinson subpoena Cole

to testify in person about his representation of Haeg including the failed PA, all Haeg had done for it, & that Haeg's immunized statements were used against him. Robinson acted - issuing Cole a subpoena – & never told Haeg that Cole "was irrelevant" or would not be appearing. [Ap.Br.10.] This again is evidence of the conspiracy of Haeg's attorneys & the State to conceal from the courts all Haeg had done for a PA everyone told Haeg he could not have. [Ap.Ex.35-36, 102-104; Tr.796, 906-07, 1223, 1260, 1319-1320, 1334-35, 1430, At.Ex.12-16, 21-31, 35-44, 96-99, 107-121, 284-85.]

18. The State claims Haeg's attorney never raised the issue of Cole's absence with the court. [Ap.Br.10.] Robinson's paralegal Burger not only told the court but also *included a copy of Cole's letter stating he was not intending on being available after receiving a subpoena* – raising Cole's intended absence with the court. [Ap.Ex.102-104.]

19. The State claims "It is factually irrelevant that Haeg might have wanted Cole to be present as his attorney waived this issue by failing to raise it with the trial court. *See* Beltz at 519." [Ap.Br.10.] Not only was it raised with the court as discussed above, *it is Haeg's constitutional right to compel witnesses in his favor*. *See* *Jones v. Barnes*, supra, in *Brookhart v. Janis*, supra & this Court in *Smith v. State*, supra. Haeg was effectively held hostage by the conflict of interest of his own attorneys helping the State frame him. In addition this Court held relevant that Beltz never asserted his attorney acted incompetently. *See* Beltz. Haeg claims his attorneys not only intentionally deprived him of rights but that they maliciously conspired with each other & the State to do so. Haeg, in front of numerous witnesses, demanded Robinson ask Cole 56 questions Haeg had typed out for Cole to answer under oath in person, then purchased & delivered to

Cole a subpoena, witness fees, airline ticket, & hotel reservation – how much clearer could Haeg have been about exercising his constitutional right to do so? [Ap.Ex.102-104 & At.Ex.284-85, 374-84.] For Robinson, Cole, & the State to conspire to take this constitutional right away from Haeg is another abomination and perversion of justice.

20. The State claims Haeg's attorney "waived" another of Haeg's rights – to a jury instruction to point out the bias when the State required Zellers to testify against Haeg for a PA & that the only reason Zellers did this was because Haeg's statement, given for a PA, implicated Zellers. [Ap.Br.10; Ap.Ex.35-36, 92-101; Tr. 331-332, 1260, 1319-1320; At.Ex.281-83, 303-49.] The State claims Haeg's attorney could waive this over Haeg's direct insistence it not be waived – more plain error. [Ap.Br.10.] It is further irrefutable proof of IAOC:

See Smith v. State, supra, *Jones v. Barnes* supra, *Brookhart v. Janis* supra, *Giglio v. U.S*, 405 U.S. 150 153-54 (1972), *Napue v. Illinois*, 360 U.S. 264 (1959), *Darden v. U.S.* 405 F.2d 1054 (9th Cir. 1969), *Johnston v. Love*, No. 94-3724 (1995), *U.S. v. Singleton*, 144 F.3d at 1343 (10th Cir. 1999), *U.S. v. Bernard*, 625 F.2d 854, 857 (9th Cir. 1980), *Giles v. Maryland*, 386 U.S. 66, 17L. Ed. 2d 737, 87 S. Ct. 793 (1967).

21. The State claims Judge Murphy never made a comment that since Haeg had agreed to it for a PA the State could use an uncharged & unproven moose hunt to "enhance" Haeg's sentence after trial. [Ap.Br.10.] This is false. Robinson, when arguing Haeg's agreement to discuss the moose hunt to "enhance" his sentence for a PA did not also mean Haeg had agreed for it to "enhance" his sentence after going to trial, stated,

> ROBINSON: "Mr. Leaders insists on bringing un-charged evidence for purposes of enhancing sentencing. *I don't know how that discussion of a moose case could be part of any negotiations to the un-negotiated case*."
> JUDGE MURPHY: "*Well it was at one point*." [At.Ex.226.]

