A-11349

~~A-11370~~

3KN-10-01295 CI

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In the Matter of the Application
For Post-Conviction Relief of:

David S Haeg
(Name of Applicant)

CASE NO: 4MC-09-00005CI

In Connection
With Case No: 4MC-04-00024CR

NOTICE TO STATE OF APPLICATION FOR POST-CONVICTION RELIEF

An original, amended, or supplemental application for post-conviction relief, or a notice of intent to proceed on the original application was filed on 11/30/2009.

The state has 45 days from the date of service of this notice to file an answer or motion.

The applicant has 30 days to file an opposition and the state has 15 days to reply.

Judge Raymond Funk is assigned to this case.

1/15/2010
Date

KGriffith
Deputy Clerk

I certify that on 1/15/10
I send a copy of this notice and the application for post-conviction relief/notice of intent to:
Office of Special Prosecutions & Appeals
David S Haeg

Clerk: KGriffith

1/15/10-
faxed to Anch Ct.
KG

FILE COPY

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

David S Haeg,
Plaintiff,

vs.

State of Alaska,
Defendant.

CASE NO: 4MC-09-00005CI

CASE MANAGEMENT ORDER
RE: FILING LOCATION

The above-entitled action has been assigned to a Fairbanks judge. The original case file will be retained by the Fairbanks Trial Courts. It is so ordered that any pleadings or other filings shall be filed at the Fairbanks Trial Courts, 101 Lacey St, Fairbanks, AK 99701.

1/15/10
Effective Date

By Order of the Presiding Judge

I certify that on 1/15/10
a copy of this notice was mailed to:
OSPA – Anch.
D. Haeg

Clerk: KGriffith

1/15/10
faxed to Aniak Ct.
KG

FILE COPY

TF998(cv)(2/09)
Case Management Order re: Filing Location

FILED
In District Court
State of Alaska
at McGrath
Date 11-30-05
Magistrate/Clerk

MEMORANDUM AND AFFIDAVIT

In Support of David Haeg's

APPLICATION FOR POST-CONVICTION RELIEF

Applicant respectfully submits the following points and authorities in support of his application for Post-Conviction Relief. See PCR Application, its attached facts, evidence, and exhibits.

INTRODUCTION

In March 2004 Haeg participated in the extremely controversial Wolf Control Program (WCP), which permitted the shooting of wolves from airplanes. The State of Alaska (SOA) told and induced Haeg hunting guide Haeg to take wolves outside the WCP area but claim they had been taken inside the WCP area - in order that the WCP be seen as effective and not shut down. The SOA then prosecuted Haeg for doing exactly as they asked. In addition, the SOA falsified all evidence locations to where Haeg guided. The SOA used the false evidence locations to claim that Haeg used the permit as a "guise" to kill wolves in his hunting guide area in order to keep the wolves from killing the moose Haeg offered to clients - claiming "the great economic benefit Haeg received by killing wolves where he guides" justified a hunting/guiding case instead of a WCP case – which by law prevented charges affecting Haeg's guiding business.

After Haeg's specific inquiry Haeg's attorneys counseled: (1) the SOA telling and inducing him to do something that they afterward charged him with doing was not a "legal defense"; (2) there was nothing Haeg could do about the SOA falsifying all evidence locations to his guide area; (3) Haeg had no right to a prompt postseizure hearing to protest the illegal search and seizure warrants or being deprived of the property that was his primary means to provide a livelihood; (4) Haeg had no right to bond his property out; (5) WCP law did not protect him from game, hunting , or guiding violations; (6) the SOA gave Haeg immunity to compel him to give a statement but afterward could use the statement to prosecute him; (7) the SOA could break a plea agreement (PA), by changing the agreed to and already filed charges to charges far more severe, after Haeg had given up a year of guiding in reliance on it; (8) there was no way to protest the SOA giving known false testimony against Haeg at trial; (9) there was no way to enforce subpoenas; (10) the SOA did not have to give Haeg credit for the year of guiding like they had promised before Haeg gave the year up; and (11) Haeg could not appeal his sentence.

After he was convicted and severely sentenced Haeg found out all the above counsel was false and that there were many other protections that his counsel had failed to tell him about. In addition, Haeg found out evidence he had placed in the official court record, over the objections of his attorneys, of the SOA telling and inducing him to take wolves outside the WCP area but mark them as being taken inside and of all Haeg had done for the PA, was missing while evidence proving it had been submitted remained in the record.

The evidence that Haeg's attorneys intentionally, knowingly, and/or negligently used Haeg's ignorance of law, procedure, and constitution to allow the SOA to violate nearly all of Haeg's

constitutional rights in order to obtain an unjust conviction and sentence is shocking. The evidence that the attorneys' performance was grossly deficient is shocking. The evidence that that official court record of Haeg's case itself was tampered with is shocking. The prejudice of these constitutional violations is shocking, resulting in the overwhelming likelihood that, had Haeg's attorneys preformed adequately, the outcome of Haeg's prosecution would have been different.

I

LEGAL STANDARDS

A. Statutory and Rule 35.1 Provisions.

Haeg is entitled to post-conviction relief if he shows that his conviction or sentence were in violation of the constitution of the United States or the constitution or laws of Alaska; that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; and/or that Haeg was not afforded effective assistance of counsel at trial or on direct appeal. See AS 12.72.010 (1), (4), (9) and Alaska Criminal Rule 35.1 (1), (4), (9).

B. Ineffectiveness Standards.

1. U. S. Constitution.

The Sixth Amendment to the United States Constitution guarantees that an accused in a criminal case shall receive the assistance of counsel. Powell v. Alabama, 308 U.S. 444 (U.S. Supreme Court 1940) This Sixth Amendment guarantee applies to the states through the Fourteenth Amendment. Gideon v. Wainwright, 372 U.S. 335 (U.S. Supreme Court 1963)

"[T]he right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759 (U.S. Supreme Court 1970)

Criteria for finding ineffectiveness: "First, the defendant must show that counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the defense." In respect to the deficiency, the defendant must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. **[A] defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case. The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome"** Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)

2. Alaska Constitution.

Article I, Section 11 of the Alaska Constitution also guarantees assistance of counsel. The Alaska Constitution provides more protection then the United States Constitution and guarantees counsel in more instances. Roberts v. State, 458 P.2d 3240 (Ak 1969) Blue v. State, 558, 558 P.2d 636 (Ak 1977)

The Alaska Constitution lessens the burden of proving ineffective assistance of counsel (IAOC). While the United States Constitution requires a "reasonable probability" the deficient performance contributed to the outcome the Alaska Constitution only requires a "reasonable doubt" that the deficiency contributed to the outcome. Risher v. State, 523 P.2d 421 (Ak Supreme Court 1974)

3. Tactical justification.

In both state and federal courts, counsel's competence is presumed, and a further presumption is that an attorney's actions were "motivated by sound tactical considerations." State v. Jones, 759 P2.d 558, 569 (Ak 1980).

Exceptions to the "tactical" justification rule, "A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

"The record ...underscores the unreasonableness of counsel's conduct by suggesting that their failure to investigate thoroughly stemmed from inattention, not strategic judgment." Wiggins v. Smith, 539 U.S. 510 (U.S. Supreme Court 2003)

If the "tactic" is objectively unreasonable, that is, one that "no reasonably competent attorney would have adopted under the circumstances" ineffectiveness will be found. State v. Jones

Erroneous or incorrect advice of basic rights, particularly after specific inquiry, is always found to be deficient and unreasonable performance by counsel. If erroneous or incorrect advice is given after specific inquiry all that remains is to find a "reasonable doubt" the erroneous or incorrect advice contributed to the outcome.

"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." Smith v. State, 717 P.2d 402 (Ak 1986)

"In order to render "effective assistance"... counsel must be familiar with the facts of the case and the applicable law so that he can fully advise the defendant of the options available to him." Arnold v. State, 685 P.2d 1261, (Ak 1984)

"It is a denial of the right to effective assistance of counsel for an attorney to advise a client erroneously on a clear point of law." Beasley v. U.S., 491 F2d 687 (6th Cir. 1971)

4. Conflicts of Interest

IAOC is established and prejudice presumed when counsel, who is burdened by an actual conflict of interest, represents a defendant.

"[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel. 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. Because it is in the simultaneous representation of conflicting interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)

"[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....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." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)

"[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington

"Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest, undeflected by conflicting considerations." Risher v. State

II

ERRONEOUS COUNSEL AFTER SPECIFIC INQUIRY AND RESULTING PREJUDICE

"A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison (U.S. Supreme Court)

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provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

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"From counsel's function as assistant to the defendant derive... the more particular duties to consult with the defendant on important decisions and to keep the defendant informed...The reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's ...litigation decisions." Strickland v. Washington

A. Entrapment Not a Legal Defense

1. Law

"Entrapment" is a complete defense to a criminal charge, on the theory that "Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute." Mere suggestion without inducement is fatal to an entrapment defense, as is a predisposition to commit the crime - such as a prior conviction of the same or related crime. Jacobson v. United States, 503 U.S. 540 (U.S. Supreme Court 1992) Sorrells v. United States, 287 U.S. 435 (U.S. Supreme Court 1932).

2. Facts

Haeg, from childhood to when he was prosecuted at age 38, made his entire livelihood by fishing, hunting, trapping, and guiding – without any criminal history of anything whatsoever.

Just before he participated in the WCP Haeg was testified at an Alaska Board of Game (the State agency who created and ran the WCP) meeting in Fairbanks about the devastating effect uncontrolled wolf numbers were having on ungulates. At this meeting Board of Game member Ted Spraker told Haeg how important it was to the SOA that the WCP was not shut down; that the WCP was likely going to be shut down because so far it was ineffective; that Haeg had to take more wolves to make sure the WCP was not shut down; that it was far more important for Haeg to be killing wolves then testifying; and that if Haeg ended up taking wolves outside the WCP area to mark them as being taken inside the WCP area. Spraker also told Haeg that he was surprised that people were not poisoning wolves and explained exactly what kind of poison worked best and how and where to obtain it. [Exhibit 10]

Haeg was then prosecuted for doing exactly as the SOA told and induced him to do. The SOA also falsified all evidence locations to Haeg's guiding area and specifically used this to justify filing hunting/guiding charges against Haeg – stating Haeg's intent in taking the wolves outside the WCP area was to benefit his hunting guide business by removing the wolves that were killing the moose he offered to clients. [Exhibits 1, 18, 22 and TR]

In newspaper articles the SOA stated Haeg was just "a bad apple" and that the SOA had nothing to do with Haeg taking wolves outside the WCP area and claiming they had been taken inside. [Exhibit 14]

Haeg's attorneys told him that being told and induced by the government to do exactly what they later charged him with was not a "legal" defense. [Exhibit 4]

Over his attorney's objections, Haeg wrote a letter to the Court of what he was told by the SOA and that "I don't know if I was exactly brainwashed at this point but I was feeling immense pressure from all sides to kill wolves…so the program would not be a failure and terminated." [Exhibit 10] This letter also stated this was going to be Haeg's verbal testimony at his PA hearing. Immediately after the SOA received this letter they broke the PA by filing an amended information greatly increasing the severity of the charges so Haeg never got to testify about this. [Exhibit 11]

Long after Haeg was convicted, sentenced, or could use it in his appeal, he found out his letter evidencing that the SOA told and induced him to do what they then prosecuted him for had been removed out of the record while evidence it had been submitted remained in the record. [Exhibit 13 and TR] Later yet BOG member Spraker said "it was absolute bullshit you (Haeg) were charged as a guide."

3. Prejudice

Jacobson v. United States and Sorrells v. United States prove beyond doubt the government suggesting and inducing Haeg's actions was a "legal" defense - and thus the counsel from Haeg's attorneys it was not a legal defense was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have raised the defense that the government telling a guide like Haeg that the entire future of the WCP depended on him killing more wolves and that if he took wolves outside the area to just mark them on the inside could easily cause that person to commit that crime. The inducement was very real and very great. Haeg's lack of any prior criminal history is evidence he was not predisposed. Thus Haeg would have had a compelling and complete defense to the charges he faced – proving the prejudice of the false counsel. This defense, even if not successful, would have evidenced Haeg's intent was to benefit the WCP at the SOA's suggestion - and not to benefit his business, precluding the intent needed to justify hunting/guiding charges - proving the prejudice of the false counsel. When this is combined with the fact the SOA falsified the evidence locations to Haeg's guide area to manufacture an intent to

benefit his business, the case against allowing devastating hunting/guiding charges is overwhelming - proving the prejudice of the false counsel.

Finally, after the PA was broken before Haeg could testify about it, the last evidence of Haeg's entrapment defense (the letter), which he had placed in the court record over the objections of his attorneys, was eliminated.

In other words three independent "errors" happened that had one thing in common – they all kept out of the record the SOA had told and induced Haeg to take wolves outside the area but claim they had been taken inside the area - in order to fraudulently make the WCP a success. These "errors" destroyed all trace of Haeg's "complete defense" to the charges filed against him.

The result is a virtual certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

B. No Way to Protest False Search and Seizure Affidavits or Warrants

1. Law

Material falsification of search warrant affidavits and/or warrants themselves is ground for all evidence/property seized to be suppressed/returned.

"[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)

"Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)

"State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)

"Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)

"'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress..." U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991)

Alaska Criminal Rule 12(b)(3) allows a motion to suppress evidence on the ground it was illegally obtained.

Alaska Criminal Rule 37(c) allows a motion for the return of property and to suppress evidence on the ground it was illegally seized.

2. Facts

In Haeg's case all search and seizure affidavits, and the resulting warrants, falsified evidence locations to GMU 19C – Haeg's guide area – false locations that were material to the SOA's case. [Exhibit 1]

These false affidavits and warrants were then used to search Haeg's home and lodge and to seize evidence and Haeg's property. [Exhibit 1]

The property seized was Haeg's primary means to provide a livelihood. [Exhibits 1 and 4]

Haeg and Zellers told their attorneys about the false locations on all the affidavits and on all the warrants and the attorneys told them nothing could be done about it. [Exhibits 4, 5, and 7]

All physical evidence found before warrants were issued had its location falsified to Haeg's guiding area. This false evidence location was then used to justify the warrants that obtained all other physical evidence. In other words **ALL** physical evidence was tainted by the false location.

The SOA continued to falsify the evidence locations during trial testimony and only upon cross-examination admitted it was false – proving the SOA had knowingly falsified the evidence locations – yet, knowing it was false, was willing to swear under oath it was not. [Exhibit 18 – TR 418-479]

The court specifically used the false location as justification for Haeg's severe sentence. [Exhibit 22 - TR 1437-1441]

On appeal the Alaska Court of Appeals held Haeg's attorney's waived Haeg's right to suppress the evidence since they did not raise it prior to trial. [Exhibit 31]

3. Prejudice

Alaska Criminal Rules 12(b)(3) and 37(c), backed up by overwhelming caselaw, prove beyond any doubt something could have been done about the material false evidence location on all the affidavits/warrants used to search and seize Haeg' property, and thus the counsel from Haeg's attorneys was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have suppressed **ALL** physical evidence – ending Haeg's prosecution - proving the prejudice of the false counsel; (2) Haeg's property would have been returned – allowing him to continue making a livelihood - proving the prejudice of the false counsel; (3) the SOA's justification for devastating hunting/guiding charges would have vanished and Haeg's true intent would have appeared – he was doing as the SOA told and

induced him to - proving the prejudice of the false counsel; (4) the court's justification for Haeg's severe sentence would have vanished - proving the prejudice of the false counsel and (5) this issue would not have been "waived" on appeal - proving the prejudice of the false counsel.

The result is a absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

C. <u>No Right to a Postseizure Hearing to Protest Property Deprivation and No Right to Bond Out Property</u>

1. Law

Notice of a hearing and/or a hearing itself is required within days if not hours of seizure of property that is used as the primary means of providing a livelihood. In addition, the property must be allowed out on bond.

<u>Waiste v. State</u>, 10 P.3d 1141 (Ak Supreme Court 2000) "This 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... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...**<u>But given 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...</u>** The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and **<u>due process mandates heightened solicitude when someone is deprived of her or his primary source of income</u>**... As the Good Court noted, moreover, **<u>the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.'</u>** 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 show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, **<u>to allow release of the vessel on bond,</u>** and to afford a prompt postseizure hearing."

AS 28.05.131 Opportunity For Hearing Required (a) Unless otherwise specifically provided, or unless immediate action in suspending, revoking, canceling, limiting, restricting, denying, or impounding is necessary for the protection of the health, safety, or welfare of the public, the Department of Public Safety or the Department of Administration, as appropriate, shall give notice of the opportunity for an administrative hearing before a license, registration, title, permit, or privilege issued or allowed under this title or regulations adopted under this title is suspended, revoked, cancelled, limited, restricted, or denied **<u>or 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.</u>**

AS 28.90.990 Definitions for Title

(a)(16) "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power;

(a)(28) "vehicle" means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area; "vehicle" does not include
(A) devices used exclusively upon stationary rails or tracks;
(B) mobile homes;

2. Facts

While he was using it as his primary means to provide livelihood, Haeg's property (including airplane) was seized with false warrants and affidavits. [Exhibit 1]

Haeg asked the troopers seizing his airplane when he could get it back because he had clients coming in the next day and he needed it. The troopers responded, "Never." [Exhibit 3]

Haeg hired his first attorney weeks later and asked him if there was any way to protest the seizure, ask for the plane back, or just bond it out. Haeg's attorney told him the law did not allow a hearing to protest the property seizure or deprivation and there was no right to bond property out. [Exhibit 4]

No postseizure hearing, or even notice, was ever given or afforded, Haeg was never allowed to bond his property out, and years later the court forfeited Haeg's property. [Exhibit 2 and TR]

The Alaska Court of Appeals ruled that Haeg had no right to a prompt postseizure hearing because he hired an attorney weeks after seizure – because the attorney would have told Haeg of his right to a hearing to protest the seizure and of his right to bond his property out. [Exhibit 31 – AR]

3. Prejudice

The Alaska Supreme Court case Waiste v. State proves beyond doubt the law allowed a prompt postseizure hearing (**it even required one "within days if not hours"**) and required property be allowed to be bonded out, and thus the counsel from Haeg's attorneys that the law did not allow a postseizure hearing and did not require Haeg be allowed to bond his property out was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

Even the Alaska Bar Association Examination, required to be passed by all attorneys practicing in Alaska, proves due process requires a prompt postseizure hearing when seizing property, especially property used to provide a livelihood. [Exhibit 34]

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have demanded a hearing to protest having his house searched and being deprived of his livelihood with false warrants and affidavits – certainly returning his property, suppressing evidence, destroying the SOA's justification for hunting/guiding charges, and almost certainly ending prosecution - proving the prejudice of the false counsel; (2) Haeg would have asked for his property to be returned and suppressed as evidence because he was not

notified of or provided a postseizure hearing "within days if not hours" – allowing him not to be bankrupt during the years before his case was even finished and almost certainly ending prosecution - proving the prejudice of the false counsel; and (3) Haeg's property, if not returned because of the illegal affidavits/warrants and/or lack of prompt postseizure hearing, would have absolutely been returned on bond – allowing him not to be bankrupt during the years before he was convicted or sentenced - proving the prejudice of the false counsel.

The result is an irrefutable difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

D. <u>No Right Against Self-Incrimination</u>

1. Law

The Fifth Amendment of the United States Constitution and Article 1, Section 9 of the Alaska Constitution prohibit compelling defendants to be witnesses against themselves.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary [statement], without regard for the truth or falsity. . . even though there is ample evidence aside from the [statement] to support the conviction." <u>Jackson v. Denno</u>, 378 U.S. 368 (U.S. Supreme Court 1964)

"A defendant can be required to give an incriminating statement if he is granted immunity equal to that of the right against self-incrimination, as risk of self-incrimination is removed." <u>Counselman v. Hitchcock</u>, 142 U.S. 547 (U.S. Supreme Court 1892)

The federal government holds that a defendant required to give a statement can still be prosecuted for actions referred to in the statement as long as there is no use whatsoever made of the statement. "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." <u>Kastigar v. United States</u>, 406 U.S. 441 (U.S. Supreme Court 1972)

This requires no direct, indirect, evidentiary, or non-evidentiary use or derivative use of the statement. It precludes use such as the decision to prosecute, use of witnesses exposed to the immunized testimony, and requires actions such as sealing the immunized testimony and a keeping a log of who was exposed to it, with no one exposed allowed to be part of the prosecuting team:

"[N]one of the testimony or exhibits...became known to the prosecuting attorneys...either from the immunized testimony itself or from leads derived from the testimony, directly or indirectly...we conclude that the use of immunized testimony by witnesses to refresh their memories, or otherwise to focus their thoughts, organize their testimony, or alter their prior or contemporaneous statements, constitutes evidentiary use rather than nonevidentiary use. This observation also applies to witnesses who studied, reviewed, or were exposed to the immunized testimony in order to prepare themselves or others as witnesses.

When the government puts on witnesses who refresh, supplement, or modify that evidence with compelled testimony, the government uses that testimony to indict and convict.

From a prosecutor's standpoint, an unhappy byproduct of the Fifth Amendment is that Kastigar may very well require a trial within a trial (or a trial before, during, **or after the trial**) if such a proceeding is necessary for the court to determine whether or not the government has in any fashion used compelled testimony to indict or convict a defendant. If the government chooses immunization, then it must understand that the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. See United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984) Where immunized testimony is used... the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the...process itself is violated and corrupted, and the [information or trial] becomes indistinguishable from the constitutional and statutory transgression.

This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.

If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

Alaska's constitution and law holds that a defendant cannot ever be prosecuted for actions referred to in a compelled statement. See AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993):

"We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.

Procedures and safeguards can be implemented, **such as isolating the prosecution team or certifying the state's evidence before trial**, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.

One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use immunity.

First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, **where the compelled testimony receives significant publicity, witnesses**

receive casual exposure to the substance of the compelled testimony through the media or otherwise. Id. at 863. In such cases, a court would face the insurmountable task of determining the extent and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.

The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. **Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.**

This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.

When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy to "probe certain topics more extensively and fruitfully than otherwise." Id. These are only some of the possible nonevidentiary advantages the prosecution could reap by virtue of its knowledge of compelled testimony.

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. **This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.**

Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' **we conclude that use and derivative use immunity is constitutionally infirm**." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

2. Facts

Cole, Haeg's first attorney, told Haeg that the SOA had given Haeg "immunity" in order to compel him to give a statement – that Haeg was going to be "king for a day" for this statement. [Exhibit 4]

On June 11, 2004 **Haeg gave the 5-hour immunized statement to prosecutor Leaders and trooper Gibbens, who had Haeg mark all wolf kill locations, all of which Haeg was later prosecuted for, on a map provided by prosecutor Leaders and trooper Gibbens.** [Exhibit 5] This statement incriminated both Haeg and Zellers. [Exhibit 5]

Prosecutor Leaders and trooper Gibbens, the very same people who took Haeg's immunized statement, used Haeg's statement and map in numerous ways to build their case against Haeg, including **releasing Haeg's incriminating statement to Alaska's biggest newspapers; obtaining and/or finding witnesses against Haeg; modifying all witness testimony with Haeg's statement; and specifically using Haeg's statement in the charging information as probable cause for all charges against Haeg.** [Exhibits 9, 11, 12, 14, 17, 19, 30, and TR]

On June 23, 2004, because of Haeg's statement, Zellers cooperated with and gave a statement to trooper Gibbens and prosecutor Leaders. [Exhibit 6] Both Zellers and Fitzgerald, Zellers attorney, testified under oath Zellers statement and cooperation was a direct result of Haeg's statement. [Exhibit 6] During Zellers interview prosecutor Leaders and trooper Gibbens used the same map upon which Haeg had marked all wolf kill sites, told Zellers that Haeg had made the marks, and asked Zellers to confirm the marks were wolf kill sites that he and Haeg had participated in. [Exhibit 7] **Fitzgerald testified under oath that both Zellers and Haeg had "transactional" immunity for their statements.** [Exhibit 29] "Transactional" immunity means there can be no prosecution for actions referred to in the statement.