Judge Murphy clearly ruled that since Haeg had agreed to allow the moose hunt to enhance his sentence for a PA with lesser charges this also meant that Haeg agreed to have the moose hunt "enhance" his sentence after trial on greater charges. [At.Ex.213-215, 225-26 & Tr. 1038-46.] Over objection, Judge Murphy agreed with the State and ruled that Haeg should be forced to comply with *everything* he had agreed to for the PA the State broke – with the State having to comply with *nothing* they agreed to for the PA – violating *Evidence Rule 410*, the right to due process, and numerous ruling cases. The State claims Haeg never raised the issue of being forced to have the moose hunt enhance his sentence after trial because he had agreed to have his sentence enhanced for a PA. [Ap.Br.10.] This was specifically & repeatedly raised with the trial court. First in the status hearing of 8/24/05 & then at sentencing. [At.Ex.225-26 & Tr.1038-1046.] The State claims Haeg did not demonstrate prejudice – yet because of this there was a "moose mini trial" from 1 PM until nearly 2 AM & then Haeg, with no criminal record, received an extremely severe sentence including nearly 2 years in jail. [Tr.1037-1454.]

22. The State claims that even though Judge Murphy specifically used the perjury knowingly & maliciously perpetrated by the State as justification for Haeg's severe sentence *this made no difference because*, "Judge Murphy appropriately considered the issues of deterrence, community condemnation, & rehabilitation when passing sentence." [Ap.Br.11.] *How can the State defend & even justify a conviction & sentence based upon intentional & prejudicial perjury perpetrated by the State itself? How can "deterrence, community condemnation, & rehabilitation", based on perjury,*

take the place of justice and the truth? All ruling caselaw & principles hold a conviction & sentence cannot be based in any part on perjury known to the prosecution – even perjury that only goes to the credibility of a witness.

See Napue v. Illinois, supra, *Mesarosh V. U.S.*, supra, *Olmstead v. U.S.*, 277 U.S. 438, 485 (1928), *Mooney v. Holohan*, supra, *Berger v. U.S.* supra, *Giles v. Maryland* supra, & *U.S. v. Basurto*, 497 F.2d 781 (9th Cir. 1974).

In Haeg's case the malicious & prejudicial perjury moving the evidence to where Haeg guides was used for the search warrant's used to deprive him of the property he used to provide a livelihood, for the charges & evidence needed to destroy his business, for the testimony needed to convict him at trial, & then, unbelievably, as the very justification for a sentence so severe it would destroy Haeg's life – even though he had absolutely no prior criminal history. [Tr. 1390.] This malicious & intentional perjury by the State permeated & tainted Haeg's entire prosecution from beginning to end, and now his appeal, – when the U.S. Constitution & U.S. Supreme Court demands it cannot.

The State does not dispute that Judge Murphy's sentence justification, that Haeg took wolves where he hunts, *was completely false & a direct result of the malicious & intentional perjury by the State throughout Haeg's prosecution to frame him for hunting, game, and guiding violations.* [Ap.Br.1-18.]

23. The State claims it is not important to Haeg's conviction & sentence that he is a hunting guide in GMU 19C, that he has a guided hunting lodge in GMU 19C, and/or that the State intentionally & maliciously lied to move the evidence found of wolves taken in GMU 19D to GMU 19C. [Ap.Br.11-12.] The importance of this is clearly laid out by Trooper Gibbens & Prosecutor Leaders themselves - both of who justified

charging Haeg with hunting, game, & guiding violations (which would destroy Haeg's entire livelihood) instead of wolf control violations (which would be a very minor incident to Haeg because they were specifically & intentionally excluded from hunting, game, or guiding violations) because "Haeg was taking wolves where he guides to economically benefit his hunting business." [Tr.45, 372, 858, 1381-1382, 1399.] As proven by the prosecution itself the issue of where Haeg guided hunts & were the evidence was found is of paramount importance – especially when all evidence was found in GMU 19D, the GMU in which the WCP was taking place, for which Haeg had a permit, & where he was not allowed to guide hunts. Particularly when WCP violations are specifically *excluded* from hunting, game, and/or guide violations & *not a single wolf was taken where Haeg hunts*. *See WCP law*:

> *5 AAC 92.050 (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", *5 AAC 92.110(m)*: "is independent of, and does not apply to, hunting and trapping authorized in 5 AAC 78 - 5 AAC 88", & *Ak Statute 16*: Chapter 5 Fish & Game Code, Chapter 50 Guides & Outfitters.

Locations were intentionally & maliciously falsified, over & over, so the evidence, none of which was found in GMU 19C, could be claimed as found in GMU 19C so Haeg, operating in GMU 19C as a hunting guide, could be charged, convicted, and sentenced for hunting, game, & guiding violations. [Ap.Ex.1-8, 102-04 & Tr. 418-20, 478-79.]

24. The State claims one of Haeg's claims of error is that Judge Murphy failed to dismiss the information because the court lacked subject-matter jurisdiction. [Ap.Br.11.] This is false. Haeg claimed that this was an irrefutably meritless issue used

by Robinson to deceive Haeg into not pursuing the real issues. [At.Br.3.] With all the numerous plain error constitutional violations that would have overturned Haeg's unjust conviction and sentence, Robinson instead used the non-existent claim the court did not have "subject-matter jurisdiction" - after Haeg himself disproved Robinson's "tactic" that the State didn't have "personal jurisdiction". [At.Br.3 & Ap.Ex.9-32.] Robinson didn't even appeal Haeg's severe and illegal sentence – and lied to Haeg that it could not be appealed. Subject-matter jurisdiction is provided by statute & *AS 22.15.060* provides Alaska's district courts with jurisdiction over misdemeanor crimes. Haeg was charged with misdemeanor crimes in district court – irrefutably providing the court with "subject matter" jurisdiction – and proving Robinson's "tactic" of ignoring all the plain error constitutional defenses for this *non-existent defense* to be further irrefutable evidence of the conspiracy between the State and Haeg's own attorneys to illegally convict and sentence Haeg. Robinson even told Haeg *not to put on any evidence at trial* because the "jurisdiction" tactic "would no doubt win on appeal". Robinson even told Haeg *not to ever bring up the PA, or anything Haeg had done for it, as this would "admit" the courts jurisdiction over him.* [At. Br. 9-11.] And then, when Haeg began to figure out this "tactic" was nonexistent & subpoenaed Cole to his sentencing to show the court all this, *Cole never showed up*. [At.Ex.301-02 & Ap.Ex.9-27, 61-72.]

25. The State claims Haeg failed to cite the record or in anyway establish a valid claim of prosecutorial misconduct & that this issue was never raised with the trial court. [Ap.Br.12-15.] This is false as shown above & below:

a.) Haeg informed the trial court & cited to the record to establish that the prosecution used intentional perjury to move the evidence found in the WCP GMU to Haeg's hunting guide GMU to illegally obtain search warrants for Haeg's lodge, house, & property; continued in this intentional and known perjury at Haeg's trial; & upon immediate cross-examination, acknowledged it was perjury. [Tr.419-421, 478-479; At.Ex.16, 26, 40, 42-44, 70-77, 104-105, 115-17, 350-73; Ap.Ex.1-8; A-10015].

See Lewis v. State, 9 P.3d 1028, (Ak.,2000), McLaughlin v. State, 818 P.2d 683, (Ak, 1991), U.S. v. Hunt, 496 F.2d 888 (5th 1974), Gustafson v. State, 854 P.2d 751, (Ak.,1993), State v. Malkin, 722 P.2d 943 (Ak. 1986), Cruse v. State, 584 P.2d 1141, (Ak. 1978), State v. Davenport, 510 P.2d 78, Mapp v. Ohio, 367 U.S. 643 (1961), Elkins v. U.S., 364 U.S., at 222.