Cole then told Haeg that the SOA could prosecute Haeg for the crimes referred to in his compelled statement and that the SOA could use Haeg's statement to prosecute Haeg. [Exhibit 4]

In a May 6, 2005 reply brief to an unrelated motion prior to trial, Haeg's second attorney, Robinson, wrote that it was a violation of Evidence Rule 410 for Haeg's statement to be used by prosecutor Leaders to support the charging information. [Exhibit 17] Robinson did not protest that Haeg had also been given immunity to compel the statement or protest the other innumerable uses of Haeg's statement (or ask for the required Kastigar hearing) - just the completely obvious and direct use in the written charging information which specifically stated that David Haeg was interviewed, this is what he said, and this is why the SOA is charging him with crimes. [TR] Even though this reply was copied to both prosecutor Leaders and the court no action was taken and Haeg proceeded to trial on an information that specifically and directly used his immunized statement as probable cause for all charges. [Exhibit 12]

Robinson told Haeg that he could be prosecuted after giving a compelled statement and that since the SOA was only going to present the incriminating parts of the statement against him at trial Haeg had to testify at trial to bring the exculpatory parts. [Exhibits 15 and 37 – TR 741-908]

At trial Haeg's immunized statement was used against him in numerous ways. **The map Haeg had created during his statement, upon which he had marked and numbered all wolf kill sites he was being prosecuted for, was the primary trial exhibit (exhibit #25) against him.** [Exhibit 5 – TR 280-286, 331-612, 645-646, 914]] **Zellers testified against Haeg at trial because of Haeg's statement.** [Exhibit 6] State Biologist Toby Boudreau's trial testimony was unarguably tainted by Haeg's statement, repeatedly referring to "Tony Lee", a material witness

who the SOA learned of from Haeg's statement. [Exhibit 19 – TR 271-272] Haeg's testimony at trial was a direct result of Haeg's statement. [Exhibits 15 and 37 – TR 741-908] Finally, prosecutor Leaders was Haeg's prosecutor at trial and trooper Gibbens was a witness against Haeg at trial, even though they were the very people who took Haeg's statement and thus "incurably tainted" for use at trial. This "taint" was irrefutably proved by Leaders arguments – citing innumerable facts from Haeg's statement – **before any witnesses or evidence was presented at trial.** [Exhibit 5 and TR 97-109]

On September 8, 2006, the SOA specifically used Haeg's immunized statement to oppose Haeg's appeal: **"In June 2004 both hunters [Haeg and Zellers] were interviewed by troopers and admitted the knew nine wolves were shot from the airplane while outside the permit area.** Both men were charged with various criminal accounts. Zellers case resolved by way of a plea agreement and Haeg proceeded to jury trial where he was convicted." [Exhibit 30 and AR]

The Alaska Court of Appeals, in deciding Haeg's appeal, held that Robinson could not bring up Haeg's statement use in a reply brief, it had to be brought up in a new motion, thus Haeg's right to protest the statement use was "waived." [AP] In other words the Court of Appeals ruled Robinson committed an "unprofessional error" proving "deficient performance".

Haeg filed a grievance with the Alaska Bar Association of prosecutor Leaders use of Haeg's statement in the prosecuting information. Prosecutor Leaders, in a sworn response, testified under oath he did not use Haeg's statement and the proof it was not used was that Haeg's attorneys would have filed a motion to suppress if it had. [Exhibit 2] Yet because of Robinson's May 6, 2005 reply brief protest of prosecutor Leaders use of Haegs statement, copied to both prosecutor Leaders and the court, it is irrefutable prosecutor Leader knew he had used Haeg's statement and that Haeg's attorneys also knew it was being used – proving prosecutor Leaders committed perjury in his sworn response to cover up he had violated Haeg's constitutional right against self incrimination – and used the "errors" of Haeg's attorneys to help do so. [Exhibit 17 and MR]

3. Prejudice

AS 12.50.101 and State of Alaska v. Gonzalez prove beyond doubt that Haeg could not be prosecuted for actions referred to in his compelled statement, and thus the counsel from Haeg's attorneys that he could be prosecuted for actions referred to in his compelled statement was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC. In addition, State of Alaska v. Gonzalez and United States v. North prove beyond doubt that, even if Alaska law had allowed Haeg to be prosecuted, his statement could not be used, and thus the counsel from Haeg's attorneys that his immunized statement could be used against him was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. **Had his attorneys told him the truth (1) Haeg could never been prosecuted at all, no matter what evidence the SOA had, after his compelled statement** - proving the prejudice of the false counsel and (2) even if Alaska law allowed Haeg to be prosecuted Haeg would have required the SOA to prove, during a Kastigar hearing, that the charging information and all evidence, witnesses, jurors, and

prosecutors had no taint whatsoever from his statement – and **as Haeg has irrefutable proof that all these were tainted it means the prosecution would have ended** - proving the prejudice of the false counsel.

The result is a absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

E. No Way to Enforce PA or Original Charges

1. Law

All authorities hold it is a violation of due process to allow a state to break a PA after a defendant has placed detrimental reliance on it.

"When 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." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

"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. Garcia, 519 F.2d 1343 (9th Circuit 1975)

"Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements..." Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)

"[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v. U.S., 442 F.3d 177 (3d. Cir. 2006)

"Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor... to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

"Where an accused relies on a promise... to perform an action that benefits the state, this individual...will not be able to "rescind" his or her actions. ... In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. ...courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement. Closson v. State, 812 P.2d 966 (Ak. 1991)

"Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement." Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999)

"Counsel ineffective for failing to move to compel the state to comply with pretrial agreement and failing to advise the defendant of this option." State v. Scott, 602 N.W.2d 296 Wis. 1999

(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 should not 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." Atchak v. State, 640 P.2d 135 (Ak 1981) Keith v. State, 612 P.2d 977, 980-81 (Ak 1980); Adams v. State, 598 P.2d 503, 510 (Ak 1979).

2. Facts

Cole told Haeg that he should make a PA to hunting/guiding charges and told Haeg he negotiated a PA with prosecutor Leaders that only required Haeg to give up guiding for 1-year. [Exhibit 4]

Cole told Haeg that prosecutor Leaders had agreed to give Haeg credit for a year of guiding if Haeg gave up the year prior to the PA being finalized at the court hearing. [Exhibit 4] Cole also said Haeg had to fly in witnesses from as far away as Illinois for the PA hearing [Exhibit 4]

Haeg gave up the year of guiding and prosecutor Leaders filed the hunting guide charges agreed to – charges that would allow Haeg to be sentenced to a 1-year loss of guide license. [Exhibit 4]

Just hours before the PA was to be finalized by the court prosecutor Leaders, without reason, increased the severity of the already filed charges so they would require the court to sentence Haeg to at least a 3-year loss of guide license. [Exhibit 4 and 11]

Even though the guide year given up was already past and witnesses had already been flown in, and in response to repeated questions of what could be done, Cole told Haeg and the witnesses the only thing he could do is "call Leaders boss, a lady I used to work with." [Exhibit 4 and 37]

Cole also told Haeg there was nothing he could do to keep prosecutor Leaders from changing the already filed charges at the last minute. [Exhibits 4 and 37]

In the weeks afterward, when asked if he had talked to prosecutor Leaders boss, Cole always replied, "I left a message and she hasn't got back to me." [Exhibit 4]

Haeg fired Cole nearly a month after the PA was broken and Haeg's new attorney, Robinson, said the PA and everything given for it was "water under the bridge." [Exhibit 15]

Haeg went to trial on the severe charges, lost, and subpoenaed Cole to his sentencing so Cole could answer 56 questions Haeg had typed up and demanded Robinson ask Cole answer under oath. [Exhibits 4, 15, and 20] The questions were about all that Cole had Haeg do for a PA with lesser charges that only required Haeg to give up 1 year of guiding, that year had already been

given up, and that Cole said nothing could be done to enforce except to leave a message for someone who never got back to him. [Exhibit 20]

Cole never showed up in response to the subpoena and airline ticket to sentencing. [Exhibit 4]

Robinson told Haeg there was nothing that could be done to enforce the subpoena. [Exhibit 15]

Robinson refused to ask the typed questions Haeg demanded be asked of the witnesses present at sentencing who had also been present when Cole had said nothing could be done to enforce the PA upon which so much detrimental reliance had been placed – even though the night before Robinson had promised to ask them. [Exhibit 37]

The SOA testified they had no idea why Haeg did not guide for a year [Exhibit 21 and TR 1335] – in exact opposition to what Cole had said. [Exhibit 4]

Haeg was sentenced to a 5-year loss of his guide license without credit for the year he had already given up on prosecutor Leaders' promise he would get credit. [TR]

The Alaska Court of Appeals ruled that since Haeg didn't request the PA , subpoena, or original charges be enforced he waived his rights to do so. [AR]

At Fee Arbitration Cole testified that since prosecutor Leaders did not give Haeg credit for the year Haeg had given up in reliance on prosecutor Leaders' promise to give credit, Haeg effectively received a 6-year loss of guide license. [Exhibit 4]

3. Prejudice

All ruling authorities hold something could be done other then "calling Leaders boss" to enforce Haeg's PA (motions to enforce, dismiss, or for specific performance), upon which he had placed so much detrimental reliance, and to enforce the original charges against Haeg, and thus the counsel from Haeg's attorneys that nothing could be done other then "calling Leaders boss" was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have moved to enforce, because of immense detrimental reliance, the PA that only required 1 year of guiding be given up. Haeg has, as of September 26, 2009, already been forced to give up 4 years of guiding in addition to the year he had already given up on prosecutor Leaders promise (for a total of 5-years and counting). By Haeg's arithmetic this means he has already suffered the undeniable prejudice of 4 additional years (and counting) without a guide license (while still having to pay many thousands a year for his lodge and hunting camp leases) - proving the prejudice of the false counsel; (2) Haeg would never been convicted of and sentenced for charges that were far more severe - proving the prejudice of the false counsel; (3) Haeg would have received credit for the year he never got credit for - proving the prejudice of the false counsel; (4) Haeg would not have wasted all the money he spent to get all the witnesses to the PA hearing from as far away as Illinois – proving the prejudice of the false counsel; (5) Haeg would not have had the huge cost of conducting an entire trial in

McGrath – proving the prejudice of the false counsel; and (6) Haeg would have realized and motioned that his entire trial and sentencing was null and void because he had bought and paid for (with the guide year and witness costs given up on prosecutor Leaders' promise of lesser charges) lesser charges then what he had just been convicted of and sentenced for – proving the prejudice of the false counsel.

In addition, because prosecutor Leaders, without reason, increased the severity of already filed charges in circumstances suggesting the increase was in retaliation for Haeg asserting his right receive the PA and lesser charges for which he had paid so much for, Haeg would have cited Atchak v. State to prevent the increase – proving the prejudice of the false counsel.

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

F. No Way to Protest the SOA Presenting Known False Testimony at Trial

1. Law

All authorities hold it is a violation of due process to allow a state to use false evidence and testimony.

"[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." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

"Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)

"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, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty..." Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

"We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony..." United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

2. Facts

The SOA falsified all evidence locations to Haeg's 19C hunting guide area on all affidavits in order to obtain search and seizure warrants for Haeg's home and property. [Exhibit 1] The SOA used these false warrants to search and seize property and evidence from Haeg's home and property. [Exhibit 1]

The SOA's justification for hunting/guiding charges was that the evidence locations proved Haeg took wolves where he guides hunts, locations that the SOA had falsified. [Exhibit 33 and TR]

Haeg's attorneys told Haeg nothing could be done about the SOA falsifying the evidence locations and nothing could be done about the false warrants or seizure. [Exhibits 4, 15, and 37]

During their immunized statements to prosecutor Leaders and trooper Gibbens (defense attorneys present), Haeg's and Zellers' stated and proved the SOA had falsified the evidence locations to Haeg's hunting guide area. [Exhibits 5 and 7]

During Haeg's trial trooper Gibbens testified, in response to prosecutor Leaders questioning, the evidence locations were located in Game Management Unit 19C - where Haeg guided hunts. [Exhibit 18 and TR 418-420] Prosecutor Leaders accepted this testimony, even though both Haeg and Zellers had told him it was false. [Exhibit 18 and TR 418-420] Only at Haeg's insistence was Gibbens cross-examined by Robinson on the evidence location, where Gibbens admitted no evidence was found 19C – it was all found in GMU 19D – the same GMU in which the WCP was taking place. [Exhibit 18 and TR 478-479] Haeg asked what could be done about this admitted perjury and Robinson said nothing could be done – no motion for dismissal with prejudice or for mistrial, nothing, even though this meant trooper Gibbens had just admitted the SOA's entire case, from all physical evidence to warrants to sworn testimony, was now based on false evidence locations material to the SOA's case. [Exhibit 15 and TR]

Haeg's trial continued as if nothing had happened, Haeg was convicted, and **to justify Haeg's severe sentence the Court said it was because the "majority if not all" the wolves were taken where Haeg hunts, when not a single wolf was taken where Haeg hunts – proving the prejudice, even after they had admitted it was false, of the SOA's known false testimony during the years from search warrant affidavits to trial testimony.** [Exhibit 22 - TR 1437-1441] Robinson did not object to the false justification by Haeg's court. [TR]

3. Prejudice

The United States Supreme Court in Mesarosh v. U.S., Napue v. Illinois, Mooney v. Holohan, and Giles v. Maryland proves beyond doubt that there was something that could be done, and had to be done, about the SOA presenting known material false testimony against Haeg at trial,

and thus the counsel from Haeg's attorneys that nothing could be done was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have moved that the case against him be dismissed with prejudice or moved for a mistrial to cure the taint, that Haeg's actions were to benefit his business, that now permeated the entire trial – as is guaranteed by the United States Supreme Court's in Mesarosh v. U.S., Napue v. Illinois, Mooney v. Holohan, and Giles v. Maryland - either ending Haeg' s prosecution entirely or giving Haeg a second prosecution in which the SOA's would not have been allowed to manufacture a hunting/guiding case - proving the prejudice of the false counsel; (2) the courts justification for Haeg's severe sentence would have vanished – a justification that irrefutably proved the prejudice of the false counsel - and **if Haeg's judge specifically used the known false testimony by the SOA to justify Haeg's sentence, exactly what did Haeg's jury use to justify convicting him?**

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

G. No Way to Enforce Subpoena

1. Law

Alaska Rule of Crimial Procedure 17. SUBPOENA (g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

2. Facts

Haeg demanded Robinson subpoena Cole and Fitzgerald (Zellers attorney) to Haeg's sentencing in order that the court could be told of the year of guiding, and all the witnesses Haeg had flown in, given for a PA the SOA broke at the last minute, with Cole telling Haeg nothing could be done to enforce it. [Exhibits 4, 15, and 37] Haeg had typed up and given Robinson 56 questions about all this that he demanded Robinson ask of Cole while Cole was on the witness stand. [Exhibit 20]

Robinson told Haeg that Cole knew more of what happen for and with the PA so there was no reason to subpoena Fitzgerald. [Exhibit 15]

Haeg paid Robinson to subpoena Cole, paid for the subpoena to be delivered, paid Cole's witness fees, paid Cole's airline ticket to Haeg's sentencing, and paid Cole's room in McGrath and then Cole never showed up to Haeg's sentencing. [Exhibit 4 and 37]

Robinson told Haeg nothing could be done about Cole's failure to obey the subpoena. [Exhibit 15 and 37]

On appeal the Alaska Court of Appeals ruled that since "Haeg" never asked the court to "enforce the subpoena" Haeg "waived" this "error". [AR]

3. Prejudice

Alaska Rule of Crimial Procedure 17(g) and the Alaska Court of Appeals ruling prove beyond doubt that there was something that could be done about Cole not showing up in response to a subpoena, and thus the counsel from Haeg's attorneys that nothing could be done was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have moved to enforce the subpoena, which meant Cole would have testified about all Haeg had done (guide year given up, witnesses flown in, etc) for a PA with lesser charges – meaning Haeg had just been convicted of and was being sentenced for, charges that were unconstitutional – proving the prejudice of the false counsel and (2) Cole's testimony would have ensured Haeg received credit for the year Cole told Haeg that prosecutor Leaders had promised Haeg (credit which Haeg never received) – irrefutably proving the prejudice of the false counsel.

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

H. <u>No Way to Get Credit for Year of Guiding Already Given Up</u>

1. Law

All authorities hold that Haeg must have been given credit for the year of guiding given up in reliance on prosecutor Leaders' promise.

"The basic Fifth Amendment guarantee against double jeopardy, which is enforceable against the States by the Fourteenth Amendment is violated when punishment already exacted for an offense is not fully "credited" in imposing a new sentence for the same offense . . .. [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..." <u>North Carolina v. Pearce</u>, 395 U.S. 711 (U.S. Supreme Court 1969)

2. Facts

Haeg gave up a year of putting food in his wife and daughters mouth for a PA and in reliance on prosecutor Leaders promise he would get credit for it. [Exhibits 4 and 37]

When prosecutor Leaders broke the PA, after the year given up for the PA was already past, Haeg's attorneys told Haeg there was no way to get credit for the year. [Exhibit 4 and 37]

3. Prejudice

As proved by North Carolina v. Pearce Haeg "absolutely" had to be given credit for the year already given up, and thus the counsel from Haeg's attorneys that he could not get credit was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have demanded, and received, credit for the year – proving the prejudice of the false counsel and (2) Haeg, once he receive "credit" for the year would have asked that his conviction and sentence be dismissed with prejudice because the "credit " he had just received proved he had bought and paid for charges far less severe than what he had just been convicted of and sentenced for - proving the prejudice of the false counsel.

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

I. No Way to Appeal Sentence

1. Law

Alaska Rule of Crimial 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... 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).

Appellate Rule 215. Sentence Appeal.
(a) Appellate Review of Sentence.
(5) Right to Seek Discretionary Review for Excessiveness. A defendant may seek discretionary review of an unsuspended sentence of imprisonment which is not 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
of the defendant's right to appeal or petition for review of the sentence

Alaska Rule of Crimial Procedure 35. Reduction, Correction or Suspension of Sentence.
(b) Modification or Reduction of Sentence. The court
(1) may modify or reduce a sentence within 180 days of the distribution of the written judgment upon a motion made in the original criminal case;

Courts may not actually rely on inaccurate information in sentencing a defendant. Actual reliance is demonstrated when the court gives "explicit attention" to the inaccurate information. United States v. Tucker, 404 U.S. 443 (U.S. Supreme Court 1972)

2. Facts

Cole, a material witness that Haeg had subpoenaed to his sentencing, failed to appear. [Exhibit 4]

Haeg's judge specifically used known material false testimony by the SOA to justify Haeg's sentence. [Exhibit 22 – TR 1437-1441]

When sentence was imposed upon Haeg his judge never informed him of his Right to Seek Review of Sentence, as required by Criminal Rule 32.5 and Appellate Rule 215(b). [TR]

When Haeg asked if he could appeal his sentence Robinson said he could not. [Exhibit 15]

3. Prejudice

Criminal Rules 32.5 and 35 and Appellate Rule 215 prove Haeg had a right to appeal his sentence, and thus the counsel from Haeg's attorneys that he could not appeal his sentence was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would have appealed his sentence, demanding Cole be forced to appear and testify that Haeg had already given up an entire year of guiding on prosecutor Leaders promise - proving the prejudice of the false counsel; (2) Haeg, once he receive "credit" for the year would have asked that his conviction and sentence be dismissed with prejudice because the "credit " he had just received proved he had bought and paid for charges far less severe than what he had just been convicted of and sentenced for - proving the prejudice of the false counsel; and (3) citing United States v. Tucker Haeg would have protested the courts actual use of the SOA's known and admitted false testimony to justify Haeg's sentence - proving the prejudice of the false counsel.

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

J. Subject-Matter Jurisdiction Tactic is Good

1. Law

Subject-Matter jurisdiction is granted by statute.

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

2. Facts

Haeg was prosecuted for misdemeanors in the district court. [TR]

Robinson told Haeg that the district court did not have jurisdiction over Haeg because prosecutor Leaders did not provide an affidavit to support the information he filed against Haeg. [Exhibit 15

and MR] Robinson said for this tactic to work Haeg must hide from the court of all he had done for the PA as this would "admit' Haeg had "submitted" to the court's jurisdiction. [Exhibit 15]

Robinson told Haeg to go to trial, not put on any evidence because it was a waste of money, and that Haeg would then "win on appeal" with the jurisdiction tactic. [Exhibit 15]

Haeg researched this and found all ruling authorities hold a prosecutor's oath of office is sufficient to verify informations. [Exhibit 15]

When Haeg confronted Robinson he admitted the court may have "personal jurisdiction" but then claimed the court would not have "subject-matter" jurisdiction. [Exhibit 15]

Haeg was convicted, Robinson told Haeg no issue other then the lack of subject-matter jurisdiction was worth appealing, and only appealed lack of subject-matter jurisdiction. [Exhibit 15 and 23]

3. Prejudice

AS 22.15.060 proves Haeg's court had subject-matter jurisdiction, and thus the counsel from Haeg's attorneys the court did not have subject-matter jurisdiction was false, an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys told him the truth (1) Haeg would not have given up numerous irrefutable constitutional defenses to "help" pursue a nonexistent defense - proving the prejudice of the false counsel.

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

III

INADEQUATE COUNSEL AND PREJUDICE

A. Property Forfeited With Inadequate Notice

1. Law

In order to criminally forfeit a defendant 's property, the indictment or information must contain a forfeiture count or allegation that alleges the extent of the defendant 's interest in the property. The primary purpose of this requirement is to put the defendant on the constitutionally required notice that his/her property is subject to forfeiture. The insertion of a forfeiture count or allegation in the indictment provides a basis for the issuance of pretrial restraining orders and criminal seizure warrants, puts third parties on notice that the government has an interest in the defendant's assets that are subject to forfeiture, and may establish a factual basis for the forfeiture of the defendant's assets in connection with a guilty plea. To forfeit a defendant's assets as part of a plea agreement, the indictment or information must include a forfeiture count

or allegation, and the defendant must plead to a statutory violation that provides for forfeiture upon conviction. Otherwise, the forfeiture will be invalid even though the defendant may have been willing to agree to forfeiture in the plea agreement. Willis v. United States, 787 F.2d 1089, 1093 (7th Cir. 1986) United States v. Boffa, 688 F.2d 919, 939 (3rd Cir. 1982) United States v. Grammatikos, 633 F.2d 1013, 1024 (2nd Cir. 1980) Unitet States v. Raimondo, 721 F2d 476 (4th Cir. 1983) United States v. Peascock, 654 F.2d 339, 351 (5th Cir. 1981) United States v. Davis, 177 F.Supp 2d 470, 484 (E.D. Va 2001)

See also Federal Rule of Criminal Procedures 7(c)(2)and 32.2(a)

Rule 7(c)(2) *Criminal Forfeiture*

No judgment of forfeitrue 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.

Rule 32.2(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.

2. Facts

Haeg's property was forfeited without a forfeiture count or allegation in the information. [Exhibits 9, 11, and 12]

Haeg's attorneys never told Haeg that without a forfeiture count or allegation in the information Haeg's property could not legally be forfeited. [Exhibits 4 and 15]

3. Prejudice

The U.S. Constitution requires notice of intent to forfeit property in the charging information, and thus the lack of counsel from Haeg's attorneys that his property could not be forfeited without notice in the information was an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had his attorneys adequately informed him (1) Haeg would not have had nearly $100,000 in property forfeited - proving the prejudice of the inadequate counsel.

The result is absolute certainty of a difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

B. Sentence Based on Misinformation

1. Law

A defendant must be given a new sentencing if inaccurate information was relied upon in imposing sentence. A sentencing court demonstrates actual reliance on misinformation when the court gives "explicit attention" to it, "found[s]" its sentence "at least in part" on it, or gives "specific consideration" to the information before imposing sentence. "For we deal here not with a sentence imposed in the informed discretion of a trial judge, but with a sentence founded at least in part upon misinformation..." United States v. Tucker, 404 U.S. 443 (U.S. Supreme Court 1972) United States ex rel. Welch v. Lane, 783 F.2d 863, 865 (7th Cir. 1984)

"We believe that on the record before us, it is evident that this uncounseled defendant was either overreached by the prosecution's submission of misinformation to the court or was prejudiced by the court's own misreading of the record. **Counsel, had any been present, would have been under a duty to prevent the court from proceeding on such false assumptions** and perhaps under a duty to seek remedy elsewhere if they persisted. Such a result, whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand. We would make clear that we are not reaching this result because of petitioner's allegation that his sentence was unduly severe. The sentence being within the limits set by the statute, its severity would not be grounds for relief here even on direct review of the conviction, much less on review of the state court's denial of habeas corpus. It is not the duration or severity of this sentence that renders it constitutionally invalid; it is the careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by the services which counsel would provide, that renders the proceedings lacking in due process. In this case, counsel might not have changed the sentence, but he could have taken steps to see that the conviction and sentence were not predicated on misinformation or misreading of court records, a requirement of fair play which absence of counsel withheld from this prisoner." Townsend v. Burke, 334 U.S. 736, 741 (U.S. Supreme Court 1948)

2. Facts

The court's specific justification for Haeg's severe sentence was "since the majority, if not all the wolves were taken in 19C...where you were hunting." [Exhibit 22 – TR 1437-1441] The SOA had placed this same information in every affidavit the court relied upon to issue search and seizure warrants and this had been the SOA's testimony at trial – stating this justified Haeg being found guilty of guiding charges, as taking wolves where he hunted benefited his guide business. Yet after years of this false testimony the SOA had been forced to admit, during trial cross-examination, they knew this information was completely false – that all evidence was found in 19D – where Haeg was not allowed to guide hunters. [Exhibit 18 – TR 478-479]

Haeg's attorneys never told him that his severe sentence could not be based on misinformation.

Even the SOA admitted Haeg's sentence was severe. [Exhibit 14]

3. Prejudice

The U.S. Constitution prohibits a sentence from being based on misinformation, and thus the lack of counsel from Haeg's attorneys that he could not be sentenced on specific misinformation was an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The prejudice caused by this "deficient performance" was devastating. Had Haeg's attorneys adequately informed him the specific justification Haeg's court used to impose a severe sentence would have vanished.

Also, if Haeg had a new sentencing he would have made sure Cole testified this time no matter how he conspired with Robinson to avoid doing so. This would have meant Haeg would have received credit for the guide year already given up for lesser charges and a sentence that only required a 1-year loss of guide license – credit that proved Haeg had just been convicted of and sentenced for charges not allowed by the United States Constitution.

And if Haeg's court specifically used the SOA's misinformation to justify Haeg's sentence exactly what did Haeg's jury, who were also presented the manufactured justification for a guiding conviction was that Haeg took wolves where he guided hunters (along with being deprived of the knowledge the SOA suggested and induced Haeg's actions) use to convict him?

The result is a certain difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

C. Revocation Instead of Suspension

1. Law

Alaska Statute 08.54.720(f)(3) states that a the court shall order the board to **suspend** the guide license for a specified period of not less then three years, or to permanently **revoke** the guide license, of a person who commits an offense set out in (a)(15) of AS 08.54.720.

2. Facts

Haeg was convicted of AS 08.54.720(a)(15) and was sentenced to a 5-year revocation of his guide license. [TR]

Haeg's attorney never told him that his license could only be suspended for 5-years, not revoked for 5-years. Haeg's attorneys only told him that since his sentence was legal it could not be appealed – when, according to AS 08.54.720(f)(3), it was not legal. [Exhibits 15 and 23]

3. Prejudice

AS 08.54.720(a)(15) only allows a guide license to be suspended for 5-years – not revoked for 5-years, and thus the lack of counsel from Haeg's attorneys that his guide license could not be revoked for 5-years was an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The federal government landowner, where many of Haeg's hunting camps were located, told Haeg their rules did not allow Haeg to keep these camps if his license were revoked instead of suspended – stating a suspended license meant Haeg still had the required license but a revoked license meant Haeg did not. Because of the inadequate counsel from Haeg's attorneys he was forced to give up irreplaceable hunting camps put in at enormous cost. [Exhibit 37]

The result is an absolute difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

D. Apparent Bias of Judge Murphy

1. Law

A trial judge's involvement with witnesses establishes a personal, disqualifying bias. Bracy v. Gramley, 520 U.S. 899 (U.S. Supreme Court 1997)

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness, of course, requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end, no man can be a judge in his own case, and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. Ohio, 273 U. S. 510, 273 U. S. 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But, to perform its high function in the best way, 'justice must satisfy the appearance of justice.'" In re Murchison, 349 U.S. 133 (U.S. Supreme Court 1955) Withrow v. Larkin, 421 U.S. 35 (U.S. Supreme Court 1975) Liteky v. United States, 510 U.S. 540 (U.S. Supreme Court 1994)

Alaska Code of Judicial Conduct: Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as an expression of prejudice.

2. Facts

Trooper Gibbens, the state's main investigator and witness against Haeg, chauffeured Judge Murphy everywhere on every day of Haeg's trial and sentencing – in front of Haeg's jury. This chauffeuring included having meals together. [Exhibits 16 and 37 – TR 1262-1263]

This chauffeuring was documented in the official record of Haeg's trial. [Exibit 16]

Haeg's attorneys never told him that Judge Murphy openly and regularly consorting with a principal witness against Haeg was ground for a new judge and/or mistrial.

When, long after he was sentenced, Haeg complained of this bias to the Alaska Commission on Judicial Conduct, trooper Gibbens and Judge Murphy falsely testified to the Commission that this never happened (false testimony irrefutably proven by the official record [Exhibit 16 – TR 1262-1263]) – which resulted in the investigation being dismissed. [Exhibit 32]

3. Prejudice

Haeg's judge exhibiting such bias, made far worse by her subsequent false testimony to the Alaska Commission on Judicial Conduct to cover it up, was ground for a mistrial. This means the inadequate counsel allowing Haeg to be placed on trial with an irrefutably biased judge was an "unprofessional error" proving "deficient performance" – the first criteria of IAOC.

The result is a near certain difference in the outcome of Haeg's case, when the second criteria that must be met to prove IAOC only requires a reasonable doubt of a different outcome.

IV

CONFLICTS OF INTEREST AND RESULTING PREJUDICE

A. Law

It is automatic IAOC if a defendant shows that a conflict of interest actually affected the actions of his attorney, without a showing of prejudice. In other words, if defendant shows a conflict of interest caused his attorney to act in a way other than if there was no conflict of interest, it is proven IAOC, without the defendant having to show prejudice.

"[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. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980).

"[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...to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)

"[T]he right to the assistance of counsel had been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact finding process that has been constitutionalized in the Sixth and Fourteenth Amendments." U.S. v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)

"[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, (U.S. Supreme Court)

"Defense counsel ... must conscientiously protect his client's interest, undeflected by conflicting consideration." Risher v. State (Alaska Supreme Court)

[Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967)

B. Facts

1. Cole

Haeg asked Cole if there was anyway to (1) protest the fact the SOA told and induced him to do what they then charged him with doing; (2) protest the falsified evidence locations; (3) protest the seizure of his plane; (4) bond his plane out; (5) protest the use of his immunized statement; or (6) enforce the PA Leaders broke. Cole told Haeg there was nothing that could be done and that "immense pressure is being brought to bear to make an example of you and I can't do anything that will piss off Leaders because I still have to be able to make deals with him after you [Haeg] are finished." [Exhibits 4 and 37]

Attorney Kevin Fitzgerald, a witness that Cole called to testify in Cole's defense during Fee Arbitration, stated that the last thing an attorney would ever do is to make an enemy out of the prosecutor and that advocating for a client would make an enemy of the prosecutor. [Exhibit 29]

2. Robinson

Robinson said Cole lying to Haeg was IAOC but that Haeg was not paying Robinson for this defense - and he had no obligation to represent Haeg's interest over Cole's interest. [Exhibit 15]

Robinson told Haeg that an IAOC claim was "suing" the attorney. Robinson told Haeg that the "Shaw case" prevented attorneys from being sued by defendants unless the defendant's conviction was overturned during PCR. [Exhibit 15] "[A] convicted criminal defendant must obtain post-conviction relief as a precondition to maintaining a legal malpractice claim against his or her attorney. [T]he legal standards for ineffective assistance of counsel . . . and

for legal malpractice in this action are equivalent." Shaw v. Dept. of Administration, Public Defender Agency, 816 P 2d 1358 (Ak 1991)

In other words if a defendant successfully overturns his conviction because of IAOC it is the same as proving malpractice - but if the defendant is not successful he cannot sue his attorney.

3. Osterman

Before Haeg hired him Osterman said Cole and Robinson's representation of Haeg was "the biggest sellout I have ever seen", that he would use this "sellout" to defend Haeg, that he and Haeg would "sue" Cole and Robinson for millions, and that he charges 3 to 4 thousand per point on appeal but would just charge Haeg $12,000 total upfront for the appeal to completion. [Exhibit 24 and RH] After Haeg had paid him Osterman stated he could not use the sellout to defend Haeg because he could do nothing that would affect the livelihoods of Cole or Robinson – because "Robinson runs the Bar [Association]" and that Haeg now already owed him an additional $24,000 on top of the $12,000 because he charges $8000 per point on appeal plus expenses. [Exhibit 24 and RH] Osterman also testified this was the fee arrangement at Haeg's representation hearing – yet upon cross-examination, during which Haeg sought to admit tapes of Osterman proving the perjury, had to admit this was false testimony [Exhibit 24 and RH]

C. Prejudice

The tape-recorded statements from Haeg's attorneys prove they all had conflicts of interest that caused them to represent Haeg differently then if there had been no conflict. According to overwhelming authority this is all Haeg needs to prove IAOC - no showing of prejudice is needed. Haeg, however, will show the prejudice these actual conflicts of interest caused:

1. Cole

The actions (and inactions) Cole took to represent prosecutor Leaders interest over Haeg's interest - and not "piss off [prosecutor] Leaders": (1) Tell Haeg that the SOA telling and inducing Haeg to do exactly what he was then charged with doing was "not a legal defense"; (2) tell Haeg there was no way to protest the SOA moving all the evidence to Haeg's hunting guide area; (3) tell Haeg there was no way to protest the false search and seizure warrants; (4) tell Haeg there was no way to bond out or protest his plane and property deprivation; (5) tell Haeg he had to give prosecutor Leaders an "immunized" statement and after the statement was given tell Haeg prosecutor Leaders could not only prosecute Haeg but could use the statement against Haeg; (6) tell Haeg that prosecutor Leaders promised to give Haeg credit if Haeg gave up a year of guiding and to fly witnesses in for a PA that only required Haeg to give up 1-year of guiding – and afterward tell Haeg that nothing could be done when Leaders changes the charges so they would require at least a 3-year loss of license - after the year of guiding was gone and the witnesses had already been flown in; and (7) not show up in response to a subpoena to testify about all this at Haeg's sentencing – so no court would ever know of the devastating injustice.

"Counsel had advised defendant that he, **the attorney, would have to work with the federal people in the future and that, therefore, it was best not to make waves when there was little**

if any chance of fighting Federal Prosecutors. REVERSED AND REMANDED" United States v. Ellison, 798 F.2d 1102 (7th Cir. 1986)

Cole's conflict of interest logically explains all of his actions. Cole acted exactly like prosecutor Leaders in disguise as Cole. Every single action (and inaction) taken by Cole benefited prosecutor Leaders' (and the SOA's) interest at Haeg's expense. The devastating prejudice is fully described in sections **II** and **III**.

2. Robinson

The actions (and inactions) Robinson took to represent Cole's interest over Haeg's: (1) Tell Haeg that there was nothing that could be done, and that he would not do nothing, about Cole's misrepresentation of Haeg; (2) tell Haeg that the SOA telling and encouraging Haeg to do exactly what he was charged with doing was no defense; (3) tell Haeg there was no way to protest the SOA moving all the evidence to Haeg's guide area; (4) tell Haeg there was no way to protest the false search and seizure warrants; (5) tell Haeg he had no right to bond out his plane or property; (6) tell Haeg the SOA could not only prosecute Haeg after his immunized statement but that the statement could be used against Haeg; (7) tell Haeg the PA could not be enforced and that the year of guiding given up for it was "just a waste"; (8) tell Haeg he should hide all he had done for the PA because this would "admit" to the court Haeg had submitted to the courts jurisdiction; (9) tell Haeg that the jurisdiction defense was so strong Haeg should not put on any evidence at trial; (10) tell Haeg there was no way to protest the SOA knowing testifying against Haeg at trial; (11) tell Haeg he had to testify in his own defense at trial because the SOA was just going to present the incriminating parts of Haeg's statement at trial and for the exculpatory parts to be heard Haeg had to testify; (12) tell Haeg that nothing could be done about Cole not showing up to testify in response to a subpoena; (13) tell Haeg he could not appeal his sentence; and (14) telling Haeg the only issue worth appealing was lack of subject-matter jurisdiction.

Robinson's conflict of interest logically explains all of his actions. Robinson acted exactly like Cole in disguise as Robinson. Every action (and inaction) taken by Robinson benefited Cole's (and the SOA's) interest at Haeg's expense. The devastating prejudice is fully described in sections **II** and **III**.

3. Osterman

The actions (and inactions) Osterman took to represent Cole's and Robinson's interest over Haeg's interest: (1) Tell Haeg he would do nothing that would affect the livelihoods of Cole and Robinson; (2) tell Haeg that he now owed Osterman 3 times the amount of money agreed to for something that Osterman now refused to do (use the sellout of Haeg by Cole and Robinson for Haeg's defense); and (3) do nothing that would help Haeg if it would affect Cole's and Robinson's livelihood's by exposing their ineffectiveness and malpractice.

Osterman's conflict of interest logically explains all of his actions. Every single action (and inaction) taken by Osterman, after Haeg hired him, benefited Cole and Robinson's interest at Haeg's expense. The devastating prejudice is fully described in sections **II** and **III**.

"The Court found that reversal of Mathis's conviction could expose [defense attorney] Schofield to liability for his part in the delay since Mathis would have spent years in prison on an erroneous conviction; affirmance, on the other hand, would have served Schofield's interest in avoiding discipline or damages..." Mathis v. Hood, 937 F.2d 790 (2d Cir. 1991)

V

Unreasonable Tactics

A. Law

"[A] mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986) Arnold v. State, 685 P2d 1261 (Ak 1984)

"[Tactical] choice will be subject to challenge as ineffective only if tactic itself is shown to be unreasonable, that is, a tactic that no reasonably competent attorney would have adopted under the circumstances." State v. Jones, 759 P2.d 558, 569 (Ak 1980)

B. Prejudice

Their affirmative false counsel, after specific inquiry, that "nothing could be done" about all the prosecutorial misconduct above proves the unreasonable tactics of Haeg's attorneys. This is because their reasons for not doing anything was not that it should not be done after discussion with Haeg – it was that "the law did not allow anything to be done" – after Haeg inquired. If their counsel were that "I don't know if anything can be done" both Haeg and his attorneys would have researched to find out if something could be done. But when the belief is nothing can be lawfully done no research takes place to find out what can be done – enormous prejudice.

Other unreasonable tactics: When questioned at Fee Arbitration Cole testified the reason he never filed motions to suppress was this was a requirement of the PA, but never told this, or that a motion to suppress could ever be filed, to Haeg – falsely telling Haeg that nothing could be done about the SOA moving the evidence and using Haeg's immunized statement against him. [Exhibit 4] Yet after prosecutor Leaders broke the PA Cole never filed motions to suppress, an unbelievably unreasonable tactic. In other words Cole, by deceiving Haeg and in return for absolutely nothing, knowingly threw away filing suppression motions proving that the SOA was falsifying evidence locations to manufacture a guide case against Haeg, was using false warrants to search and seize Haeg's property, and was using Haeg's immunized statement against Haeg – unbelievable prejudice.

Cole testified under oath that Haeg had no right to a postseizure hearing and that "Alaska law" prevented Haeg from bonding his airplane out. [Exhibit 4] Cole testified that he thought Haeg was going to commit suicide over the seizure of his airplane and property he used to provide a livelihood. [Exhibit 4] When Haeg proved to Cole that the law required a postseizure hearing and required Haeg be allowed to bond out his airplane, Cole responded, " David [Haeg], the time to

make that decision was in April – you were almost comatose because you were so depressed about the State walking in and taking all this stuff." [Exhibit 4]

In his own words Cole admits his tactic almost caused Haeg to take his own life – incredibly unreasonable and incredibly prejudicial. And then Cole unbelievably tries to shift the blame to Haeg for not bonding the plane out after seizure, when Haeg had specifically hired Cole for his professional knowledge of this right, and Cole had even told Haeg at the time the law did not allow this – another incredibly unreasonable tactic resulting in great prejudice.

After this Haeg asked Cole, "Did you think my airplane was important for my livelihood?" Cole testified, **"You thought so. I didn't"** – an incredibly unreasonable tactic resulting in such great prejudice that Cole testified Haeg nearly committed suicide over it. [Exhibit 4]

Finally Cole testified his "tactic" for Haeg's defense was **"we [Cole and Haeg] were falling on our sword",** a stunningly unreasonable tactic resulting in unbelievable prejudice. [Exhibit 4]

Haeg asked why Cole did not show up in response to the subpoena to Haeg's sentencing and Robinson replied: "there was no need to call him because what he had to say is not relevant to your guilt". Haeg: "It would have been relevant to my sentence and you know it". Robinson, "Why would it have been relevant to your sentence David?" Haeg: "Because we had a deal that I had given up a year of my freaking guide license for… and I wanted that man to be asked that and I wanted him to be asked why he never stood up for my deal and I wanted that judge to know that I'd been sold down the river. And it never happened and I paid for it." Robinson: "Well David I think that you obviously think that I was ineffective so we have a conflict of interest so I am goanna have to withdraw from your case." [Exhibit 15]

Yet Haeg had already been found guilty at trial, had subpoenaed Cole to his sentencing in order to get credit for the year of guiding given up in reliance on the SOA's promises, and had flat demanded Cole testify in person - proving Robinson's unreasonable tactic and resulting incredible prejudice of not having Cole testify.

In addition, Robinson's reason for not protesting the prosecutorial misconduct and perjury of prosecutor Leaders and trooper Gibbens was that they were part of "the good ole boys club, the group they protect", another unreasonable tactic that resulted in the great prejudice of allowing the prosecutorial misconduct and perjury go unaddressed. [Exhibits 15, 18, and 21 – TR 478-479 and 1335]

"Court found both prosecutorial misconduct and ineffective assistance which created the 'real potential for an unjust result.'" State v. Sexton, 709 A.2d 288 (N.J. 1998)

VI

EVIDENCE TAMPERING AND PREJUDICE

A. Facts

In spite of his attorneys' counsel that it was not a legal defense and over his attorneys' objections that he do so, Haeg wrote a 16-page pretrial letter to the court detailing how, when, where, and why the SOA told and induced him to do exactly what he was charged with doing. [Exhibit 10]

Long after trial, sentencing, and after it could be considered on appeal, Haeg's wife Jackie found that while evidence remained in the record proving it had been submitted, Haeg's letter evidencing the legal and "complete" defense that his attorneys told him was not a legal defense, was removed out of the court record. [Exhibit 13, TR, and AR]

B. Prejudice

Because of his attorneys' false advice and corresponding refusal to use it as a defense, Haeg's letter was the only evidence left to prove he had the defense the SOA had suggested and induced his actions and that he had brought the defense up in a timely manner so as not to "waive" it. But since it was removed out of the official record and this was not discovered to reconstruct it in time, this undeniably material evidence was never seen by the trial court and was not allowed to be considered on appeal (along with all the other misconduct by Haeg's attorneys and the SOA) – meeting the AS 12.72.010 (4) requirement that there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of the conviction or sentence in the interest of justice. This is proven prejudice and, when considered with his attorneys' false advice they could not bring this defense up, devastating cumulatively.

VII

CUMULATIVE INEFFECTIVENESS AND PREJUDICE

A. Law

Courts deciding IAOC claims should look at the cumulative effect of counsel's ineffectiveness and prejudice.

"Of course, the type of breakdown in the adversarial process that implicates the Sixth Amendment is not limited to counsel's performance as a whole – specific errors and omissions may be the focus of a claim of ineffective assistance as well." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1949)

"[Counsel's errors must be] considered collectively, not item by item." Kyles v. Whitley, 514 U.S. 419 (U.S. Supreme Court 1995)

"By finding cumulative prejudice, we obviate the need to analyze the individual prejudicial effect of each deficiency. See Mak v. Blodgett, 970 F.2d 614 (9th Cir. 1992) 'We do not need to decide whether these deficiencies alone meet the prejudice standard because other significant errors occurred that, considered cumulatively, compel affirmance...' But by no means do we rule out that some of the deficiencies were individually prejudicial." Harris v. Wood, 64 F.3d 1432 (9th Cir. 1995)

"Cumulative effect of the errors required reversal. Rather than evaluating each error in isolation...the pattern of counsel's deficiencies must be considered in their totality." Goodman v. Bertrand, 467 F.3d 1022 (7th Cir 2006)

"Defense counsel's errors pervaded and prejudiced the entire defense." Aldrich v. State, S.W.3d WL 5057647 (TX 2008)

"Consistently inept form of lawyer conduct [is not] acceptable in this state, nor will we employ a prejudice analysis, for counsel's ineffectiveness [is] so pervasive as to render a particularized prejudice inquiry unnecessary." Nance v. Ozmint, 626 S.E.2d 878 (S.C.) 549 U.S. 94 (2006)

B. Cumulative Error and Prejudice

Haeg's counsel not litigating that Haeg was told and induced by the SOA to take wolves outside the WCP area and then to mark them as being taken inside is prejudicial error. But this failure in conjunction with their failure to litigate the fact that the SOA falsified the evidence locations to Haeg's guide area, in order to manufacture the claim Haeg's intent was to benefit his hunting guide business, and the cumulative error and prejudice to Haeg is devastating. Not only did Haeg's counsel not prove his intent was, at the SOA suggestion, to help the SOA conduct the WCP, they allowed the SOA, unchallenged, to manufacture an entirely different intent – perverting the entire case from the SOA fraudulently running the WCP to Haeg was a rogue hunting guide out to feather his own nest. A conviction of a WCP violation would have been inconsequential to Haeg's life – as by law it could not affect his business – the conviction of hunting guide crimes destroyed Haeg's life.