Further, the prosecutions justification for charging Haeg for hunting, game, and/or guiding violations was that Haeg's actions in taking wolves where he guided hunts benefited him financially. [Tr.796-797, 858, 1832, 1399.] This intentional perjury deprived Haeg of the protection of the WCP laws – which would have precluded a participant like Haeg from being charged with hunting, game, and/or guiding violations. [*See* WCP law – pg. 14.] The perjury's effectiveness is proven by Judge Murphy specifically using it as the on-record justification for Haeg's severe sentence, especially when not a *single* wolf was taken where Haeg guided hunts. [Tr.1437 & 1441.]

b.) Haeg informed the trial court & cited the record to establish the prosecution never provided procedural due process when depriving Haeg of property he used as the primary means of providing a livelihood & then used this property as evidence in violation of due process. The State continues to intentionally & maliciously misrepresent the issue – stating Haeg is claiming he was denied the *opportunity* to a post seizure

hearing [Ap. Br. 13-14] – when Haeg has always claimed he was denied *prompt notice* of an opportunity to a post seizure hearing, *prompt notice* of the intent to forfeit, *prompt notice* of the property sought to be forfeited, *& prompt notice* of authority for forfeiture, and that he was deprived of all this because of his ignorance. [At. Br. 1-20; A-10015; At.Ex.169-70, 173-78.]

See: Waiste v. State, supra; F/V American Eagle v. State, supra; State v. F/V Baranof 677 P.2d 1245 (Ak, 1984); Perkins v. City of West Covina, 113 F.3d 1004 (9th Cir. 1999); Mathews v. Eldridge, 424 U.S. 319 (1976); Mullane v. Central Hanover Bank, 339 U.S. 306 (1950); Sniadach v. Family Finance Corp. 395 U.S. 337 (1969); Goldberg v. Kelly, 397 U.S. 254 (1970); U.S. v Seifuddin, 820 F.2d 1074, 1076 (9th Cir. 1987); Coe v. Armour Fertilizer Works, 237 U.S. 413 (1915); Armstrong v. Manzo, 380 U.S. 545, 552 (1965); U.S. v. James Daniel Good Real Property 510 U.S. 43 (1993); Brock v. Roadway Express, 481 U.S. 252 (1987); Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123 (1951); Etheredge v. Bradley, 502 P.2d 146 (Ak 1972); Wiren v. Eide, 542 F.2d 757 (9th Cir. 1976); Boddie v. Connecticut, 401 U.S. 371 (1971); Fuentes v. Shevin, 92 S. Ct. 1983, 407 U.S. 67; Powell v. Alabama, 287 U.S. 67 (1932); Johnson v. Zerbst, 304 U.S. 458 (1938); Marbury v. Madison, 5 U.S. 137 (1803); Memphis Light, Gas & Water Div. V. Craft, 436 U.S. 1 (1978); U.S. v. Hall, 521 F.2d 406 (9th Cir. 06/18/1975); Goss v. Lopez, 419 U.S. 565 (1975).

Haeg was recently given a copy of a DUI IMPOUND REPORT, which states:

> "**NOTICE TO OWNER/LIEN HOLDER** ***You are hereby given notice that you have an opportunity for a hearing under AS 28.05.131. The reason your vehicle was impounded is stated on the reverse side of this form. If you make no request for a hearing to the nearest Department of Public Safety office within 10 days of receipt of this notice, your right for a hearing is considered to be waived."***
>
> "*AS 28.05.131. Opportunity For Hearing Required.* (a) Unless otherwise specifically provided, or *unless immediate action in … impounding is necessary… the Department of Public Safety … shall give notice of the opportunity for an administrative hearing before a … vehicle is impounded by that department. If action is required under this section and prior opportunity for a hearing cannot be afforded, the appropriate department shall promptly give notice of the opportunity for a hearing as soon after the action as possible to the parties concerned.* (b) The notice under this

> section must state the reasons for the proposed action of the Department of Public Safety… and must provide for a reasonable attendance date of not less than 10 days after service of the notice. If there is no request for a hearing by the attendance date specified in the notice, the hearing is considered to have been waived.