Haeg's counsel not requiring that Haeg be allowed to bond his plane and other property out was prejudicial error, but when you combine this with the fact they also failed to protest the seizure/deprivation of the property because of the illegal search and seizure warrants, because Haeg was not provide the required postseizure hearing, and/or because there was no forfeiture notice in the charging information, and the cumulative error and prejudice is devastating. And when you combine these three errors with the fact Haeg's counsel told him to give up a year of guiding on the SOA's promise but later tell him the SOA did not have to give him credit for it and the cumulative error and prejudice is incomprehensible. Haeg's ability to provide a livelihood before even being charged, convicted, or sentenced was completely destroyed.

Haeg's counsel allowing Haeg to be prosecuted after providing an immunized statement is prejudicial error; their also allowing the statement to be used to prosecute him makes the cumulative error and prejudice beyond devastating.

Haeg's counsel not enforcing the PA and the lesser charges the PA guaranteed was prejudicial error, but combined with not enforcing Cole's subpoena so this could be litigated at sentencing, proving Haeg had just been convicted of, and was being sentenced for, charges that were in violation of his constitutional rights, and the cumulative error and prejudice is devastating.

Haeg's counsel not having all physical evidence suppressed because it was all based upon false evidence locations was shocking; combine this with the fact they never sought to have all

witness testimony suppressed because it was tainted by Haeg's immunized statement and the error and prejudice is devastating. The SOA would have had no case against Haeg at all.

All the above "errors" by Haeg's counsel also combined to preclude appellate review of these injustices. [Exhibit 31] This prejudiced Haeg by costing him years on appeal with a record that was inadequate and deficient to address these errors – and requires this PCR proceeding to prove these were "errors" instead of "reasonable tactics" by counsel.

In addition, Haeg talked to the Alaska Big Game Commercial Services Board and they stated they would likely be suspending Haeg's guide license for between 0 and 100 years in addition to the 6 years Haeg has already received. Also, because of a guide use concession system that will be implemented in the near future, Haeg will almost certainly be excluded from guiding as, without a license, without a history of guiding for the past 6 years, and with a guiding conviction, he will not be able to apply for, or be qualified to receive, a concession to guide. In other words Haeg, after he receives his hunting guide license in approximately 50 more years, will own a hunting lodge but not have land upon which to hunt.

The cumulative effect and prejudice of all "errors" combined is beyond comprehension.

CONCLUSION

There is overwhelming evidence that Haeg's attorneys conspired with each other and the SOA to deprive Haeg of numerous constitutional rights in order to unfairly and unjustly prosecute Haeg. No other conclusion is possible when all evidence is considered. The "immense pressure" - that Cole testified the SOA applied to Haeg's judge, prosecutor, and attorneys to "make an example" of Haeg - worked. The false counsel by his attorneys stripped Haeg of his ability to make a livelihood before trial – bankrupting him before he was even charged; stripped Haeg of numerous constitutional defenses; and helped the SOA illegally manufacture a hunting guide case against Haeg – when Haeg specifically asked how to prevent all this. Not one "error" in the dozens that occurred was in Haeg's favor. That these "errors" were no mistake is confirmed by a review of successful IAOC claims since Wiggins. [Exhibit 35] The type and number of the error in Exhibit 36 prove beyond doubt Haeg's attorneys were intentionally sabotaging Haeg's case to help the SOA's prosecution. The combined errors of the 3 most egregious cases do not equal the "errors" in Haeg's case alone. Without doubt this is because 3 attorneys with real conflicts of interest represented Haeg – not just one that was incompetent. Even Alaska's biggest newspaper, the Anchorage Daily News, can see the corruption in Haeg's prosecution. [Exhibit 36]

The most compelling evidence of conspiracy in Haeg's prosecution - other than Robinson and Cole working together to avoid Cole's subpoena, everyone working together to falsify evidence locations and removing evidence out of the court record - is that Haeg was allowed to be prosecuted in violation of law after being given immunity to compel an incriminating statement – and then the court and prosecutor Leaders were informed by Robinson in his "reply" that they should not blatantly use Haeg's statement in the charging information to prosecute Haeg in violation of his rights. Yet no one did a thing – trial on the irrefutably illegal information continued. And after the illegal conviction prosecutor Leaders now testifies under oath he never used Haeg's statement and testifies the proof this is true is that if he had used Haeg's statement

Haeg's attorneys would have filed a "motion" to suppress. Yet prosecutor Leaders had been sent the "reply" (not a "motion" to suppress) from Robinson himself proving prosecutor Leaders was using Haeg's statement in violation of Haeg's rights. In other words prosecutor Leaders is using Robinson's "ineffectiveness" in filing a "reply" instead of a "motion" to cover up that they worked together to violate Haeg's right against self–incrimination. Their own writings prove they knew this and did nothing but cover it up. Alaska law does not even allow Haeg to be prosecuted at all after giving a compelled statement and federal law holds that any use, as is proven by Leaders own charging information, the map used against Haeg at trial, and by all the trial witnesses, means the whole proceeding was null and void.

And the Alaska Court of Appeals ruled they could not decide Haeg's claims of error on direct appeal - that there must be a PCR hearing to see if Robinson had a legitimate tactic for protesting only a single inconsequential use of Haeg's compelled statement in a "reply" (which they stated the court could ignore) instead of a motion (which they stated the court could not ignore) protesting all devastating use. How could a protest of only one inconsequential use in a "reply" which can be, and was, ignored, be anything but ineffective? It is obvious Robinson, when he decided to protest, was required to protest all the devastating use in a manner that had to be addressed - especially on an issue so wrong and devastatingly prejudicial as the widespread use of Haeg's immunized statement in both the charging information and at trial.

"It is a deprivation of due process of law to base a conviction in whole or in part on a [compelled] confession, regardless of its truth, and even though there may be sufficient other evidence to support the conviction." Jackson v. Denno, U.S. Supreme Court

"Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North

"Prejudice presumed because counsel did not serve as advocate – such that he was a 'second prosecutor' and defendant would have been 'better off to have been merely denied counsel.'" Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997)

"Defendant was denied his right to counsel because he was forced to choose between incompetent counsel or no counsel at all." Crandell v. Brunnell, 144 F.3d 1213 (9th Cir. 1998)

"Governments collaboration with defendant's attorney during investigation and prosecution violated defendants Fifth and Sixth Amendment right and required dismissal…" United States v. Marshank, 777 F. Supp. 1507 (N.D. 1991)

"[Counsel] so abandoned his overarching duty to advocate the defendant's cause that the state proceedings were almost totally non-adversarial. **[T]he record supports the district court's finding that defense counsel turned against [defendant], and that this conflict in loyalty**

unquestionably affected his representation. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous and unacceptable legal fiction. A defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction... suffers from an obvious conflict of interest. **In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition.** The performance of [defendant's] counsel was constitutionally unreasonable, but more importantly, the evidence presented overwhelmingly established that his attorney abandoned the required duty of loyalty to his client. **[Defendant's] attorney did not simply make poor strategic choices; he acted with reckless disregard for his clients best interests and, at times, apparently with the intention to weaken his client's case.** Prejudice, whether necessary or not, is established under any applicable standard." Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988)

To Haeg and many others the consequences to the United States Constitution are not acceptable:

"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. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he not be guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 45 (U.S. Supreme Court 1932)

"A layman will ordinarily be unable to recognize counsel's errors and to evaluate counsel's professional performance; consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

It is a direct attack upon the Constitution when counsel, trusted to assert constitutional rights to protect ignorant defendants from the government, betrays that trust to help the government violate the defendants constitutional rights – even more so when the defendant has shown, as Haeg has, that, but for the deception by counsel, he would have asserted the constitutional rights on his own as best he could. In other words if Haeg had never had any counsel at all he would have raised the numerous rights above. It is only because he had Alaska's "best" counsel, trusted so much he paid them $100,000, that Haeg was deprived of a fair trial and sentencing. The incredible prejudice is understandable when you look at the prejudice that still happened to Senator Ted Stevens, a former U.S. Attorney with defense attorneys that were on his side.

"Truth is best discovered by powerful statements on both sides of the question." U.S. Supreme Court, United States v. Cronic. (1) Haeg's attorneys allowed the SOA, unchallenged, to make the powerful and false statement that Haeg took wolves where he guides so he must be charged and

convicted of guiding violations. (2) Haeg's attorneys falsely told Haeg he could not make the powerful and truthful statement that the SOA told and induced him to take wolves outside the area but claim they had been taken inside the area; (3) he could not make the powerful and truthful statement that the SOA knowingly falsified evidence locations, to Haeg's guide area, in order to illegally manufacture a guide case against Haeg; (4) he could not make the powerful and truthful statement that the SOA knowingly falsified affidavits in order to illegally search Haeg's home and illegally seize Haeg's property – and that all physical evidence at trial was tainted by the false location; (5) he could not make the powerful and truthful statement that the SOA gave Haeg immunity in order to compel Haeg to give a self-incriminating statement - and then directly used that statement against Haeg in the charging information, for direct physical evidence at trial, and to obtain or modify all testimonial evidence against Haeg at trial; (6) he could not make the powerful and truthful statement that the SOA promised to give Haeg credit for it if, as he did, Haeg gave up guiding for a year prior to being convicted; and (7) he could not make the powerful and truthful statement that the SOA promised Haeg if he gave up the year guiding, as he did, he would be charged with lesser charges then what he was charged with and went to trial on – and that Haeg would only be required to give up one year.

When the false counsel allowed the SOA to make and use false and powerful statements is combined with the false counsel stripping Haeg of truthful and powerful statements, it is no wonder the outcome was so unfair and unjust.

The public must have confidence justice was done and constitution obeyed when the SOA's limitless power prosecutes and harms. Yet how can there be any confidence when defense attorneys, which defendants must have because of their ignorance, are giving false counsel to allow the SOA to violate a shocking number of basic rights? It is such a complete breakdown in justice, threat to the constitution, and so hard for ignorant defendants to realize that how anyone knowing this ever quit fighting? If they did it would be admitting the constitution, for which so much has been given, no longer protects us from government wrongdoing.

It is like Haeg's family got sick, they went to the doctor, and instead of medicine the doctors administered poison, resulting in a lifetime of damage. If you never knew the doctors had administered poison you could move on and not blame them for the result. But if you found out the doctors you trusted because of your ignorance had knowingly poisoned your family, causing great harm that otherwise would never have happened, you would have a far different perspective. You would realize they must be held accountable, not just for your family but for all other families who will be visiting them because of their ignorance when they are ill. You could not let this go – especially after realizing how unlikely it is for these people to be found out and after you realize that until this is corrected the Constitution is not worth the paper it is written on.

To defend his family and the Constitution Haeg has already invested over 5 years of life along with the fortune he acquired through years of hard work. Proudly and without regret he will invest the rest of life in order that an incredibly sophisticated, effective, nearly impossible to prove, and evil chapter in America's judicial system is brought to an end before it can destroy another family as it has destroyed his – and without doubt the past is littered with other unjustly destroyed families. Haeg's oath to support and defend the Constitution of the United States

against all enemies, foreign and domestic, requires nothing less. Those that have already given their lives and fortunes for the Constitution require nothing less.

To this end Haeg will take the following action; decided upon after much counsel: (1) he will carefully document any further perversion and conspiracy that occurs during PCR proceedings; (2) he will add this proof to that already requested by the United States Department of Justice for their current investigation; (3) he and all witnesses will fly to Washington D.C. to demand federal prosecution, under 18 U.S.C. 241 and 242, of those involved; (4) if no justice is granted after exhausting all other remedies Haeg will exercise the one right that does not need an attorney, has yet to be taken away, and that is reserved for dire situations such as this, his Second Amendment right; (5) before he does he will ask all those that have sworn an oath to, or believe in, the Constitution of the United States to carefully research the facts and law (by Goggling the statutes and caselaw and by review of the case record) and to join him if they feel they must; and (6) he will inform Congress and national media of the reasons that require such action.

In short, defense attorneys conspiring with the government to take away the constitutional rights that protect ignorant defendants from the government is so serious it must be addressed at any cost. When "counsel did not serve as advocate – such that he was a second prosecutor and defendant would have been better off to have been merely denied counsel" is combined with, "of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have", defendants are effectively stripped of all rights, fairness, and justice – as Haeg was.

The SOA filed a 14-page **opposition** to Haeg, a non-attorney, being allowed to represent himself. [Exhibit 30] Yet the SOA attorney that wrote this opposition was charged with defending Haeg's conviction. In other words even the SOA believes Haeg will have a better chance of overturning his conviction **without** an attorney – a belief proven to be absolutely true.

Haeg (1) subpoenaed Cole, (2) paid and delivered Cole's witness fees, (3) paid and delivered Cole an airline ticket, (4) typed up and delivered to Robinson 56 questions Haeg demanded Cole be asked at sentencing - of the year of guiding Haeg had already given up for a PA with lesser charges and that only required one year to be given up. Not only did Cole not show up as subpoenaed with Robinson saying nothing could be done about it, Robinson refused to ask the typed up questions of all the witnesses present at sentencing that had also been present when the PA had been broken - questions concerning the PA, everything Haeg had been done for it, and that Cole had said it could not be enforced. So when the SOA testified they had no idea why Haeg did not guide for a year the Court did not know David and Jackie Haeg were deprived, for nothing, of an entire year of their sole source of income – by the promise the SOA would give them credit for it. It was like the entire year of guiding, that Haeg had given up his constitutional right to exercise while he still had a guide license, had vanished with no trace. And long after Cole testified that the SOA had promised to give Haeg credit for this year before Haeg had given it up – and that when Haeg was sentenced to 5-year guide license loss it was in effect a 6-year loss because the SOA did not give him credit as promised. And if Haeg had been given credit it would have meant he had bought and paid for charges far less severe then what he had gone to trial on and been sentenced for. So how is it possible, after everything Haeg had done to get credit, Cole did not have to testify at sentencing and the SOA did not have to give Haeg credit

for the year? How much harm is it to parents losing an entire years income, which then allowed 5 more years to be taken, when they have two kids to feed, house, and clothe?

Haeg, after losing everything he had in life and starting to realize how unfairly it had been done, asked his former attorney Cole during an official proceeding, "Did you think my airplane was important for my livelihood?" Cole, while sworn under oath, **"You thought so. I didn't."** Haeg's airplane was the primary means by which he put food in his wife and two daughters' mouths, a roof over their heads, and heat in their bedrooms.

"As Judge Wyzanski has written: 'While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it the sacrifice of unarmed prisoners to gladiators,'" United States v. Cronic U.S. Supreme Court

Haeg's own attorneys and the SOA worked hand in hand to destroy and conceal true evidence; to manufacture and publish false evidence; to systematically strip Haeg of numerous basic constitutional defenses and weapons; and then to thrust him into the ring bound, naked, and unarmed to do battle with the SOA's seasoned and well armed gladiators – who got to stomp, unopposed, the shell of a man who had already been bankrupt and mentally strained to the verge of suicide – who was already labeled and convicted by all as a rogue big game guide deserving anything and everything the gladiators could do to him.

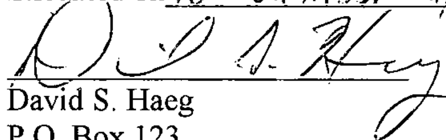
You need not be an attorney to understand the crushing injustice. You need not even be human to understand what Haeg is willing to do to protect his family and the United States Constitution.

RELIEF REQUESTED

In light of the fundamental and complete breakdown in justice above, Haeg respectfully asks the Court to carefully research the law, facts, and evidence; to grant his PCR application; to schedule a hearing so Haeg may examine witnesses under oath to further prove the injustice; and to reverse Haeg's conviction and sentence along with any other relief justice may require.

I certify under penalty of perjury I have personal knowledge of the facts and law above and that they are true and correct. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

Executed on November 21, 2009 in Browns Lake, Alaska.



David S. Haeg
P.O. Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax

Exhibit 1

FILED
In District Court
State of Alaska
at McGrath
Date 11-30-04
Magistrate/Clerk

AFFIDAVIT FOR SEARCH WARRANT'S – FALSIFYING EVIDENCE LOCATIONS TO HAEG'S GUIDE AREA

1. Your affiant is an Alaska State Trooper with over six years of experience including five in the Yukon and Kuskokwim area. I am currently assigned to the State's Bureau of Wildlife Enforcement in McGrath. My main duties include enforcement of fish and wildlife related crimes. In addition to my law enforcement experience I am a lifelong Alaska resident and have actively trapped for over 20 years.

2. For many years it has been illegal to shoot wolves from an airplane. As part of an experimental predator control program in a small area around McGrath, it was made legal to aerial hunt wolves by a select number of permitted hunters as long as they remained within the permit hunt boundaries, and adhered to strict reporting requirements and permit conditions. The only legal methods of take for wolves outside of the two permitted areas in the State are either ground shooting after three A.M. after the day a person has flown, or trapping and snaring. On 3-5-04, the Alaska Department of Fish and Game issued permit #12 to David S. Haeg and Tony R. Zellers allowing them to take wolves with the aide of an airplane (same day airborne) within the portion of Game Management Unit 19D East outlined by map and written description.

3. On Haeg's and Zellers' application form they stated that they would be operating from Trophy Lake Lodge, a fully equipped, well insulated hunting lodge located just southeast of McGrath and capable of supporting winter flight and hunting operations, built, owned and operated by David Haeg. If not based at the lodge, they planned on basing out of McGrath (which did not end up being the case). In addition they stated that they would be using a bush modified, high performance, PA-12 Supercruiser on Aero 3000 skis. David Haeg identified himself as a Master Guide on his application for the aerial wolf hunting permit with the Alaska Department of Fish and Game. (See attached application).

4. On 3-21-04 your affiant contacted Haeg and Zellers in McGrath and viewed their aircraft, N4011M, I specifically noted the style of skis and oversized tail wheel without a tail ski, which is a rather unusual set up in this area. Out of all the aircraft permitted to legally hunt wolves in the McGrath area, this was the only one set up with these skis in conjunction with this type of rather unique tail wheel. During our conversation Haeg commented on the performance of his skis, and the one-inch wide center skeg. Zellers specifically commented on the type of experimental shotshells they would be using to shoot wolves with. This included new copper plated pellets and Remington "hevi shot". As Zellers was describing the new shot, he pointed into the airplane and I observed a camouflaged colored shotgun near the rear seat. Zellers went on to describe how with the short shot gun and the type of doors on this airplane, he was able to shoot out both sides of the airplane without the airplane making a full circle turn. N4011M is registered to Bush Pilot, Inc., P.O. Box 123, Soldotna, Alaska 99669. This is the mailing address

listed for David Haeg on his wolf permit application with the Alaska Department of Fish and Game.

5. On 3-26-04, while patrolling in my state PA-18 supercub in the upper swift river drainage located with GMU-19C I located a place where an aircraft had landed next to several sets of wolf tracks. From my experience as a long time hunter trapper I recognized this as common practice when looking to see the direction of travel of the wolves. This location was approximately 50 plus miles outside of the permitted aerial wolf hunting zone.

6. On 3-27-04, I returned to this location and eventually located where four wolves had been killed in separate locations just up river from the initial point. Aerial inspection of the sites showed that in every instance running wolf tracks ended in a kill site, with no wolf tracks leaving the kill site. Ground inspection of one of the kill sites confirmed my earlier observations. From my experience I recognized this as being consistent with wolves being taken from arid airplane. At all four locations airplane backs consistent with David Haeg's airplane were observed and the wolf carcasses had been removed.

7. Trophy Lake Lodge is located in Game Management Unit 19C, and is a large guide camp which Haeg owns and uses for both commercial and private use throughout the year. The lodge is located on the upper Swift River, 27 miles upstream of the kill sites, and 63 miles southeast of the nearest boundary of the legally permitted aerial wolf hunting area.

8. On 3-28-04. I returned to the kill sites and did a thorough ground investigation. At kill sites # 1, #3 and #4 I was able to locate shotgun pellets in the snow next to the point where the wolf tracks ended in a bloody kill site. Investigations at kill site #3 showed a vertical trajectory of the pellets, consistent with the shot being fired from an airplane. At kill sites #3 and #4 I found copper plated buck shot pellets consistent with my conversation with Zellers on the 3-21-04 in which we talked about what ammunition he would be using. At kill site #2 I found a fresh .223 caliber brass near the kill site stamped with "223 REM WOLF". There were no human tracks, snowshoes, snowmachine, or airplane ski tracks within 20 yards of the cartridge brass, consistent with it being fired from an airplane. Ground inspection also showed ski tracks next to each kill site consistent with the ski on your defendant's airplane and at kill site #2 I located oil drippings from a parked airplane.

9. On 3/29/04, search warrant 4MC-04-001SW was issued by the Aniak District Court for Trophy Lake Lodge, and Aircraft N4011M. During the search warrant execution later that same day, the lodge was searched during which distinctive ammunition (".223 REM WOLF"), wolf carcasses, and hair and blood samples were seized. The carcasses had no obvious trap or snare marks, and appeared to have been shot. It was learned that Aircraft N4011M was in Soldotna (McGrath ADF&G spoke to Haeg at his home) at the time, and the search warrant return was submitted to the Aniak Court on 3/30/04.

10. During my time as a pilot in remote Alaska, it has been my experience that most pilots use a global position system (GPS) in conjunction with maps of the area when conducting bush flight operations. It is very common to save landing sites, lodge locations, and kill sites in

the GPS, or to mark the locations on a map. Many of the hunters participating in hunts with specified boundaries, mark the boundaries on either the map or the GPS. Haeg provided GPS coordinates for the kill sites of the three wolves that he reportedly killed inside the legal permit hunt area. I flew to the coordinate which Haeg provided to ADF&G, and was unable to locate ski tracks or kill sites.

11. During the investigation it was brought to my attention by another Trooper that on the web site found on the internet at www.davehaeg.com David Haeg offers winter wolf hunting and trapping trips for $4,000.00. He goes on to state that in his advertisement that he will guarantee that every hunter takes home a wolf or wolverine hide. On the web site there are photographs of what appear to be shot wolves in front of N4011M. Also in the photo is a man holding a Ruger mini-14 rifle, which is capable of firing .223 caliber cartridges. There are numerous other photographs on the site showing shot and snared wolves.