How can the State & Haeg's own attorneys continue to claim Haeg was *not* required to be given *prompt notice of an opportunity for a hearing* when Haeg's property, used as his primary means to provide a livelihood, was seized & deprived? [Ap.Br.13-14 & State's Memoranda in A-10015] Especially when all ruling caselaw, principles, & *Criminal Rule 37(c)* hold property deprived in violation of due process cannot be used as evidence – as Haeg's was used. [*See* all caselaw & A-10015]

c.) Haeg informed the trial court & cited to the record to establish *AS 12.35.020, 12.35.025, 16.05.190, & 16.05.195* are unconstitutional as written & as applied to Haeg's case because they lack standards for providing the due process that was never given Haeg. [*See* A-10015; all of the numerous motions for return of property & to suppress as evidence filed with this court; At.Ex. 22-31, 169-170, 173, 175-179.]

> *See* also *F/V American Eagle v. State* supra, *Waiste v. State* supra, *State v. F/V Baranof* supra, *Goss v. Lopez* supra, *Memphis Light, supra*, & *Perkins v. City of West Covina*, supra.

d.) Haeg informed the trial court & cited the record to establish the prosecution used Haeg's immunized statement against him. [Ap.Ex.69-70; Tr.107-8, 143, 162, 332, 906-7, 1038-45, 1430; At.Ex.16, 25-31, 37-44, 84-87, 97, 99, 112-15, 284-85.] Haeg's immunized statement *is still being used* during this appeal & even in the State's appellee brief. "*In June 2004 both hunters were interviewed by the troopers & admitted*

they knew nine wolves were shot from the airplane while outside the permit area." [At.Ex.286-87 & Ap.Br.13.]

e.) Haeg informed the trial court & cited the record to establish the prosecution violated a PA by filing an amended information using Haeg's statements (just 5 business hours before it was to be presented to the court) containing harsher charges not agreed to - but after Haeg had already placed the enormous detrimental reliance of giving up an entire years income & 5 hour statement on it. [Ap.Ex.35-36, 69-70; At.Ex.16, 23-31, 37, 60, 73-77, 96-99, 121, 225-26, 246-80, 284-85; Tr.281, 796, 906-7, 1038-45, 1260, 1308-09, 1318-20, 1334-35, 1421-22, 1430.]

See also: Santobello v. New York, 404 U.S. 257, 264, 30 L. Ed. 2d 427, 92 S. Ct. 495 (1971), *U.S. v. Garcia*, 519 F.2d 1343 (9th Cir. 1975), *Butler v. State* supra, *In re Kenneth H.* supra, *Mabry v. Johnson* supra, *People v. Rhoden* supra, *Reed v. Becka* (1999) 333 S.C. 676 [511 S.E.2d 396, 403, *State v. Beckes* supra, *U.S. v. Goodrich* supra, *U.S. v. Goldfaden* supra, *Atchak v. State*, supra, U.S. v. DeMarco, 550 F.2d 1224 (9th Cir. 1976), *Blackledge v. Perry*, 417 U.S. 21, 40L. Ed 2d 628, 94 S. Ct. 2098 (1974), *Keith v. State*, 612 P.2d 977 (Ak. 1980), U.S. v. Alvarado-Sandoval, 557 F.2d 645 (9th Cir. 1977), *Stolt-Nielsen*, 442 F.3d 177, *Berger v. U.S.* supra, *U.S. v. Cantu*, 185 F.3d 298 (5th Cir. 1999), *U.S. v. Castaneda* supra, *U.S. v. Lyons*, 670 F.2d 77 (1982).