12. Less than one quarter mile from kill site #1, there is the carcass of a dead moose which the wolves have been feeding on. The moose carcass has snares set around it, as determined by two snared animals I observed near the carcass. The airplane tracks where the trapper landed and walked in to set the snares next to the moose carcass are the same type and vintage of those at the shot gun and rifle killed wolf sites. During the investigation there were no catch circles or drag marks typically found at sites where wolves have been trapped or snared. All four of the wolves were free roaming and left normal running wolf tracks up until the point they were shot.

13. At both the consolidation (a location between the kill sites where this same aircraft landed and took off several times) site and kill site #3, shoe tracks which appeared to be made from "bunny boots" were observed.

14. On 3/29/04, I executed a search warrant at the lodge, but the airplane was in Soldotna at the time. Soldotna Troopers have visually confirmed that the airplane is at the Haeg residence currently. The residence address listed by David Haeg on his wolf hunting permit is 32283 Lakefront Drive in Soldotna. On 3/30/04, Tony Zellers telephoned the McGrath ADF&G office and requested that a copy of the revised wolf permit conditions be faxed to David Haeg's residence. The reported kill date of the wolves by Haeg and Zellers was 3/6/04, and the wolf hides would need to be either fleshed, stretched, and dried, or stored in a refrigerator or freezer to prevent spoilage.

15. Landing gear, ski's, and tail wheels can be rapidly removed from an aircraft.

Trooper B. Gibbens — "s/"
Title — Signature

Subscribed and sworn to or affirmed [telephonically] before me on March 31, 2004, at Aniak, Alaska.
(Seal)

"s/" Magistrate Margaret Murphy

Exhibit 2

October 4, 2007

Mark Woelber
Assistant Bar Counsel
Alaska Bar Association

RE: Attorney Grievance: ABA File NO 2007D173

Paragraph #2:

Mr. Haeg complains of a couple of things in this paragraph of his grievance: that due process was not followed regarding the seizure and forfeiture of his property and that I lied to the judge when I argued her that she would be usurping executive authority if she allowed the defendant to post a financial bond in lieu of his seize plane. As the State's opposition pointed out, Mr. Haeg is incorrect in his understanding of the law in this area, including the holdings of the very cases he relies upon. Mr. Haeg's property was seized based on a valid warrant obtained through the judicial process in a criminal mater. Accordingly, due process was satisfied and there is no right to an immediate hearing regarding the property...

Paragraph #3.

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. The purpose of these interviews was to have a statement from each defendant that could then be used during the prosecution of the co-defendant if the co-defendant did not resolve his case. And part of the agreement sought to be reached with each individual defendant required him to testify against his co-defendant. Accordingly, the information obtained from each defendant was also used to determine the appropriate charges to be filed against the co-defendant. Using this procedure, the State was able to use the information obtained from the interview with Zellers in the prosecution of Haeg. Because the information obtained from each of the defendant's was essentially identical, it is understandable that Haeg believes that his statement given as a part of plea negotiations was wrongly used against him. However, this was not the case, the State relied on the information obtained from Zellers in prosecuting Haeg.

Again, the fact that Haeg nor his attorneys have raised this issue in pre or post trial motions or appeals is indicative of the fact that there was no violation. Any attempt to use Haeg's plea negotiation statements would have resulted in a motion to suppress.

Paragraph # 6.

Haeg complains that I suborned perjury when Trooper Gibbens testified at Haeg's sentencing that he did not know why Haeg had given up guiding in 2004.

I have no recollection of Trooper Gibbens making such statement. However, even if he did, there is no perjury involved and no violation of the Rules of Professional Conduct for a couple of reasons. First, as discussed above, Haeg had withdrawn from the Rule 11 agreement, so even though the agreement called for a year suspension of Haeg's guide license, the agreement was no longer in effect.

I, Scot H. Leaders, hereby certify that the above information is true and correct to the best of my knowledge and belief.

Dated: 10/4/07 Signed: "s/"

Exhibit 3

April 1, 2004

SOA
Department of Public Safety
Case No. 04-23593
Reporting Officer: Glenn Godfrey Permit ID GGG9 Investigating Agency ABWE

Search Warrant 4MC-04-002

On 4/1/04 at 1029 hours warrant 4MC-04-002 was served on 32283 Lakefront drive off Brown's Lake Road in the Soldotna area. The following items, listed by evidence item number, were seized pursuant to the warrant.

#501-12 gauge camoflauged shotgun, serial # U233343 taken from the hangar wall.
#502-.223 Ruger rifle w/scope, serial #195-08482 taken from the hangar wall.
#503-Two rifle magazines taped together and loaded with .223 ammunition located under the rifle and shotgun.
#504-Five pair of bunny boots taken from a hanging rack in the hangar.
#505-One pair of bunny boots that HAEG was wearing when he arrived at the residence.
#506-Paperwork from the house office.
#507-Kodak Camera I226631 1 taken from the plane in the hangar.
#508-Olympus Camera 987753 taken from the plane in the hangar.
#509-.223 casing found outside the garage door to the hangar.
#510-White Rope from the hangar.
#513-Nine 12 guage shotgun shells from open faced building by the lake.
#514-Five well used wolf snares from the hangar.

#516-Bag of miscellaneous ammunition from the hangar.
#51 &Green cord from the hangar.
#519-Animal Hair found by the fleshing station in the hangar.
#520-Two quarts Wl00 Aeorshell aviation oil from the shed near the lake.
#521 -White cord from the hangar
#522-Three samples of hair and blood from near the open shed where the plane was parked.

INFORMATION:
During the search warrant I had multiple contacts with HAEG. Most of those contacts were recorded and HAEG said
*When can I get my plane back? I have clients coming in tomorrow and I have to set up bear camp.

Exhibit 4

BRENT COLE'S RECORDINGS

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE
COLLEEN J. MOORE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

August 25, 2005

VIA FACSIMILE: 262-7034
Mr. Arthur S. Robinson
Robinson & Associates
35401 Kenai Spur Highway
Soldotna, Alaska 99669

Re: *SOA v. David Haeg*
Our File No.: 102.484

Dear Chuck:

I am in receipt of the letter from your office dated August 22, 2005, in which a subpoena was enclosed for my appearance at Mr. Haeg's upcoming sentencing hearing. As I discussed with you in an earlier telephone conversation, I was not intending to be available on September 1, 2005, as it is opening day for duck and moose hunting season. I have already made plans to be out of the office. Please keep me advised as to the status of the hearing in this matter.

If you have any further questions or concerns, please do not hesitate to contact me. Thank you.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

11/11/04 Recording of Cole while he was still Haeg's attorney

Just after arraignment of 11/9/04

Haeg: Anyway I don't know ***have you seen all the crap hitting the newspapers etc. etc. I assume?***

Cole: ***Well yeah.***

Haeg: ***Um and is that you know at the time we gave our – our statements and stuff is that – uh - proper for them to do to release all that stuff? I mean is that how it goes or what?***

Cole: ***Yep.***

Haeg: And do I just sit back and uh not do anything about that or what?

Cole: Well um ***I don't know what we're goanna do, ok.***

Haeg: ***Where I get lost is why did we tell the State everything then if they're just goanna use it against us? Why did we do that?***

Cole: ***We wanted to mitigate the damages***.

Haeg: ***What I guess what I was getting at is – um - why uh and I you know I've been stewing about all this stuff because we in good faith flew Tony up here, took my kids out of school, had my - you know - my wife and I come up there get hotels all this stuff and it really gripes me that we didn't get to pursue what we had to pursue and is it I know you said that the only person we could bitch to is Leaders or Leaders boss. I mean I bit my tongue when the judge – when we were talking – I mean I was scared to death of course I wasn't thinking real straight but could it – is it – it doesn't do any good to bitch to the judge say, "hey we did all this on good faith with the State and then they just pulled the rug out from under us after we you know essentially spent another $2000 dollars or $3000 dollars just to have people come from Illinois and everything else and they just roop right out from under us".*** Is that the way the ...

Cole: They didn't - ***I don't understand why you say that. We had 4 options on Monday night and we went through every one of the options.***

Haeg: Well we couldn't have – we didn't have ...

Cole: Two of them would have allowed you to go out and be sentenced on Tuesday.

Haeg: ***Not with the agreement that we'd had.***

Cole: I mean if you had gotten that agreement David ok lets assume you got it.

Haeg: Yep

Cole: What makes you think that it - things would be any better?

Haeg: I mean you don't remember telling me that uh – ok let me just think and put my words very – as clear as I can say - as I can – that ***this was all about the airplane*** and that ...

Cole: *I said that - I remember saying that.*

Haeg: *And that there was a very good chance I would get to keep my ...*

Cole: *I said they must have thought there was a chance.* ***CAUSE THEY CHANGED THE RULES.***

Haeg: Well I'm not – ***I'm not blaming you for telling me what you think. That's what I'm paying you for.*** I – you – I think you're taking it that I'm attacking you I'm not. ***I want to somehow bring forth that in good faith I decided what I wanted to do with my family with your advice. Ok I take you advice sometimes - sometimes I don't and that's – that's my privilege.***

Cole: ***That's right.***

Haeg: ***that's my privilege***

Cole: ***That's exactly right.***

Haeg: ***And in my perspective we had an agreement like for 2 weeks and I made all the arrangements to in good faith go to McGrath. You follow me so far?***

Cole: ***Yeah.***

Haeg: ***And after we had invested a lot of time, effort, and money, committed to that venture to settle it because my life is getting eaten up by worry among other things and I had great expectations to leave McGrath either without a license for 5 years, and no airplane, and going to jail for 6 months and a $200,000 fine or something a little less. Um – no – nothing to do with you. I knew the judge was the one goanna be deciding that but all that was taken away from me at the last minute that agreement. Do you agree with that? Or I mean not at the last minute but whatever it was – well beyond when we could have changed anything and saved all the money in hotel and airfares and etc., etc., etc.***

Cole: ***The thing that was taken away was the option to go open sentencing total. There were other options that were available that would've allow us to go out to McGrath. But to go totally open sentencing ...***

Haeg: ***WELL TO ME THEY WEREN'T VIABLE OPTIONS.***

Cole: The only thing that was different was the loss of the plane.

Haeg: Yep and is that – ***is that ethical for them to do say, "yep you give us the plane and you can – you can have your day in front of the judge". Is that how the game is played all the time?***

Cole: ***Yep.***

Haeg: ***Um legal way to do it?***

Cole: ***They have discretion, yep.***

Haeg: Ok um let me just go through my little deals here. Um - like I said ***when Magistrate Murphy was on the phone would it have been appropriate or could I have – could I have said, "hey judge before you leave could I put in my 2 cents worth that I came with the understanding this was the deal and then they pulled that rug out from underneath my feet". Could I have done that at that time?***

Cole: Um - she would have – if it would be – ***she would have cautioned you and told you before you say anything you're represented by an attorney anything you say can, will be used against you, you should speak with your attorneys advice. If you continued to insist she probably would have listened and that would have been the end of it.***

Haeg: Ok and if and when we go to sentencing and anymore I don't know. I guess it's still up in the air. We still plead not guilty ***we could still go to jury trial.***

Cole: ***That's right.***

Haeg: And you know – it – you know ***it also seems to me like the State enjoys the fact that I voluntarily gave up guiding because now the longer they drag it out it's just like I'm voluntarily shooting myself in the foot.*** And that also ...

Cole: ***Well then why would they have agreed to allow it to go back to July 1st?***

Haeg: Um – if – if ***I wanted to – uh – to complain – or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?***

Cole: ***I left a message. I haven't been in touch.***

Haeg: And ...

Cole: I mean how much – ***how much do you want me to push it? Is that what you want? Is that really what you want me to do David?***

Haeg: Well.

Cole: I mean I – ***you know I've got to deal with these people but if you tell me, "that's the deal I want and I'm not stopping until I get it", I'm goanna send you a letter saying this is absolutely in my mind crazy but I will do it if you tell me.***

Haeg: ***Well I'm not happy that they took away my opportunity that I thought we had set away from me.***

Cole: Ok ***tell me right now is that what you want me to do? Do you want to go back and take the risk when now you've got things in place?***

Haeg: ***You mean go back to the original agreement where it's one year ...***
Cole: ***Yes – a minimum 1 year.***

Haeg: ***Minimum 1 year – the plane is up for ...***

Cole: ***yes***

Haeg: ***... the judge to decide. THAT IS WHAT I WANTED AT THE TIME AND THAT IS STILL WHAT I WANT. Because I feel that they mal...***

Cole: ***Ok.***

Haeg: ***I personally feel that they maliciously took that away from me.***

Cole: Mm hmm.

Haeg: Um ***I would like to keep my plane.*** You know and I know it bugs you and...

Cole: It doesn't bug me.

Haeg: And so um – uh – you know and – ***you know I understand you need to have a relationship with the - with these people but I also know that I'm paying***

you to protect my interest. I know you have a – a – you know – it kind of goes both ways but I guess you know I feel you should be in my corner all the way.

Cole: ***I am in your corner all the way.***

Haeg: You know so – uh –

Cole: ***That's why I keep trying to push you to see these things.***

Haeg: Well – um – ***alls it was is you had said once to me that hey we can't totally go bonkers because I have to live with these guys you know after you're gone and blown away, and out guiding again hopefully, or retired in Mexico I'm still here dealing with these guys on a daily basis and ...***

Cole: ***Well I deal on my word – you're right.***

Haeg: ... but ***what I feel when they pulled the rug out from under us when we all showed up in your office and you said, "uh Dave I got something to tell you" I feel they poked you in the eye.***

Cole: ***THEY DID AND I'M STILL BURNING ABOUT IT.***

Haeg: So you know what they would have filed still had the old charges in it. It just had a cover letter stating different ones and is that – I mean it just seems to me like it's unprofessional.

Cole: Well that's because he probably did a poor job doing it.

Haeg: That's what I'm saying it's very unprofessional. You know I just look through it and I'm like "huh they forgot to change all of them in the body of the document". Um I just – ***in other words he knew – I mean he was planning on that all along and then "voop" last minute – you know.***

Cole: I don't think he was planning on it - but anyway.

Haeg: ***Well we were. I was.***

Cole: ***RIGHT.***

Haeg: ***I don't know if anybody else was but I sure was. Otherwise I wouldn't have taken my kids out of school and flown Tony up here.***

Brent– ***Mm hmm.***

Haeg: Um ***if we go to a jury trial is it in McGrath?***

Cole: ***Yep***

Haeg: You know I think that's a done deal ***because we already have given them everything [they] need to persecute us*** and now if we go that way it's pretty – anyway I would like to you think about just a really abbreviated trial.

Cole: Ok.

11/22/04 meeting with Cole while he was still Haeg's attorney

Present Brent Cole, Dave Haeg & Tom Stepnosky

Haeg: *[O]ne of the Board of Game Members – current Board of Game Members told me in Fairbanks literally about a week before went out there he said, "Dave if you end up shooting animals outside of the area just make sure you mark them on your GPS inside the area".* Well I – you know - I doubt if I can ever get him to say that on the stand. And a whole bunch of the other...

Cole: *You know I don't know what to tell you on that one because I don't think that a State official can tell you to violate the law quite frankly. I really don't. I don't know that it's a defense.*

Haeg: *I already gave up a whole years worth of income.*

Cole: *I know that David.*

Haeg: *Doesn't that account for anything?*

Cole: *Yeah it does – that's – that's what we negotiated.* .

Haeg: I understand.

Cole: *It doesn't make any difference, to them.* I'm just saying that's the way they see things, that's the message they send to Leaders.

Haeg: Yep but you know it I also remember why didn't – *why didn't Leaders let us go out to McGrath when it was eleven counts and let the judge decide that?*

Cole: *I don't know why he didn't do that. That pisses me off. He just –he has caused me to have to sit here and explain this to you 25 times he did it because he wanted to be a dick and it pisses me off. It caused me so much problems in my dealing with you and I as much told him.*

Haeg: *Yep.*

Cole: *It pisses me off. He had no concept of what it has done to your and my relationship.*

Haeg: *Like I told you to me it's important to get the plane back somehow. You don't – I guess what you're saying we're not goanna do that short of a trial probably – I mean he's not goanna let the plane be decided by a judge or magistrate?*

Cole: *It doesn't sound like it to me.*

Haeg: So he just put his foot down even though that isn't his job to administer punishment. It is his job to determine guilt or innocence as far as I'm concerned.

Cole: *They can do all that – they do it all the time* – I mean you can say that but...

Haeg: Well that's what I read through the Constitution.

Cole: *They do it day in and day out – they set penalties.*

Mr. Haeg: How did we get to where we're at now? From where we were at before – where you – how did we get from there to here?

Cole: Well I just keep talking to him, we keep working it, we keep throwing out suggestions, the pressure comes down, *there's a day that we're suppose' to go out there,* they've got to put on evidence, they concede a little bit, we concede a little bit, we are where we're at.

Cole: Hey Scot it's Brent I have uh David Haeg and Tom in here and they're asked again about whether the Troopers are willing to talk about the plane. Can you call me back and if you talk to them if you could give me the name of the trooper whose making this decision and maybe I can talk to him personally seeing that this is such a difficult thing for them to make a decision on. Call me 277-8001. Bye

Haeg: Um ***have you run it by Leaders that I'm thinking about going to a jury trial?***

Cole: ***Yep.***

Haeg: What does he say about that – great?

Cole: ***I don't have good client control.*** ***He can't believe that I would do that. And I just say, "well..."***

Haeg: ***Ok.***

Cole: ***"...he wanted to go open sentencing - yeah I know I don't understand it but".***

Stepnosky: : ***You should have a sit down talk with Scot Leaders and say, "hey Scot come on now – I mean just like he said – gave up the hunting season, had him stewing over this god damn moose thing, now then spilled his guts from – at the deposition like he was asked to, all of that and you know what are you doing – ok – you've got him nailed to the cross already well lets put some more spikes in him – I mean – come on Scot" and say "hey (inaudible). You know it's been going on for 8 goddamn months already – I mean goddamn – life is to freaking short to be going through this shit. Resolve it and get the man on with his freaking life.***

Cole: And – and you know – ***maybe I shouldn't be so concerned out of your welfare. It certainly isn't in my best interest. My best interest is for you to litigate the shit out of this thing and just keep paying me a whole ton of money.***

Stepnosky: ***I thought he did that already.***

Cole: No I haven't even started that - down that trail. I don't want to start down that trial. You mean – I – you know – I – I - unlike what people say about attorneys I want to see you get taken care of. ***I mean I – under these circumstances you're never goanna feel good about this thing, regardless.***

Stepnosky: : ***And with nothing in writing that I can see at this point I mean freaking Leaders can go in there before January 7th and amend that thing anyway he wants.***

Haeg: Ok well if you could just at some point try to figure out yes or no. Also we – ***I have yet to get a full copy of my interview with the State that we did in your room.***

Cole: I understand that to – I have asked them to send a tape into the Troopers – the tape is out in McGrath – I've asked them to send it in to here so that I can have it redone.

Phone Call Between Investigator Joe Malatesta & Brent Cole 1/4/05 - Transcribed

Malatesta: ***Did you have any agreements with the State where you know sentencing was open? That you folks agreed to and then the State backed out?***

Cole: Well I – I that's a difficult question. The State gave us a number of options on a number of different occasions and I've gone through all that with David on a number of occasions. You mean a straight open sentencing?

Malatesta: ***Yeah an open sentencing you know where you agreed and then they - the State backed out. He was telling me something about he had to bring witnesses in and all and then the State backed...***

Cole: ***Going to go to be arraigned at an open sentencing, yes.***

Malatesta: ***And why did they back out?***

Cole: ***THEY DIDN'T BACK OUT THEY CHANGED THE DEAL.***

Malatesta: ***Well that's basically backing out, right?***

Cole: Just – just listen for a second.

Malatesta: I am – I have been listening. Go ahead.

Cole: So I said - ***he said, "If he will forfeit the plane he can have open sentencing".***

Malatesta: Ok – I'm still with you.

Cole: ***"If he is unwilling to forfeit the plane and we have to have to have a hearing about that then I'm goanna file an amended information charging him with AS 08 54 720 A 15". Which makes him lose his license for a minimum 3 years.***

Malatesta: I gotcha – I'm still with you.

Cole: ***And I said, "Hey you know that doesn't make sense to me". And he said, "Well that's the way its goanna be". AND I SAID, "OK".***

Malatesta: That's great.

Cole: So then we said –um- what happened then. Then ***on Monday I met with David and we were scheduled to go to McGrath on Tuesday morning. So we worked and I presented all the different scenarios that David had in front of him. He was unhappy about what the DA had changed. And I was too.***

Malatesta: Well it's – it's important.

Cole: Listen ***to me it doesn't make that much difference.***

Malatesta: But I'm looking at this that ***you've been honest with me this morning and I knew you would be cause I work with so many lawyers and everybody told me you would be. It sounds to me like you had a rule 11 agreement verbally.***

Cole: We had a couple different – opt - options.

Malatesta: And ***Scot Leaders reneged. He just backed out on those – on that agreement.***

Cole: *HE DID.*

Malatesta: Ok well then he's got a problem.

Cole: Then – then ***on Monday afternoon we reached another deal.*** (*Long pause*) And ***that deal was what I thought David was goanna be willing to plea to***.

Malatesta: Ok - but ***the whole crust of this thing is you did a good job for him, you got him an agreement, and the DA backed out.***

Cole: ***If you guys want to look at it that way yeah you can...***

Malatesta: All right I'm sure that Chuck may want to talk to you later but I'll try to pass this on. Took notes and I think I understand and you explained about the discovery.

Cole: ***One thing that the DA did back out on though is originally he said same counts that he was facing that are in that note that he sent to me "open sentencing".***

Malatesta: And that's the point that I'm interested in.

Cole: Right.

Malatesta: And he backed out.

Cole: *Then he changed that.*

Malatesta: Ok.

Cole: But the only thing ***the DA said is "if he is not goanna give up his plane then I'm going to change this from 720A08 to 720A15" which he did the very next morning anyway.***

Malatesta: Make sure I don't mix it up. You had an agreement regardless of what all the parameters were you had an agreement with opening –

Cole: the options.

Malatesta: Right all the options ***you had an agreement with an open sentence and basically the DA backed out.***

Cole: ***RIGHT.***

Cole's Sworn Fee arbitration testimony 4/12/06, 4/13/06, 7/11/06, and 7/12/06

Cole: He killed a number of wolves outside the area. Nobody knew about it except the DA, myself, some of the troopers and I thought – I thought he was going to receive a significant punishment because it made the governor look bad, it made the executive branch look bad, it put in - at risk the whole wolf hunting - airborne wolf hunting policy.

Haeg: Ok when I asked Brent Cole if I could have tried to get the magistrate to enforce the Rule 11 Agreement he replied quote, "She would have told you anything you say can and will be used against you and that would have been the end of it". When I insisted that Brent Cole try to enforce the Rule 11 Agreement he stated quote, "I can't force Leaders to do anything because after you are finished I still have to be able to make deals with him". During a meeting with Brent Cole & Tom Stepnosky on 11/22/04 - and that's a tape that we – my wife transcribed and I don't know if we can admit that or how that works but?

Shaw: Mr. Cole have you looked at that?

Cole: -Um- I – my recollection and I'm not sure about this is that this was taped without my knowledge and so I don't know that I've ever heard this tape. So I don't know.

Shaw: So you've got an objection to its admission?

Cole: Yes.

Haeg: Can I offer the tape?

Shaw: On – on what grounds? I don't mean to sound...

Cole: I have no reason – I – I have – I have no -um- lack of foundation -um- authenticity I guess.

Cole: I guess my question was did you – did you think that you had any defenses to the – the charges that were being discussed between you and your attorney?

Zellers: -Uh- yeah. -Um- the – the mere fact that the State was – they had -uh- -um- you know they had 4 of the 9 wolves locations -um- kill sites. They didn't have them all. -Um- and we were you know at that time I mean we weren't charged with anything. That was the whole thing. Is we weren't charged with anything before our interview with the State.

Cole: Ok. Do you remember –uh- that you talked about this statement that I – that I – that you say I made about not wanting to rock the boat with Mr. Leaders. Do you remember that?

Stepnosky: Yes.

Cole: And that was done in the context of discussing what it would take to enforce a Rule 11. Do you remember us taking about that?

Stepnosky: Yes I believe that's true.

Cole: And do you remember me telling Mr. Haeg that in order to enforce a – first of all do you remember me saying I wasn't sure – or no I guess it's your testimony that I said it was a ruling. Do you remember me telling you what it would take to enforce a Rule 11 Agreement?

Stepnosky: No I don't recall that.

Cole: Do you remember me saying that it would take cross-examining Mr. Leaders, and calling him as a witness?

Stepnosky: No I do not recall that.

Cole: Do you remember me telling you that I didn't think that it would accomplish what you wanted to accomplish? Or Mr. Haeg I should say – that I was – remember me telling Mr. Haeg that filing this Motion would not accomplish what he wanted to accomplish?

Stepnosky: –Uh- no I – I - I don't think so – to my recollection his idea was to go out and have the open sentencing I mean that - that was it. So if that could be accomplished, and that's what he wanted, if that would do it, then that would work for him.

Cole: Do you remember me telling him that - that could be filed, that Motion?

Stepnosky: No.

Cole: Do you remember me telling that it was goanna cost money to file that Motion?

Stepnosky: No I do not.

Cole: Do you remember me telling you that we would still have to deal with Mr. Leaders at an open sentencing and he would still be doing the recommending of the sentence if we were successful and were able to enforce a Rule 11 Agreement?

Stepnosky: : Do not recall that, no.

Cole: That's all the questions I have.

Cole: Would it be – I'm sorry – would it be fair to say that -um- Mr. Haeg was under a fairly substantial amount of stress after the house was searched and the airplane was taken?

Mrs. Haeg: Yeah.

Cole: Do you recall ever expressing to me any of your concern about his mental well-being?

Mrs. Haeg: I don't recall actually discussing it with you – I could have -um- I know I talked to you a few times on the phone -um- we were both pretty stressed out at that time – I don't – that was a really really really hard time for us, with the kids and that happening and people coming to our house and doing what they did.

Cole: Did –uh- Mr. Haeg express to you that he was dissatisfied with my services when you drove home?

Mrs. Haeg: He was upset with everything that had happened – yes – he wasn't happy.

Cole: I guess my question was – was - did he express to you that he was dissatisfied with my services at that point?

Mrs. Haeg: Yes he – he didn't understand why you know something wasn't done to make the deal happen and you know it – so yes I – I believe that he was – he did tell me that yes.

Cole: Did you encourage him to get another attorney to represent him – in his court case?

Mrs. Haeg: We discussed it – he was extremely upset with what had happened – he didn't feel like you had done your job and he started you know he wanted to get another opinion and then -

and I agreed with him that it would be good to do so.

Cole: That's –uh- that's all the questions I have.

Cole: My understanding is that you looked at the search warrant and it's your opinion that if the search warrant were suppressed that there would have been no evidence against Mr. Haeg and Mr. Zellers in this case. Is that right?

Jones: I – what I presented was my – that my knowledge of the search warrant that – that –uh- Trooper Gibbens said that the –uh- wolves under investigations were in Unit 19C on the search warrant when in fact they were not in 19C they were in 19D and that is the criteria with which I was making that statement on.

Cole: And would it be your opinion then that that error would constitute a basis for suppressing any evidence found pursuant to any search warrant issued based on that affidavit?

Jones: Yes and I have a reason for saying that is because of the way it was structured in the complaint was that it started off with Trophy Lake Lodge is owned by the Haeg family is in 19C then it immediately thereafter the wolves under investigation were in 19C. And then when in the course of the trial –uh- under - well under the rule 11 agreement that –uh- you were negotiating with Mr. Leaders it was pointed out to his very strongly that –uh- that in fact those wolves were in 19D not 19C and so then when he comes back in to court he says those wolves are in 19C again when – when it's pointed out to him that they are not and that shows malice all the way through it that to me you know and I would think that would be a reasonable assumption with anybody that read it.

Cole: Have you ever heard of situations where people are made offers to plead conditioned upon them not filing search warrants –uh- motions to suppress evidence? You ever heard of that before?

Jones: Well I would suppose that would be available but at the same time –uh- if you're talking about negotiations towards a rule 11 and then that rule 11 got pulled away then – then it was not a valid arrangement was it?

Cole: Now as a defense attorney when you – when you initially heard some of the facts of this case did it raise any concerns -um- about the type of case this could become?

Fitzgerald: So -um- I was somewhat familiar with the kind of political climate, I was aware that Friends of Animals as they continue to do today -uh- are strongly oppose any Wolf Control

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Program -um- and initially I was laboring, as I believe Mr. Cole might have been laboring, under a misperception that the State authorities because they had authorized a State Wolf Control Program that – that there might be some sympathy or adhere from the State officials regarding - um- the plight that - that Mr. Haeg and Mr. Zellers found themselves in. And almost immediately Mr. Leaders who was representing the State dispelled that – that belief among Mr. Cole and I by emphatically indicating to me repeatedly that this was not the kind of case that we were goanna find any sympathy for in fact the State was goanna in my view bend over backwards to make sure that for political reasons if nothing else that -uh- in some measure -uh- these gentleman - um- were - the matter was goanna be addressed very sternly.

Cole: Do you recall talking to me about you - our understanding of our client going in – clients going in and giving statements to the officers in this case?

Fitzgerald: Well I can tell you my clear understanding from having talked to Mr. Leaders and I will represent here as an officer of the Court and Mr. Leaders indicated that -uh- my client Mr. Zellers was goanna be given immunity that there was nothing about that interview which I characterize as a "king for a day" – there was nothing about that interview that could be used against Mr. Zellers.

Shaw: Excuse me. What did you mean a "king for a day"?

Fitzgerald: -Um- it's – it's something that – that I frankly – you don't see -um- as frequently in State Prosecutions but in Federal Prosecutions it's – it's what I describe as -um- the immunity that – that usually is accompanied a letter -um- where you bring your client in and -um- the -uh- protections that are afforded -uh- your client are essentially use immunity protections. The – because the State and the Feds interpret immunity differently I've always interpreted that if you bought that same kind of offer and protection in -um- the States side that it would be transactional immunity.

Cole: In your discussions with Mr. Leaders did you learn that he needed Mr. Zellers testimony because he didn't have evidence of some of the counts because he couldn't use Mr. Haeg's statement?

Fitzgerald: I know that – that – that was discussed. I know that – that was discussed between you and Mr. Leaders; it was discussed between Mr. Leaders and myself, and -um- -uh- it was clear to me that by virtue of the immunity provided that – that Mr. Leaders believed maybe early on that he might have – he wasn't goanna have because of the immunity agreement.... May I just make a point of clarification? I was asked about the correspondence -uh- that I believe was exhibit 1. I have a

entry on December 23rd that I'm just looking at now and says reviewed correspondence regarding king for a day from Brent Cole – conference with Cole regarding the same.

Haeg: Ok so what you're telling me is you've given the State everything, your client has given up both his wife and him a whole years income, flown in people from around the whole countryside, and you're telling me you wouldn't even try because it aint goanna do any good? Why do you have a lawyer?

Cole: Can I object for just a second because this has – I understand what he's trying to say but Mr. Haeg has a fundamental misunderstanding of the criminal justice system.

Shaw: (...)

Fitzgerald: I think you've asked me a number of questions Mr. Haeg and -um- I – I've described to you what I believe the appropriate steps would be and the appropriate assessment of risks would be with regard to whatever – whatever steps you took.

Haeg: Ok. Can you explain the risks involved in trying to enforce the agreement?

Fitzgerald: The risk Mr. Haeg or that if you're not successful before the – if – if you attempt and indeed do for instance file a motion with the Court and the Court rules as I think it would with regard to any kind of oral terms that it does not have the jurisdiction or ability to intercede and define those terms then what you've done is you've really drawn a line in the sand with regard to the Prosecutor and that what you've done is you've made an enemy out of frankly the last person you want to make an enemy of. Whether we like it or not Mr. Haeg us in the defense bar realize quickly that you are not infrequently in a position where you don't have the leverage and so what relationships you can develop and what ability you can develop with regard to obtaining good term for your client you want to keep in tact because when the rubber meets the road and you're a criminal defendant it's typically not a pretty picture.

Haeg: Well you're correct as I was the rubber that met the road. Ok – in your opinion if you advocate for your client – excuse me – are you making an enemy out of the Prosecutor?

Fitzgerald: It depends on the circumstances.

Haeg: I told you the circumstances. I'll repeat them again. Your client gave a 5 hour interview to the State, gave the State maps, gave up a whole years income not for just the client but also the clients wife most peoples arithmetic that's two years income, then for the Rule 11 Agreement you fly people in from around the country from Illinois, from a remote lodge Silver Salmon

Creek, take kids out of school, people away from work, drive up here to comply with the Rule 11 Agreement and then the Prosecutor breaks it by filing harsher charges because I believe he -uh- changed his mind. Wasn't even a mistake just changed his mind – didn't make a mistake. And your attorney can't ask for the Rule 11 Agreement to be honored because that would oh make an enemy out of the Prosecutor. Is that what you're telling me?

Fitzgerald: I think sir I described my answer to the best of my ability. I've described the – what I believe to be the appropriate steps.

Haeg: Raises my point exactly. In your opinion [is] a lawyer legally allowed to represent a client if he has a conflict of interest – a direct conflict of interest in representing that client?

Fitzgerald: Well this is the – well I can tell – tell you ethically that there are ethical rules that – that prevent representations when you have a conflict of interests.

Haeg: So is that yes or no? Just kind of be a little more clear for me please.

Fitzgerald: I don't know that it's good practice and there are rules that govern that thing.

Haeg: Ok. -Um- -uh- Mr. Fitzgerald in your opinion when a Prosecutor breaks a Rule 11 Agreement does he become the enemy of the client and his client – and that clients attorney?

Fitzgerald: I don't think at that stage no. If the Prosecutors the one that's breaking the agreement.

Haeg: (exhales) Why not?

Fitzgerald: Well there's nothing for the Prosecutor to be upset about if the Prosecutors the one that breaching the agreement.

Haeg: What I asked is if the Prosecutor breaks the agreement that he made with the client and his attorney – so the client and the attorney are one unit – there like the white – (...) cowboys and the Prosecutor is like the Indians and the Indians break the rule 11 agreement does that – that doesn't make them enemies of the cowboys. Is that what you're saying?

Fitzgerald: Yeah that's what I'm saying.

Haeg: And can you elaborate on that for me please?

Fitzgerald: As I said the Prosecutor – if the Prosecutor is the one that's -uh- breaching the agreement they've got – shouldn't have any hardship with regard to -uh- their prospective towards the client and the defense counsel.

Haeg: Don't you think that there might be a little bit a (laughs) at least irritation?

Cole: Objection argumentative.

Haeg: Have you upheld or overruled or what?

Shaw: (...) Mr. Fitzgerald to answer that question.

Fitzgerald: I – I think if the Prosecutor is the one breaching the agreement then there's little likelihood that they would be upset about that breach and hold it against the client or the defense attorney.

Haeg: But wouldn't the client and defense attorney hold it against the Prosecutor?

Fitzgerald: Oh I – yeah – I – I – I – I think that's -uh- breach of the bond and yeah that's – that's a – in – in my measure – I my view that's a very serious matter.

Haeg: So why do you say to me then if – since they're now enemies – we'll just use the word enemies cause you brought it up – why do you then say if the client and his attorney wanted to enforce the Rule 11 Agreement they couldn't because they couldn't make an enemy of the Prosecutor? But the Prosecutor – you guys see where I'm going with this? It's – to me it's pretty apparent.

Fitzgerald: Mr. Haeg what I said is that the issue – the real issue is one of enforceability and if the attempt at getting a Court to intervene on your behalf and enforce the Rule 11 – if that's goanna be a futile exercise then you probably damaged your clients interests or certainly not served them by making the attempt. So –

Haeg: So what you're saying – what you're say - in your opinion what you're saying is – is you can make an agreement and pay oh in my case maybe $700,000.00 dollars for it and just blow it off and let the Prosecutor do whatever he wants?

Fitzgerald: No I'm not advocating that sir. I'm – I've said that it – it was something that needed to be carefully deliberated and considered and the consequences of the same had to be considered carefully.

Haeg: Ok. -Um- have you ever heard -uh- you had said that detrimental reliance on a Rule 11 Agreement rarely happens in criminal cases – yet have you ever researched that?

Fitzgerald: I can't say I've ever research it sir I've experienced it.

Haeg: Ok. -Um- do you trust Prosecutor Scot Leaders in all clients dealings?

Fitzgerald: That was really my first -uh- significant contact with Mr. Leaders I had no reason to believe he wasn't a person of his word. There are certainly that occurred in this particular case that would leave me subsequently to be more careful about his representations.

Haeg: Ok. -Um- did you trust Mr. – you answered now that you. At the time I made my deal did you trust Mr. Leaders?

Fitzgerald: I don't know at the point that -um- you made the deal and – and what deal you might have been talking about. I can tell you that I became concerned about Mr. Leaders representations when I was informed by Mr. Cole that he had some hesitation or wouldn't be honoring the -um- the immunity – the "king for a day".

Haeg: Ok. I was thinking of something else. Can you explain you said you had questions about what – what was that exactly?

Fitzgerald: At various points I had concerns about Mr. Leaders word.

Haeg: Ok and you'd said December and then November 8th and 10th. Can you say December of what year?

Fitzgerald: I think it was December of – December -uh- it – it - it's consistent with exhibit 1. -Um- December 23 with regard to the review of correspondence regarding "king for a day" from Mr. Cole and it - it leads me to believe that – that he and I had a discussion around that time with regard to whether Mr. Leaders was goanna honor the "king for a day".

Haeg: Well is there something other than the king – and I don't know what king for a day but is there something other than this that describes the "king for a day" that you say Mr. Leaders didn't want to honor?

Metzger: When you say this you're (...) exhibit number 1?

Haeg: Ok – yep.

Fitzgerald: At – at various junctures in the proceeding I had concerns about Mr. Leaders word. This is an example of one of them. Is that in approximately December when I believe Mr. Cole informed me that Mr. Leaders was [not] goanna honor

the "king for a day" that I had some real concerns based on my own discussions with Mr. Leaders with regard to his bond.

Haeg: Ok if – if a Judge heard either myself or Mr. Cole say that there was a Rule 11 Agreement and they wished it to be upheld would she have been required to hold an evidentiary hearing to decide this question?

Fitzgerald: No.

Haeg: And why is that?

Fitzgerald: Because when you wear a black robe you can do a lot of things that pretty much almost anything you want to and you're asking a Judge – my experience tells me sir that a Judge would say "that sounds like a problem of communication between you and the prosecution. Work it out – I'm not goanna in arbitration with regard to what those terms were".

Haeg: Ok so I'm new into the field here so in your opinion if essentially what you're putting forth is if the Prosecutor holds out a carrot to get somebody to do something he never has to give them the carrot?

Fitzgerald: No – I'm not saying that. The question that was asked of me with regard to whether the Judge would have to hold an evidentiary hearing. I don't believe that the Judge is legally obligated to hold an evidentiary hearing about that particular matter.

Haeg: Would it have been likely?

Fitzgerald: I don't believe so for the reasons I've articulated.

Haeg: Boy (hmm). So in your opinion you should never ever make a Rule 11 Agreement because there's no way of enforcing it.

Cole: I told David from the beginning – he's correct, his wife is correct – I told them at the beginning I thought there would be significant political fallout from this. I thought he might be used as an example. And my logic was very simple. Governor Knowles had stopped wolf hunting in Alaska. Even though the ga - Game Board and everybody else wanted it to go forward – that's one of the things he did and he stopped it. When Governor Murkowski came back in he reinstated it. He took a tremendous amount of grief for that. The governor did, the governor's office, the State of Alaska, tourist and – and I just saw this as just terrible publicity toward the governor if someone who was a guide intentionally took a privilege that the State gave him to kill wolves out of an airplane – which is about as unfair chase as you can get – unless you do it with a helicopter – and goes outside of his area and shoots wolves and then they're close to the area where he happens to hunt moose – I just saw a lot of very negative facts in that respect and I

saw someone that if the State wanted to make a – an example out of anybody this was a prime case. And I initially thought, – and – and I talked about this with Kevin, if we got a reduction anywhere below 5 years in this I thought we were goanna be doing well, initially.

Shaw: Five years to serve?

Cole: No five years on his license. They – they really don't give too much jail time on these things. I mean they like to give a little bit but the kicker is – but – and the troopers know it – it's the license. That's what's valuable, that's what – that's what hits home, that's what scares all the guides around the State is all of a sudden they could be out of business and they know you know being out of business means you know and for 5 years it is almost impossible to come back. -Um- and so -um- I started talking to I – I (exhales) -um- David has raised this deal with Scot Leaders – I did not have that much experience with Scot Leaders - he had not been a DA that long. He was the fish and wildlife DA but I had a number of cases of with him. -Um- 4 to 5 at least – 3 – 3 that I can think of right off the bat. Two of which resolved themselves in the course of this and – and – and were another part of the reason why I kept telling David -um- that he needed to get the DA onboard.

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 they – and he was goanna do it in this case too.

Shaw:. So what was the -um- understanding that you had as Mr. Haeg went into this -um- conversation where he provided information to the prosecutors?

Cole: We were – we were falling on our sword. Ok. It was a deal that his statement would not be used against him – kind of a king for a day.

Shaw: It was a deal? That was the deal?

Cole: That was my understanding, yeah. Cause it says July 1st – now that was because we had represented that David was not going to be guiding in the fall of 2004 and so he put that date in there. It was goanna be going back to July 1st – it's right there.

Shaw: Does it say that?

Cole: Yeah "parties agree that each years term will end effective July 1st".

Shaw: Uumm hmm.

Cole: That's what that means.

Shaw: I think it begins July 1st 2004.

Cole: Well yes that's - that's what it means. Is that if he gets one year it will end on July 1st 2005. If he gets 2 years it will end on July 1st 2006. And that was to minimize the impact because as I had argued to him "we're not hunting this coming year so you should give us credit for that." David comes to the office on Monday – he brings everybody there – we are planning on going out – I handed him – I think I told him "this is you know here's the deal". I just disagree with David when I said – when he says I never told him before. I did tell him before that Leaders had informed me that if he wanted to go open sentencing they were goanna to change the charges and it was goanna require a 3 year loss of license. I said it's not fair – I don't like it – but I don't have any discretion over what the prosecutor files as charges. And I said – and I have my notes here – we went through and talked about it – the options that he had with the group of people in there.

Metzger: Ok.

Cole: And we – you know – I – I prepared this thing, your trial options, we went through the 12 counts and I said "you know these are all the concerns that I have – I mean you know some of these – you don't have any defenses to and all you've got to do is be convicted of 1 at trial" and *did we discuss motion to suppress – no I really didn't think we did because I never felt that was a good option.* It's like Judge Rolland once told me on a preemption of a judge *"If you're goanna shoot at the king you'd better kill him - cause if you don't your heads goanna get lopped off" and that's the way I felt with this.*

Shaw: Sure.

Cole: I need to talk about one other thing if that's ok and then I'll let you go. -Um- this – this discussion about the sentencing of David – ok -um- David wanted me – the – the – originally the sentencing I believe was set for right around September 1st 2005. When he was – after he was convicted. I -um- was goanna be unavailable at that time – I was going hunting myself. I go hunting every year. So I called Mr. Robinson and said "yeah you know I got this notice that you want me to" – you know his secretary I think was calling me and telling me about the sentencing or something like that. I called him up and I said – I said "first of all you understand, Chuck" – I've known Chuck for a long time – done a lot of a cases with him – I said "if I get put on the stand – it's goanna waive the attorney – I – I – I am assuming that –uh- waives

the attorney client privilege and I'm not so sure that David wants me on the stand. -Um- there are things that he has told me that would not be helpful to him at a sentencing - so first of all I'm not goanna be there in September and second of all think real hard about this" and he said "yeah – yeah I know I'll talk to you later". Then the second sentencing came along and I got – I received a subpoena – I – I admit I received a subpoena from David – I got the ticket – I called up Robinson - it's in my notes – and again I talked to him and I said "look I don't – you know I'll do whatever you want but I really don't want to go out there for a full day just to sit around at a sentencing. You know David when he's already not paid me -um- but and you know has basically told me that he's not goanna pay me." But I said on top of that even more important -um- "I don't think I'm goanna be a good witness for you. I'm happy to talk to you about it but I really don't think so" and he said, "Yeah I'm trying to tell David that you shouldn't do it."

Haeg: -Um- Mr. Fitzgerald testified that Mr. Leaders had told both of you immediately and emphatically that there was going to be no sympathy for Mr. Haeg and Mr. Zellers. Is that true?

Cole: I don't know what he told Kevin. I know what he told me and -um- none of it was real good for you -um- he was pretty emphatic about what was goanna happen if – if you were goanna – I mean he – he looked at you and said the troopers looked at you as a bandit and didn't think that you should be a guide and wanted you out of the business and -um- thought that anybody who shot wolves under permission of the State when they were a guide didn't have the qualities of being a guide, shouldn't be a guide, -um- and that the troopers -um- were not sympathetic to you in essence he wasn't very sympathetic to you.

Metzger: Mr. Haeg I'm listening to these and being – trying to be patient but I don't really I'm having trouble trying to figure out what these have to do with the fee that you were charged?

Haeg: -Um- I'm goanna try to show that there was gross prosecutorial misconduct and Mr. Cole did absolutely nothing in my favor to stop it.

Haeg: And you're saying that I told you that I did not want to file the motion?

Cole: You told me that you didn't want to lose your license for 5 years. I concluded from that that if it was – if this was goanna result in your license you didn't want it. I can't remember exactly what was said. I just said, "These are you options". I explained them time and time again. But I always told you "if you do this you have to be willing to accept that you're goanna lose your license for 5 years, if you lose, is that a risk you're willing to take?" I never heard you say that "yes it is – I want to take that risk".

Haeg: If I have evidence refuting that do point it out now?

Shaw: If you have evidence that Mr. Cole gave you advice that was different, sure. If it contradicts what he's telling you now.

Metzger: If you have something in writing you can show it to him and say, "Did you write this?"