It was agreed by the State Haeg would get credit for this year. [Tr. 281, 527, 796, 906-07, 1334-35, 1362-63, 1393, 1414, 1430; At.Ex.281-83.]

f.) Haeg informed the trial court & cited the record to establish the prosecution intentionally misled the court to conceal that Haeg had been required by the prosecution to give up a year of income for a PA the prosecution then broke & also to still require the moose hunt "enhance" his sentencing because it had also been agreed to for the PA. [At.Br.14; Ap.Ex.35-36; Tr. 125, 281, 332, 527, 796, 906-07, 1038-45, 1308-

09, 1318-20, 1334-35, 1362-63, 1414, 1430; At.Ex. 23-31, 36-44, 96-99, 109-21, 225-26, 281-83.] This was never disputed by the State. [Ap.Br. 1-18.] *See* North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), Blackledge v. Perry, supra, Berger v. U.S., supra, U.S. v. Giese, 597 F.2d 1170 (9th Cir. 1979).

g.) Robinson & others raised with the trial court that the prosecution of Haeg was "vindictive", wanted to make an "example" of Haeg over & above what the law allowed, even though Haeg had no prior convictions for *anything*. [Tr.1390] That the prosecution *"was not looking for justice"* – that the prosecution *"just wants to string this man up & make an example of him."* [Tr. 1270, 1421-1422.]

h.) Haeg raised with the trial court that the prosecution conspired with Haeg's counsel to accomplish & conceal the above denial of Haeg's rights. [At.Ex.1-212.] *See* U.S. v. Marshank, supra, North Carolina v. Pearce, supra, Blackledge v. Perry, supra, Berger v. U.S., supra, U.S. v. Giese, supra.

26. The State misleads this court by stating, "Haeg claims that Trooper Gibbens committed perjury on the search warrant applications & that Prosecutor Leaders perpetuated the perjury at trial." [Ap.Br.13.] Haeg claimed that Gibbens & Leaders, *after* they committed the perjury on the search warrant applications & were *both* told about it, *both* perpetuated this now irrefutably known & malicious perjury at Haeg's trial. [At.Br.13-14.] The irrefutable evidence it was intentional perjury is the fact that Gibbens, upon immediate cross-examination, admitted it was perjury. [Tr.419-420, 478-479.]

27. The State claims that since Gibbens & Zeller's testimony is "consistent" this is "strong evidence against Haeg's claim of perjury." [Ap.Br.13.] Again the State misleads this Court. It is Gibbens perjury itself that the State is claiming is "consistent" with Zellers testimony. Gibbens testified in direct examination, in front of Haeg's judge & jury, the evidence he found of wolves taken were in GMU 19C & GMU 19B. [Tr.419-420.] Upon immediate cross-examination Gibbens admitted *all* wolves were taken in GMU 19D (the GMU in which the WCP was taking place – for which Haeg had a permit & where Haeg was not allowed to guide). This is proved perjury, by any & all definitions. *See AS 11.56.200 & 11.56.235*. There is no "consistent" testimony & thus no "strong evidence against Haeg's claim of perjury." The prejudicial taint of this perjury is spread throughout Haeg's prosecution – it now spreads throughout his appeal.

28. Again the State falsely claims that Haeg never cited any law or authority that would justify staying Haeg's appeal pending a PCR claim of IAOC. [Ap.Br.16.]

29. The State claims Haeg never asked the trial court to stay the suspension/revocation of his guide license. [Ap.Br.17.] Haeg specifically asked the trial court for this & was refused. [Tr.1449-1454.]

30. The State claims "Haeg failed to establish a claim for IAOC & malicious/vindictive prosecution." [Ap.Br. 17.] As shown above there is overwhelming evidence of IAOC, malicious/vindictive prosecution, & of conspiracy to deliberately deprive Haeg of his constitutional rights. There is no doubt Haeg wanted to promptly protest the deprivation of the property he used as the primary means to provide a livelihood, that he wanted the benefit of the PA he paid for, that he wanted Cole to testify

in person at his sentencing, that he did not want to have his immunized statement used against him, & that he did not want to have malicious perjury used to destroy the guide business he & his wife worked their whole life for. Neither Haeg's attorneys nor the State ever told Haeg he had a right to a prompt hearing to contest the deprivation of his property – nothing. No motion for its return. Haeg's attorney's told him "there is nothing we can do about the perjury moving the evidence to your guiding area". No motion to suppress – nothing.