Haeg: Ok I don't have anything in writing but I have the conversations taped that explain exactly what went on and they're transcriptions so they're not writing.

Metzger: Transcriptions of statements with whom.

Shaw: That Mr. Cole had made?

Haeg: Yes.

Shaw: Oh – ok sure.

Haeg: Ok -um- I'd asked you yesterday about why I didn't want the motion to enforce the agreement –uh- moved forward and, I believe you had said that it was because I did not want to risk a 5-year suspension of my guide license. Is that correct?

Cole: We talked about this on several occasions. I explained to you that it was - it would be against my advice to have you file that motion because, again, I could not understand how it would benefit you. All it did is get us back in front of the judge open sentencing, which I did not understand, I - I put it to you several times. I went back and reviewed the tapes that you made without telling me, of the conversation on the 10th and on the 22nd, which they now have transcripts of it, specifically I asked you in one of those, "Do you want me to file this?"

Haeg: And what did I - respond...

Cole: You didn't say - you didn't say anything about it.

Haeg: That...

Cole: You did not tell me, "Brent, I want you to file this. I don't care about anything else." We specifically talked about this. I specifically told you this. So –uh- every time we talked, you ultimately said, "You're right, I don't think I want to lose my license for 5 years" and we talked about the fact that we had it down to 1 year.

Haeg: Can I direct the panel's attention to some evidence?

Shaw: Ok.

Haeg: ...think of a better way. -Um- I'd like you to –uh- I guess read maybe –uh- yeah kind of the bottom of page 10 and then top of page 11. Is that what I had said at that time? And I guess I'd like you to look at the spot where it says, "That is what I wanted at the time, and that is still what I want, because I feel that they maliciously took that away from me".

Cole: This is what I said. "I mean, you know, I've gotta deal with these people, but if you tell me, 'that's the deal I want, I'm not stopping until I get it' I'm goanna send you a letter saying this is absolutely, in my own mind, crazy. But I will do it if you tell me." That's what I told you. You said, "Well, I'm not happy they took away my opportunity, that I thought we had set - had set away from me." "Ok, tell me right now, is that what you want me to do? Do you want to go back and take the risk, when you've got things in place." You said, "You mean, go back to original agreement?" which, "Yes, a minimum one year. A minimum one year. The plane is up for - for the judge to decided is that what the time because I feel they maliciously...." I say "okay." You don't say anything about "that's what I want to do, Brent, I want you to file the motion."

Haeg: Does anybody read where I say, "that is what I wanted at the time and that it's still what I want"?

Cole: I read that. Because I feel they maliciously...but you didn't say, "Brent I want you to file the motion."

Haeg: Ok. Can we go to somewhere else here, also, page 7 please? If you notice, nowhere does it say "motion". Because I didn't know I could file a motion.

Cole: Objection, testimony.

Haeg: Can you go over, I guess, kind of wherever on page 6.

Cole: I don't know what you want me to look at. You need to tell me what you want me to look at, David.

Haeg: I guess reading page 6 and the top of 7, does it appear like I wanted - the only thing I wanted was to enforce that agreement and the only thing you wanted was to keep me from enforcing it?

Cole: No. I don't read it that way at all. I don't read the whole thing that way. I kept telling you, you had options.

Haeg: -Um- where does it say that I didn't consider them valid options, Jackie? I need to just use this one, I'm used to this one. And I'm sorry, I guess, I apologize for my nervousness. Ok, I have page 9, I don't know exactly where it'll be on your pages, Jackie will try to find it here - it would be page 8.

Cole: You want to look at what it says on page 6 and go over what we talked about on page 6 and 7? Because I think you're...

Shaw: Mr. Cole.

Haeg: Sure.

Cole: ...it supports my position.

Haeg: Ok. I have no problem with that.

Shaw: -Um- Mr. Cole let Mr. Haeg ask his questions. Why don't you invite us to look at the page that you're looking at.

Haeg: Ok, -um-.

Shaw: Is it – is it page 8?

Haeg: Ok - page, I guess page - starting – starting on the bottom of page 7, can I read it, or should just people read it, or should Mr. Cole read it?

Shaw: -Um- this is your time to ask Mr. Cole the questions, so.

Haeg: Oh, it's actually on the bottom of page 6, I guess Jackie pointed out, I'm sorry I got - I had notes on this one and..

Metzger: You can – you can ask Mr. Cole if this transcript accurately reflects the conversation that took place.

Haeg: Ok, does this accurately reflect the conversation that took place?

Cole: As far as I can remember, you have the tape, I didn't know it was being tran - uh, tape recorded. But as far as I remember this is what was said in our meeting. I'm not denying it.

Haeg: Ok and do you agree that if you keep reading from whatever on the bottom of page 6 to the top of page 7, you said "That's because you're goanna lose your license for 5 years" and I said, "Well, I was willing to take that chance".

Cole: In the past. Was. That's right. You're not telling me I am. You were not telling me that then. And I told you to think about it because I was telling you that you could not affo - you would not handle the risk. And it's become apparent to me that you haven't handled the risk.

Haeg: Um, and then continuing on, I don't - where is this stuff here. Do you agree that where I say, "I'm not blaming you for telling me what you think, that's what I'm paying you for - I think you're taking it that I'm attacking you. I'm not. I want to somehow bring forth, that in good faith, I decided what I wanted to do with my family with your advice, and I take your advice sometimes, sometimes I don't. That's my privilege." You say, "That's right". I say, "That's my privilege". You say, "That's exactly right". I say, "In my perspective we had an agreement, like for 2 weeks, and I made all the arrangements to in good faith go to McGrath, you follow me so for – so far?" I believe you say "Yes, yeah". Then I say, "After we invested - invested a lot of time, effort and money, committed to that venture to settle it, because my life is getting eaten up by worry, among other things, and I had great expectations to leave McGrath either without a license for 5 years, no airplane, going to jail for 6 months and a two hundred thousand dollar fine, or something a little less. Nothing to do with you. I knew the judge was the one going to be deciding that, but all of that was taken away from me at the last minute by that agreement. Do you agree with that? Or I mean not at the last minute but whatever it was – well beyond when we could have changed anything, saved all the money in the hotel and airfares, etc, etc." You say "the thing that was taken away was the option to go open sentencing total. There were other options that were available that would allow us to go to McGrath, but to go totally open sentencing", and I say, "Well to me they weren't viable options" and you say, "The only thing that's different was the loss of the plane". And I say, "Yep, and is that – is that ethical for them to do, say 'yep, give us the plane and you have the same day, or the same day in front of a judge', is that how the game is played, all the time?" And you say "yep".

Shaw: Mr. Haeg, why don't you pause for a moment and have a drink of water.

Haeg: Is that correct? (Very upset) I didn't care what happened, I wanted a judge to listen to me. (Pause)

Shaw: Do you want to step out for a moment? You certainly can.

Haeg: Ok. Do you also remember right after that going, "Um, when Magistrate Murphy was on the phone would it have been appropriate, or could I, could I have said, 'Hey judge, before you leave could I put in my two cents worth that I came with the understanding that this was a deal, and then they pulled the rug out from underneath my feet'. Could I have done that at the time?" And do you remember what you said, Mr. Cole?

Cole: I – I – I don't exactly remember, this looks like the right thing, it's what I would have told any defendant. The judges normally stop defendants from saying anything, um, and warn them.

Haeg: Can you tell me what I could have said that could have been used against me that I did not say in 5 hours of a confession to an Assistant Attorney General and a - an Alaskan State Trooper for 5 hours?

Cole: I tell - I tell you what I tell everybody. The judges warn everybody. Whether you are going to incriminate yourself or not. They tell that as a matter of routine, every time a defendant appears with an attorney, and starts trying to say something. In fact, my experience has been the judges like attorneys to keep their clients under control and to not say things. That's not to say you couldn't have. But I would - I definitely would not have encouraged you, you're right. I was trying...

Haeg: And would that - would that....

Cole: ...to get our deal done.

Haeg: ...would that essentially make me feel threatened so I wouldn't do it?

Cole: No I – I can't speak for how you felt David. It shouldn't have. We sat in there...

Haeg: It very much did.

Cole: ...we decided not to go the night before. Everybody went to dinner, we went and had drinks at the hotel, people were happy about the situation, about not having to travel out to McGrath, that the situation was in place that you were goanna be guiding within the year. When we left on the 8th everybody was happy. When we left on the 9th people were happy.

Haeg: I don't remember being happy at all. But I guess I can't testify. -Um- do you also remember telling me that if I would have continued to insist "she probably would have listened and that would have been the end of it" is that – is that correct?

Cole: Are we get – it – it says what it says. I think I said that. We goanna go through the whole thing?

Haeg: So I – what you're saying is I could've laid out that I cooperated with the State from the beginning, gave them a 5-hour interview which led to over double the amount of charges filed against me, gave up guiding for an entire year – the money was already gone, the season was already over, which dang near bankrupt Jackie & I because we still had to pay all the leases and all the insurance and all the bonding and we didn't get any income. Now that – that hurt – hurts. Your saying that that judge would've heard that and said "Mr. Leaders you can just do whatever you want. You could promise this man the moon and when he takes action and sacrifices his life you can just go..."

Mrs. Haeg: David.

Shaw: Mr. Haeg.

Haeg: I'm sorry. Been through a lot.

Shaw: I know that you've been through a lot but...

Haeg: I'm sorry.

Shaw: ... we – we've got to do this hearing in a way...

Haeg: Ok.

Shaw: ...that makes us all feel comfortable so you really need to collect yourself.

Haeg: Ok. I'm sorry you know but is that what you're saying Mr. Cole is that and we already had all the witnesses flown in from Illinois, Silver Salmon Creek, took my kids out of school, took people from work, came up here so that they could all testify and the judge would have listened to all that – with – what's called detrimental reliance and she would not have required specific – specific performance of that agreement?

Cole: I will tell you again, David, I told you before the hearing that they were not going to allow you to plead open sentence to the first charges and go – and be able to get your plane back.

Haeg: You still – could you answer my question that the judge "would have listened and that would've been the end of it".

Cole: I – I really don't think the judge would've done anything, David.

Haeg: Have you ever told me that that is my right to make that decision?

Cole: I think it was your right to make that decision. I made that very clear. You go through that transcript. I say it on time and time again. "What do you want me to do?" I never read in here "Brent I don't care what happens. I don't care what the risk is I want you to file the motion to enforce my judgment."

Haeg: How can I say, "file a motion" when you never mentioned that I could do so?

Cole: I did to David. I mentioned it. I talked to you about it.

Haeg: Are you – I don't know – this might be whatever argumentative or whatever. Are you telling me that you can read all this, honestly sit there and tell me that if you'd have said you could of filed a motion that I would have not said "hammer down – let's go – let's get it"?

Cole: I told you that – I had it in my notes. I told you that when we met with Mr. McCommas I had it in my notes and I'm sure I told you this before. I know I told you this before.

Haeg: That's what it says – since Jackie did the transcriptions here – I know they're exact and then it goes on "you know that probably is you know in most the time and probably in my case too but I – that happens to be a point that I beg to differ." And then you say "ok" and I say "if I wanted to – uh – to complain – or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?" and you say "I left a message. I haven't been in touch"...

Cole: Right.

Haeg: Mr. Cole if – if you'd told me about a motion would I have been – would I have maybe asked about it there?

Cole: I don't – I didn't talk to [you] about it there.

Haeg: Oh.

Cole: We had a number of conversations, David...

Haeg: Ok. So...

Cole: Well lets read what it says before...

Haeg: Ok.
Cole: Let's read what it says right after that...

Haeg: Ok.

Cole: "I mean how much – how much do you really want me to push it? Is that what you want? Is that really what you want me to do David?" And what do you say?

Haeg: "Well..."

Cole: "Well" you don't say "yes" you, say "well". "I mean you know I've got to deal with these people but if you tell me, 'that's the deal I want and I'm not stopping until I get it', I'm goanna send you a letter saying this is absolutely in my mind crazy but I will do it if you

tell me." "Well I'm not happy they took it away from me." "Ok tell me right now is that what you want me to do? Do you want me to go back and take the risk when now you've got things in place?" "You mean back to the origin..." You never come out and say...

Haeg: Keep going...

Cole: "Brent Cole..."

Haeg: ...keep going.

Cole: "...yes a minimum one year..."

Haeg: Yep keep going.

Cole: "a minimum year – the plane is up for..." "yes" "the judge to decide. That is what I wanted at the time and that is still what I want. Because I feel that they personally took it..."

Haeg: Now I may be stupid because I'm not an attorney but Mr. Cole do you feel that when someone says, "that's what I wanted at the time and that is still what I want" – they said yes?

Cole: No I don't, David. You have to read this whole thing in context; you have to read the whole thing.

Haeg: Ok. -Um- -um- I need to just go back to the main ones - cause if we're goanna get smoked on time. -Um- I don't know if I ever got a clear answer about why I did not want to file the motion, if indeed I didn't want to file the motion. Can you tell me clearly what my reasons were for not filing a motion?

Cole: The reasons were it was not in your best interest to do it.

Haeg: Ok. Well I guess that's arguing. And you are while under oath and on record here before the Alaska Bar Association goanna tell me that when I tell you "that is what I wanted at the time and that is still what I want" that I said, "no"?

Cole: I'm goanna tell you that if you read this whole thing it doesn't say "I want you to reject every offer and go in and do whatever we have to

do to get this original deal" David that's what I'm goanna tell you. If you read this from front cover to back you will not get that sense.

Haeg: So when I tell you "well to me they weren't viable options" that – that – that means that there were options that were viable - is that what you're telling me?

Cole: I can't speak for what you were thinking, David. You were not half of the time rational in my mind.

Haeg: So you can look at these...

Shaw: Mr. – Mr. Haeg I – I think that you've – you've covered this one...

Haeg: I've hit that one enough?

Shaw: I think you have.

Haeg: Ok now why would Mr. Leaders file the original information on November 4th...

Cole: You need to ask him - I have no idea.

Haeg: ...if he knew I wanted something else?

Cole: I – you have to ask him – I have no idea. I – I don't know...

Haeg: Do you understand what I'm saying there?

Cole: I – I – I see what your inference is David but I don't think it's as big of deal as you think.

Haeg: Ok.

Cole: They file those things time and time again.

Haeg: So what you're saying is he filed by mistake?

Cole: I'm not saying that at all. I think he filed it (laughs) the way he did. But he changed his mind.

Haeg: Ok so he changed his mind before or after November 4th?

Cole: You need to talk to him. I have no idea. I had no control over what pleadings he files.

Haeg: Now...

Cole: What charges he makes...

Haeg: Ok. Ok -um- is it likely for him to have filed the wrong information when he was going to file the amended one...

Cole: I have no.

Haeg: ...before filing the original information?

Cole: You need to talk to Scot Leaders. I cannot explain to you why he did that. I was not happy with it cause I thought we had a deal. You can hear it in my statement to the judge on the 9th.

Haeg: Ok. Can you look at I think it's exhibit number 1?

Metzger: It's the December 23rd 04 letter?

Haeg: Yes.

Metzger: That's exhibit number 7.

Haeg: (laughs) sorry. -Um-.I make a very poor attorney. Ok now this letter being in July 6th 2005 would it be a clearer version of your recollection or a less clear version?

Cole: Now I see what you're saying. It was done cl- done closer to time, I told you that I thought it was later in the middle of October or later in September. The reason I said August 29th is because my specific recollection is that – my notes from the time slips that I keep says that I inquired about it on August 29th and I felt that it was about 7 days later. My recollection is that it actually happened later on but I – I don't have – I wasn't specific enough in my time slips. This says that "sometime after the middle of October you inquired about pleading open sentence to the filed charges so that you could argue. I indicted I would make that inquiry, which I did, he initially did not have a problem with this. About a week a later however I received a call from him indicated he was amendable to allowing you to plea open sentencing but he was going to change the information to require a minimum 3 year license revocation."

Haeg: Ok. What's...

Cole: I believe this happened on or about this happened on or about November 5th.

Haeg: Ok.

Cole: I apologize...

Haeg: Ok.

Cole: ...maybe it did happen later to that time.

Haeg: Ok. Ok.

Cole: Hmm.

Haeg: And did – do you think that before you talked to Mr. Leaders on November 5th that in my mind and in all the witnesses mind, that I called at your request, that we thought we had a deal on November 5th when you talked to Mr. Leaders?

Cole: No I don't think so David. Maybe you know I can't speak for you. I didn't think that that was ever going to be the deal. I never had it in my mind that you wanted open sentencing. I apologize about you know when this actually occurred.

Haeg: Why would you make the statement that you just did that you never thought it was going to be the deal?

Cole: Cause I never thought you would plead – in your own mind – I never – I told you time and time again "it was goanna be over my dead body, I thought, that you would plead open sentencing". I could never imagine a scenario where you would do that. Why would you put yourself in a worse position then you had?

Haeg: So – so what you're telling me is you – you inquired of Mr. Leaders on November 5th if I could have open sentencing - is that it?

Cole: I don't think so. Uhh-uhh.

Haeg: Is that it?

Cole: No. No.

Haeg: -Um- on number 4 can you read number 4 out loud, please, slowly and clearly?

Metzger: Are – are you talking about exhibit number 7 again?

Haeg: Yes.

Cole: "On Monday, November 8th you and your family came to our office to meet in preparation for the arraignment and change of plea scheduled to occur in McGrath. It was at that time I informed you of Mr. Leaders' decision and outlined your legal options."

Haeg: Ok do you agree that on November 8th indeed myself and more then several witnesses – I believe there were – well I don't know – I think there was 8 in our entire party. Some of them flying in from –uh- Illinois. Do you agree that we all came there as you say in preparation for arrangement – arraignment and change of plea scheduled to occur McGrath the next day? Do you agree that that's what happened?

Cole: I – I don't know what your intention was. I know what my intention was. I know what this says.

Haeg: Ok explain to me again what your intention was.

Cole: My intention was that we were goanna fly to McGrath to do the deal for 1 to 3 years.

Haeg: Ok yep. I...

Cole: And all the other terms were fixed.

Haeg: Oh ok. Ok.

Cole: It was not that you were going to go open sentence.

Haeg: Ok. Ok. -Um- do you also agree that the next line it says "It was at that time...

Cole: Yep.

Haeg: I informed you of Mr. Leaders' decision and outlined your legal options"?

Cole: I informed you of Mr. Leaders' decision to file the amended complaint.

Haeg: Now I'm interested in the word "that". It was at "that" time.

Cole: Yep.

Haeg: Ok. So you waited until I had spent $6000.00 dollars gathering witnesses. You waited until literally hours before we were supposed to do it to let me know that it wasn't goanna happen?

Cole: I didn't find out about the amended information until Friday morning when I was going to Dillingham. I didn't get back from

Dillingham until Friday night. I didn't call you the next 2 days and I talked to you when you got to my office.

Haeg: Yesterday you were so adamant that you called me weeks before...

Cole: I – I think I did.

Haeg: Now that's on the record.

Cole: I do think that's right.

Haeg: How can he state two things?

Shaw: Well the purpose of your cross-examination...

Haeg: -Um- ok.

Shaw: ...is to show that his testimony is contradictory...

Haeg: Mr. Cole did you ever try to get my plane back by bonding it out?

Cole: No.

Haeg: And why not?

Cole: -Um- I don't ever remember you asking me to do that.

Haeg: I didn't express an – an interest in getting my plane back?

Cole: You always had an interest in getting your plane back.

Haeg: Are you telling me that I would've had to ask you about bonding?

Cole: I don't think you can get it back when it was subject to a search warrant. My recollection is the State statutes don't allow you to get it back

Haeg: Ok. Would you say that that plane was important for my livelihood?

Cole: You thought it was. I didn't.

Haeg: Ok. So – did I ever tell you that it was important for my livelihood?

Cole: You did.

Haeg: Ok. Did the State offer a hearing so I could get my plane back?

Cole: Nope.

Haeg: Why not?

Cole: Cause they intended to forfeit it from the very beginning. It was used in the commission of a crime.

Haeg: Ok. You guys need to be taking notes here.

Shaw: (...) take some...

Haeg: Ok. So ok. As my attorney are you supposed to know the law? Or when you were my attorney were you supposed to know law that would help me?

Cole: Yes.

Haeg: And if you didn't know the law were you supposed to research it?

Cole: If I thought it was applicable I tried, yes.

Haeg: Ok – applicable. Now this is kind of a question. If the State was required to give me a hearing and you never told me and I was deprived of my constitutional rights of due process - um- oh if the State was required to give me a hearing and you never told me was I deprived of my constitutional right of due process?

Cole: Show me where the State's required to give you a hearing.

Haeg: –Uh- look at your exhibit that you brought in.

Cole: Ok.

Haeg: –Uh- yes. It's American Eagle versus State 620 P.2d 657... Ok would you agree that it – this is also the correct "When the seized property is used by its owner in earning a livelihood," and seized property is used by its owner in earning

a livelihood "notice & an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees. Due process does not require that any owner of the vessel seized by the State for suspected use in illegal activity has an absolute right to obtain release of the property – it just means that he has an opportunity to contest the State's reasons for seizing the property." And my understanding in the case and let me ask you if this is your understanding? Was that the State with commercial fishing violations could not seize a persons boat which in the next month they would make their entire years income. They couldn't seize it and just kind of sit on it and wipe out that year. The people could say, "Hey we'll put up bonding. We'll – we'll get it out. We make our living for the year...

Cole: Right.

Haeg: ...and then we fight about it"?

Cole: Right.

Haeg: Was that – was that close to what happened to me?

Cole: David the time to make that decision was in April – you were almost comatose because you were so depressed about the State walking in and taking all this stuff.

Exhibit 5

EXCERPT OF HAEG'S IMMUNIZED STATEMENT

Mr. Haeg 6/11/04 Interview w/Trooper Gibbens, Prosecutor Leaders, and Attorney Brent Cole

Trooper Gibbens: In killing wolves in 19D wouldn't specifically had necessarily directly benefited your business?

Haeg: Yeah I don't hunt in – I don't guide in 19D and that's where...

Trooper Gibbens: 19D right. And so when you got the permit did you intend on hunting in 19D?

Prosecutor Leaders: Well a little bit. I mean you know when you get to it at some point obviously at some point your intent to hunt in 19D changed.

Trooper Gibbens: At this point we're at permit issuance right now.

Haeg: But if you look at where most the wolves are taken, most of them were taken in 19D. Maybe not inside the permit boundaries but not where I guide.

Trooper Gibbens: Uh I guess we could move on right to that. Um we had a faxed copy of that map and maybe David could use that map and could we – could we mark them on a – or do you have the map – do you have the map that was marked? Ok. Maybe David could mark them and then kind of chronologically take me through the plan.

Haeg: Yep. It was somewhere...

Trooper Gibbens: Why don't we mark them out with a digit, chronologically?

Haeg: yeah

Trooper Gibbens: or a 1 where it was with a pen and it will show up just a little better.

Haeg: Yep.

Trooper Gibbens: Rifle or shotgun?
Haeg: Shotgun.

Trooper Gibbens: Ok. Tony as the gunner?

Haeg: Yep.

Trooper Gibbens: Ok that was on the 5th?

Haeg: Yep.