See Lewis supra, McLaughlin supra, *U.S. v. Hunt* supra, *Gustafson v. State* supra, *State v. Malkin* supra, *Cruse v. State* supra, *State v. Davenport* supra, *Mapp v. Ohio* supra, *Elkins v. U.S* supra.

No notice to the court – nothing. No objection when the State broke the PA by filing different, harsher charges at the last minute after it was bought & paid for – no motion to enforce – and lies that it couldn't be enforced. No notice by the court when the State used immunized statements for nearly their entire case – nothing. No mistrial when the State was proved to be maliciously committing perjury to frame Haeg for hunting, game, and guiding violations – nothing. No objection when Judge Murphy used the perjury for her severe sentence – nothing. No one telling Haeg he could appeal his sentence – nothing. *See Criminal Rule 32.5(b) & Appellate Rule 215(b).* No one telling Haeg or the court his sentence was illegal – nothing. No one telling the court Haeg had cooperated with the prosecution from the beginning, giving them a year of guiding & their entire case, corrupted by perjury, for a PA never received – nothing. [At.Br.12-13.]

> "One of the most effective ways to lie is to mix falsehood with truth" - U.S. Supreme Court Justice O'Conner in *Williamson v. United States*, 512 U.S. 594 (1994). *See* also *Risher v. State* supra, *Cuyler v. Sullivan*, 446 U.S. 335

(1980), *U.S. v. Cronic*, 466 U.S. 648 (1984), *Strickland v. Washington*, 466 U.S. 668 (1984), *U.S. v. Marshank*, supra, *Holloway v. Arkansas*, 435 U.S. 475 (1978), *Wayrynen v. Class*, 586 N.W.2d 499 (S.D. 1998), *Faretta v. California*, 422 U.S. 806 (1975).

31. The State never addresses the most important issue in Haeg's brief - judicial system corruption resulting from Haeg's attorney's conspiring with each other, the prosecution, Troopers, and/or the court to deny Haeg fair proceedings. [At.Br.1-20 & Ap.Br.1-18.] In addition to a conspiracy to deprive Haeg of his property in violation of due process Gibbens, Leaders, & Haeg's counsel conspired to move the evidence to Haeg's guiding GMU, to use Haeg's immunized statement against him, to deprive Haeg of a bought & paid for PA, & to deprive Haeg of any benefit of the year guiding given for it. A judicial officer, as required, never signed most search warrant returns. [Ap.Ex.1-8, At.Ex.350-73.] Throughout Haeg's trial & sentencing Judge Murphy & Gibbens had unarguably prejudicial conduct outside court – with Gibbens transporting her to & from court every morning, noon, & night along with having meals with Judge Murphy outside court. [Tr.1262-1263 & At.Ex.385-90.] In their testimony to the Ak Judicial Commission they denied these rides ever took place. [At.Ex.391-404.] This proves perjury & conspiracy between Judge Murphy & Gibbens to deny Haeg an unbiased court. Judge Murphy ran Haeg's sentencing until 1:30 am – forcing Haeg to stay up nearly 24 hours straight & never told Haeg, as required, he could appeal his sentence. [Tr.1037-1454.] Haeg filed a timely affidavit to recuse Magistrate Woodmancy. [At.Ex.167-69 & 405-09.] Violating *AS 22.20.022* he remained. Magistrate Woodmancy stated Haeg had "delusions of conspiracy" and ordered an examination by Dr. Tamara Russell, a leading psychologist. [At.Ex.206] After a thorough & complete examination Dr. Russell

concluded it was almost a certainty that a conspiracy to harm Haeg existed between Haeg's counsel and the State. [At.Ex.410-11.]

FINAL THOUGHTS BY DAVID HAEG

I had an irrefutable & constitutional right to have my "advocates" tell me of my rights & their violations so I could choose the path I wished to follow. I was the one with the right to decide how to protect my wife, our two beautiful daughters, our livelihood, & myself. The many rights that would allow me to do so were intentionally & systematically stripped away by my own attorneys working with a malicious prosecution, plunging my family & I into a downward spiral that has consumed nearly everything we had, including 4 years of our lives already. I hope you understand the determination and resolve for justice created when the ignorant defendant starts reading the law & sees exactly what happened. [*See* At.Ex.464-502 - Text of Caselaw Principally Relied Upon], *U.S. v. Marshank*, supra, *State v. Scott*, 709 A.2d 288 (N.J. 1998), & *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'."*

Our "advocates" helped take everything by deceiving us to make the situation unbelievably worse, and the State got a big & public conviction, valuable property, & benefits for all those involved. The State & my "advocates" did not have to be "adversaries" anymore – everybody won but justice, my family, & the public – exactly as happened with the oil companies & the Legislature.

The most effective part of this perversion is yet to come, when the defendant, now on his own, is denied an effective opportunity to prove the truth – no staying punishment,

no PCR proceedings, no cross-examination of adverse witnesses, no evidence presentation, no witness testimony, no oral argument, no recusing biased judges, no staying appeals, no supplementing the record, no remands to perfect the record, no correcting illegal sentences, no prompt consideration of issues, allowing obvious conflicts of interest, allowing the State years to complete briefs, & forcing defendants to extremes to get a property hearing. [At.Ex. 201, 412-62.] The ignorant defendant is left in the incredible position of having to blindly search for justice by himself while the "professionals" - the State & the defense attorneys - effectively work together to forestall his ever reaching it. Maybe this only happens in politically charged cases like mine. More likely, as in the Legislature, this has likely been going on so long & become so pervasive, without any adverse consequences, the people involved forgot this is a federal felony. My family and I, and those who will see justice done, have not forgotten.

Anyone who can justify & cover up the sellout of a U.S. citizen's rights to fundamental fairness when prosecuted by the government's full might, paid for with untold lives, is far more misguided then any of Alaska's legislators. Stemming from the same attitude, the actions taken in my case are far more serious – striking at the very basis of this nations foundation, its constitution – and, when fully realized, will eclipse what happened in Alaska's legislature. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970), *Monroe v. Pape*, 365 U.S. 167 (1961), U.S. v. Price, 383 U.S. 787 (1966).

Not to put too fine a point on it but I will have justice. At any & all cost. If I have to go all the way to the U.S. Supreme Court & petition them for justice on bended knee in person, as of old, I shall do so. I will not be alone. No attorney, prosecutor, and/or

Trooper is going to take away the wonderful life my wife & I built for our daughters with years of blood, sweat, & tears by maliciously sabotaging nearly every constitutional right we possess. My prosecution was so unfair & prejudicial it is unbelievable.

I will continue to do my "legally challenged" best to effectively present my case, my family's plight, & the truth to exhaustion in Alaska's courts & to carefully document the process for the appeals beyond Alaska. I hope you will not sanction me for the defects in my presentation to you. I continue, as always, to honestly try to comply with the rules, yet still effectively present my case & the truth.

You three judges of the Alaska Court of Appeals have the power to grant my family and I justice and relief. I beg you carefully read the record I can use to make my case, consider carefully my claims of error, & then, giving careful consideration to my stated desire to know & exercise my rights in spite of my ignorance when my attorneys were supposed to be representing *me*, reverse my conviction with prejudice because of malicious prosecution, IAOC, judicial misconduct, and/or conspiracy; allow me to sue those who deprived me of my rights and/or conspired to do so; & recommend these people stand trial for perjury, conspiracy, and/or obstruction of justice.

This reply brief is supported by the accompanying affidavits & excerpt.

RESPECTFULLY SUBMITTED this _____ day of _____2008.

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David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE:

I certify that on the ____ day of _____ 2008,
a copy of the forgoing document by ___ mail, ___ fax,
or ___ hand-delivered, to the following party(s):
Andrew Peterson, Attorney, O.S.P.A. & the U.S. Department of Justice. By: _____