Trooper Gibbens: Ok you can go ahead and write the 5th next to that. Go ahead and establish our order here. Ok.

Exhibit 6

ABA FEE ARBITRATION TESTIMONY THAT ZELLERS COOPERATION WAS A FRUIT OF HAEG'S STATEMENT
WITNESS - TONY ZELLERS 4/12/06

Haeg: *-Um- if Brent Cole had not had me give my statement to the prosecution would you have ever done so?*

Zellers: No.

Metzger: So is it your perception at this point that your decision to – *at some point you decided if I understand it right you coo[perated] – you decided to cooperate with the law enforcement authorities. Is that right?*

Zellers: *Based in the fact that Mr. Haeg had already cooperated with the law enforcement* and from advice from my attorney and stuff I was basically left – left out or I felt like I had to cooperate also or otherwise I would be deemed as - as not cooperating obviously.

Witness - Kevin Fitzgerald 4/13/06

Haeg: *Would you have Tony Zellers give – would you have had Tony Zellers give a statement to prosecution without anything in writing if Brent Cole had not have me first give a statement implicating Tony?*

Fitzgerald: I think I would have for the reasons that I've articulated but *certainly 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.*

Exhibit 7

ZELLER'S IMMUNIZED STATEMENT

Tony Zellers 6/23/04 Wolf Interview with trooper Gibbens, trooper Doerr, Prosecutor Leaders, and Attorney Kevin Fitzgerald

Trooper Gibbens: Right in the heart of your guide area there? Cause that is pretty centrally located in the county you guys hunt right?

Zellers: Actually where them wolves were killed is to the west outside of our – where we guide.

Trooper Gibbens: If we drew a (**Tony interrupts**)

Zellers: The people who benefited from them wolves being killed, is Lime Village. It's right next to the Lime Village management area. We cannot guide in the Lime Village management area. It's in 19D we don't hunt in 19D.

Trooper Gibbens: Knowing what we know about the way wolves move if we drew even a 15-mile circle around where those wolves were killed would we encompass any of your hunt areas?

Zellers: You would encompass – yeah you – hunt areas that we watch I don't think you'd encompass any of our camps if you drew a 15-mile circle.

Trooper Gibbens: This is where the Stony River wolf was killed; this is where the big batch of 5 was killed.

Zellers: Did Dave tell you that's where he was killed?

Trooper Gibbens: Dave put that mark there, yes.

Zellers: I mean it's hard to tell. There – there was a pretty good bend on that so.

Trooper Gibbens: Right so with his lodge here, with all these wolves right here – which are – did I write down the mileage apart there? No I forgot it didn't I. Anyway it's I think 24 miles maybe from his lodge to all of these kills. Uh so you're saying you guys don't hunt this country in a 15-mile arch?

Zellers: We can't hunt here.

Trooper Gibbens: Right but you can --

Zellers: Because that's Lime Village management area

Trooper Gibbens: Right. Well real quick while I've got the map out I'll have you look it here and I'll show you marks that David made and you tell me if you concur or unconcur basically.

Zellers: That looks about right.

Trooper Gibbens: Ok and back to my previously made mess. Um generally look like what the boundary looked like to you? This.

Zellers: Ok 19D doesn't that come to where the Babel flows in?

Trooper Gibbens: Actually

Zellers: Where the Babel hits the Swift. Isn't that the point?

Trooper Gibbens: Uh boy I'd have to read it. I don't know if this pencil mark was made by me as part of this or not. This is the sectional I got out of my office. All the pen and all the highlighted for sure would be.

Zellers: Well I just remember when you know we got the affidavit through the search warrants at David's - read through that and it said 19C and we both questioned it and looked that up and its like no, there's 19D where - like we thought.

Trooper Gibbens: Yeah.

Zellers: Because it's the point that David – well we read at David's that where the Babel flows into the Swift River that intersection is the deciding line between 19C and 19D.

Trooper Gibbens: Yeah and I'd have to look at that again to - to remember what that definition is but so you think that David's lodge is in...

Zellers: It's in C

Trooper Gibbens: It's in C, right.

Zellers: But I'm saying these wolves...

Trooper Gibbens: You're saying that you think these wolves are in D?

Zellers: Yeah.

Trooper Gibbens: Ok. The definition of which way all these drainages flow it was all the drainages flowing this direction for D.

Zellers: Upstream of where the Babel dumps into the Swift.

Trooper Gibbens: I don't remember

Zellers: Or downstream from where the Babel dumps into the Swift.

Trooper Gibbens: And I don't remember if it's – if it's the Babel or not – I don't - without having that in front of me.

Exhibit 8

COLE'S BILLINGS

Marston & Cole, P.C.
745 West Fourth Avenue, Suite 502
Anchorage, AK 99501
(907) 277-8001
Fed. Tax Id. No. 92-0152597

June 29, 2004 - Invoice 19750

Case matter: Criminal Investigation
Our File No.: 102.484

Date		Description	Hours	Amount
6/11/2004	BRC	Prepare for and attend meeting with client and assistant district attorney and trooper	**5.20**	**1,040.00**

August 30, 2004 - Invoice 19961

Date		Description	Hours	Amount
8/19/2004	BRC	Telephone conference with client regarding offer	**1.40**	**280.00**
	BRC	Review plea agreement	**0.30**	**60.00**
8/27/2004	BRC	Telephone conference with opposing counsel regarding plea agreement and opportunity for open sentencing	**0.30**	**60.00**

October 7, 2004 - Invoice 20119

Date		Description	Hours	Amount
9/29/2004	BRC	Meeting with assistant district attorney regarding sentencing date	**0.30**	**60.00**

October 29, 2004 - Invoice 20133

10/15/2004	LC	Docket change of plea hearing; make flight arrangements for same	**0.20**	**20.00**
10/22/2004	BRC	Telephone conference with client regarding sentencing date, moose hunt, transcribed interviews, and review of letter	**0.60**	**120.00**

Exhibit 9

November 4, 2004: In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

STATE OF ALASKA, Plaintiff
vs.
Tony Zellers, Defendant

INFORMATION

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, "a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers. a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(&)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellers knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellers knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellers, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

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 exactly identical, and a summary of the statements of the two men follows:

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellers bought a new Binelli twelve gauge shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellers doing the, shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellers with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellers. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellers had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellers returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellers flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellers decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellers did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellers shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellers pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellers then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the

wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellers flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves. They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellers with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellers decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellers doing all of the shooting, while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellers flew to Soldotna with all nine wolf hides. They had a discussion about having Zellers get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellers took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellers knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

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.

Both Haeg and Zellers stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 4th day of November, 2004 at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL
by: "s/"
Scot H. Leaders
Assistant Attorney General
Alaska Bar No. 971 1067

Exhibit 10

November 8, 2004:

<u>DAVE HAEG'S WOLF STATEMENT THAT WAS ENTERED INTO THE COURT RECORD AND THEN REMOVED</u>

<u>ADF&G told me the 4 teams who had hunted all winter had taken less than ¼ of the wolves specified and that there was a concern the program might be terminated if more wolves were not killed.</u>

<u>Probably because of this a current Board of Game member at the February meeting told me that if we ended up shooting wolves outside the open area to just report them taken inside the area.</u>

A former State biologist said he couldn't believe people were not poisoning the wolves out there and went on to explain <u>exactly</u> the poison that works best and how to obtain it. Several other Board of Game members along with high level ADF&G personnel and many others testifying at the February BOG meeting all had the same comment to me: It is much more important for a pilot as good as you to be out killing wolves then to be here testifying at this meeting.

Several ADF&G people at the BOG meeting again made the comment that 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.

<u>I don't know if I was exactly brainwashed at this point but I was feeling immense pressure from all sides to kill wolves.</u>

The cancelled fall hunts would have provided ¾'s of our total years income to Jackie and I. Yet we still had to pay the State thousands in land leases and permits for our lodge and hunting camps even though we did not use them this past season. We had to cancel all my summer flightseeing trips because the plane I used for this was seized. Our legal bills are growing and we lost not only my income for this past season but also my wife's. Neither of us have any other income.

We assisted in the investigation in everyway possible including rushing a map with kill locations to Mr. Leaders ASAP at his request.

I ask you to again look carefully at my intentions, at my lack of <u>any</u> prior offenses except 2 speeding tickets, at the Board of Games intention of expanding aerial wolf control to include the area where we took wolves, at the circumstances involved, at how much we both have suffered already financially, at what motivated me, that I felt under pressure to make the program a success, 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 was encouraged to poison wolves by

a former State biologist, that several current Board of Game members told me it was much more important to kill wolves than to testify at the Board of Game , that we were told by ADF&G that if more wolves weren't taken the program may be cancelled,

Dave Haeg

Exhibit 11

November 8, 2004: In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

STATE OF ALASKA, Plaintiff
vs.
Tony Zellars, Defendant

1ST AMENDED INFORMATION

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, "a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellers, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, and Tony Zellars, a licensed assistant guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(8)(A) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VII

That on or about March 21, 2004 through March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg and Tony Zellars knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

Count VIII

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count IX

That on or about March 26, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, Tony Zellars, with the intent to mislead a public servant in the course of performance of a duty, did submit a false written statement which the person does not believe to be true on a form bearing notice, authorized by law, that false statements made in it are punishable; to wit: did make a false statement on an Alaska Department of Fish and Game Furbearer Sealing Certificate.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.56.210(a)(2) and against the peace and dignity of the State of Alaska.

Count X

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count XI

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(13) and against the peace and dignity of the State of Alaska.

Count XII

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently fail to salvage the hide of a wolf taken in a snare he had set.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.220(a)(1) and against the peace and dignity of the State of Alaska.

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

The two men applied for and were issued a permit to hunt wolves with the use of an airplane in a specific area near McGrath. Zellars bought a new Binelli twelve gauge shotgun, and a large amount of several kinds of buckshot ammunition.

On 3/5/04, the two men flew in N4011M (Bat Cub) to McGrath where they were issued permits at the Fish and game office, during which they were given maps and written descriptions of the legal hunting area. After leaving McGrath, the two flew upstream along the Big River. Several wolves were located about one or two miles outside the hunt area, and they shot one gray wolf, with Zellars doing the, shooting with the shotgun from the air while Haeg was flying the plane. The wolf was hauled back to trophy Lake Lodge whole and was skinned that night.

On 3/6/04, they flew to the Big River where they had shot the wolf the day before. They could not locate the remaining wolves, so they proceeded upstream on the Big River (further outside the legal area). Twenty-four miles upstream from the hunt area boundary on the Big River, they spotted two gray wolves on a ridge near a moose kill. Both wolves were shot from the air with a shotgun by Zellars with Haeg again flying the plane. One of the wolves then had to be shot from the ground with the .223 by Zellars. The two wolves were hauled back to the lodge, and were skinned that night.

On 3/6/04, Haeg called on his satellite phone and reported to McGrath Fish and Game that he and Zellars had harvested three wolves within the permitted hunt area on the Big river, at which time he gave false coordinates for the kill sites.

After calling in the report, Haeg and Zellars returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

On 3/20/04, Haeg and Zellars flew from Soldotna to Trophy Lake Lodge, where they spent the night. They had brought the three wolf hides back with them to take to McGrath for sealing.

On the morning of 3/21/04, Haeg and Zellars decided to fly South (further from the legal area) to the upper Stony River to look for wolves and check out local moose populations. Several wolves were spotted on the Stony River, and a gray male was shot from the air with the shotgun. Zellars did the shooting from the air while Haeg flew. One of the wolves was wounded and Zellars shot the wounded wolf again from the ground with the .223. Multiple shots were taken at the other wolves, but none were killed. The dead wolf was taken back to the lodge where it was dropped off whole.

During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

On 3/22/04, Haeg and Zellars flew along the Swift River to check on moose numbers in the local area. They still had the shotgun and rifle in the plane. They found a dead moose, which had been recently killed by wolves. They spotted two different wolves near the moose kill. The second wolf they saw was a large gray male, and was shot from the air by Zellars with the shotgun while Haeg was flying the plane. The wolf was hauled back to the lodge, and the two men gathered traps and snares from the lodge, and two other sites in the field where traps and snares were being stored. They returned to the moose kill site and set in excess of forty wolf snares, and some traps. Each man set about half of the snares, and Haeg set the leg hold traps. There were no diagrams made of where the snares and traps were set, and neither man wrote down exactly how many snares had been set.

On 3/23/04, Haeg and Zellars decided to fly back to the Swift River to see if any wolves had been caught in the traps or snares. After finding no animals at the set, the two men began to fly upstream along the Swift River when they spotted, shot and killed four wolves running on the river. They also located more wolves scattered in the trees. Four gray wolves were shot from the air, with Zellars doing all of the shooting; while Haeg flew the plane. Multiple shots were taken at other wolves in the pack, without success. All wolves were hauled from the field whole and skinned at the lodge later that day.

The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 8th day of November, 2004 at Anchorage, Alaska.

GREGG D. RENKES ATTORNEY GENERAL by: "s/" Scot H. Leaders Assistant Attorney General Alaska Bar No. 9711067

Exhibit 12

April 25, 2005: In the District/Superior Court for the State of Alaska Fourth Judicial District at McGrath. Case No. 4MC-S04-Cr.

STATE OF ALASKA, Plaintiff
vs.
David Haeg, Defendant

SECOND AMENDED INFORMATION

THE STATE OF ALASKA CHARGES:

Count I

That on or about March 5, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count II

That on or about March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count III

That on or about March 21, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a) (15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count IV

That on or about March 22, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

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Count V

That on or about March 23, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, a licensed registered guide, did knowingly commit a violation of a state game regulation; to wit: did take a wolf while airborne.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 8.54.720(a)(15) and 5 AAC 92.085(8) and against the peace and dignity of the State of Alaska.

Count VI

That on or about March 5, 2004 through March 6, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg knowingly possessed wolf hides which they knew or should have known were taken in violation state game laws.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 92.140(a) and against the peace and dignity of the State of Alaska.

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Count IX

That on or about April 1, 2004 through April 2, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolverines with leg hold traps when trapping season for wolverines was closed.

All of which is a Class A Misdemeanor offense being contrary to and in violation of 5 AAC 84.270(14) and against the peace and dignity of the State of Alaska.

Count X

That on or about May 1, 2004 through May 4, 2004, at or near McGrath in the Fourth Judicial District, State of Alaska, David Haeg, did negligently trap for wolves with snares when trapping season for wolves was closed.

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After calling in the report, Haeg and Zellars returned to Soldotna, taking the three-wolf hides with them. On 3/15/04, they received a call from Fish and Game in McGrath telling them that the three hides had to be sealed in McGrath.

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During their interviews, Haeg and Zellars pointed out the location of the kill on a map. The location described as the kill location for this wolf was more than eighty miles from the nearest border of the legal hunt area.

Haeg and Zellars then flew to McGrath with the three wolf hides from earlier in the month. Upon arrival in McGrath, the two men met with Biologist Toby Boudreau, to have the wolves sealed. Haeg provided the information for the sealing of the wolves, knowing that it was false at the time he signed the form. He had claimed that the wolves had been shot inside the permit area because he wanted to be known as a successful participant in the aerial wolf hunt.

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The area where all five of the wolves were killed on the Swift River is fifty miles from the nearest boundary of the legal hunt area, and separated by major terrain features.

On 3/24/04, Haeg and Zellars flew to Soldotna with all nine wolf hides. They had a discussion about having Zellars get the six new wolves sealed in his name, and giving a false location so that they would not draw extra attention to the Swift River area. Zellars took all nine wolf hides to Anchorage, where on 3/26/04, he had the six new wolves sealed at the Fish and Game office. Zellars knew that the information he provided during sealing was false at the time he signed the signed the certificate. After getting the wolf hides sealed, he took all nine to Alpha Fur Dressers to have them tanned.

During their interviews, both Haeg and Zellars admitted that they knew that the wolves they shot from the airplane were outside the permit area when they were shot.

Both Haeg and Zellars stated that they did not know that the leg hold traps had to be pulled before March 31st, and that they never went back to the trap and snare set. Haeg stated that Tony Lee had pulled some of the animals from the set during April, and he thought that Lee was going to pull all of the traps and snares. When Gibbens asked Haeg if he thought that the snares which were left out were his responsibility, he said that he did not think so, since he thought that Tony Lee was going to take care of them. Gibbens asked him if he told Tony Lee exactly how many snares were at the site, and he said that he did not know.

DATED this 25th day of April, 2005 at Kenai, Alaska.

David W. MARQUEZ
ATTORNEY GENERAL
by: "s/"
Scot H. Leaders
Assistant Attorney General Alaska Bar No. 9711067

Exhibit 13

PROOF, WHICH IS STILL IN THE RECORD, THAT HAEG'S SENTENCING STATEMENT WAS PLACED IN COURT RECORD AND LATER REMOVED – WHICH INCLUDED PROOF THAT STATE TOLD AND INDUCED HAEG TO TAKE WOLVES OUTSIDE THE AREA BUT CLAIM THEY WERE TAKEN INSIDE THE AREA

November 8, 2004: In the District/Superior Court for the State of Alaska Third Judicial District at McGrath. State v. Haeg, Case No. 4MC-S04- Cr. Notice of Supplemental Letter.

NOTICE OF SUPPLEMENTAL LETTER FOR SENTENCING HEARING

David Haeg, by and through his counsel, hereby submits his supplemental letter for consideration during the sentencing hearing in the above-captioned case scheduled before Magistrate Murphy in McGrath on November 9, 2004, at 10:30 a.m.

Dated this 9th day of November 2004, at Anchorage, Alaska.

MARSTON & Cole, P.C.
Attorneys for Defendant

By: "s/"
Brent R. Cole
AK Bar No. 860674

I certify that a copy of the foregoing document w/attachment was faxed to Scot H. Leaders.

By: "s/"
11/8/04

FILED
In the District Court
State of Alaska
At McGrath
Date 11-8-04

"s/" MLM
Magistrate/Clerk

Exhibit 14

PROOF HAEG'S IMMUNIZED STATEMENT WAS PUBLISHED BY THE MEDIA – ALSO PROOF THAT WHAT HAEG SAID WAS FALSIFIED

Aerial Wolf Hunters Face Charges
Tataboline Brant / Anchorage Daily News / November 10, 2004

Two men contracted to kill wolves in a state predator-control program near McGrath have been slapped with numerous criminal charges that accuse them of shooting the animals from their planes outside the prescribed area, according to court papers.

David Haeg, 38, of Soldotna, and Tony Zellers, 41, of Eagle River, each face five counts of shooting wolves from a plane, two counts of unlawful possession of game, and one count of lying about where they shot the wolves.

Haeg, owner and operator of Trophy Lake Lodge, is also charged with two counts of trapping in closed season and one count of failure to salvage game.

Each charge against them is a class A misdemeanor, punishable by up to a year in jail and a $10,000 fine.

According to Alaska State Troopers, Haeg and Zellers last March applied for and were granted a state permit allowing them to kill wolves on the same day the two hunters were airborne in an area near McGrath -- a practice that is usually forbidden under state law.

The tactic, part of a predator-control program approved by the Alaska Board of Game in 2003, was designed to eliminate wolves in a 3,300-square-mile area surrounding McGrath to help the moose population there grow.

But charges say Haeg and Zellers on numerous occasions shot wolves outside the prescribed area -- in one case, as far as 80 miles from the nearest border of the legal hunt zone -- and then falsified paperwork to the state about where the wolves were killed.

Troopers also believe the two men caught wolverines out of season in snares and in one case failed to return to the snares, leaving a salvageable wolf to rot, according to the court papers filed last week and this week.

Both men have pleaded not guilty to the charges against them, prosecutor Scot Leaders said Tuesday. Haeg could not be reached for comment. Zellers declined to talk about the case when reached at his home in Eagle River.

Charging documents say both men admitted to troopers they had killed or wounded nine wolves from their airplane outside the legal hunt zone in March. In all of the cases, Haeg flew the airplane while Zellers shot at the wolves with a shotgun.

The wolves were fired upon as they ran along riverbanks, spread out in trees or stood along a ridge-line near a moose kill, charges say. In some cases, Zellers shot at multiple wolves but missed. In other cases he wounded the animals and had to finish them off when he landed.

Troopers have seized the plane used by the two men. It could be forfeited to the state permanently if they are convicted.

According to airplane ownership records, the aircraft is owned by Haeg.

Prosecutors say Haeg told troopers he lied to the state about where the wolves were killed "because he wanted to be known as a successful participant in the aerial wolf hunt," the court documents say.

Wildlife enforcement trooper Brett Gibbens, who pieced together the case, could not be reached Tuesday. But his supervisor, Lt. Steve Arlow, deputy commander of the Alaska Bureau of Wildlife Enforcement, wrote in the troopers' fall newsletter that Gibbens, a trapper, had a great deal of personal knowledge of the wolf packs around McGrath -- about their pack sizes and coloring.

Gibbens figured out pretty quickly that something was amiss, Arlow wrote. "The area the permit holders (claimed) to be involved in ... and the color phases of wolves they were harvesting did not add up in his mind," Arlow wrote.

Gibbens interviewed the hunters about the type of ammunition they were using and the areas they were working in.

On March 26, while flying in his personal aircraft on his day off, Gibbens found suspicious airplane ski tracks in the snow along with wolf footprints. He followed the wolf tracks over the next few days, which eventually led him to some of the wolf-kill sites. The same airplane ski tracks were found at the sites, charges say.

At one site, "Running wolf tracks ended abruptly with blood and wolf hair in the track, and there were airplane ski tracks and human foot tracks where someone had loaded the wolf into the airplane and taken off again," according to the charges.
"Because of (trooper) Gibbens' expertise in the area of wolf hunting from aircraft and aircraft ski track patterns in snow, he could read the crime scene like a good novel," Arlow wrote.

Haeg and Zellers have been arraigned on the charges and are not in custody, Leaders said. Their next court date is scheduled for Jan. 7, he said. Daily News reporter Tataboline Brant can be reached at tbrant@adn.com or 257-4321.

Peninsula Clarion, November 11, 2004

Two men face charges in wolf kill program

Charging documents say both men admitted to troopers they had killed or wounded nine wolves from their airplane outside the legal hunt zone in March.

Wolf control permittee pleads no contest to illegal kills

By MARY PEMBERTON
Associatied Press Writer
Published: January 14, 2006

Even though Zellers and pilot David Haeg, 38, of Soldotna were permitted under the state's predator control program, they were acting on their own, said Matt Robus, director of the Division of Wildlife Conservation.

"We do not consider this a part of the McGrath wolf control program," Robus said.

Patricia Feral, president of Darien, Conn.-based Friends of Animals, said the behavior by the program participants illustrates how "abominable the entire program is and how little enforcement there can be to make sure it goes the way the state wants it to."

Groups taking aim at aerial wolf hunt

LEGISLATIVE EFFORT: Support is being sought for a ballot measure to restructure the hunt.

By SEAN COCKERHAM
(Published: November 9, 2005)

JUNEAU – The much-touted tourism boycott of Alaska appears to be a flop, and another winter of state-sponsored aerial wolf killing is set to begin in the next month or so.

But the state's controversial predator control program is not out of the woods. Connecticut-based Friends of Animals still hopes to stop it in court. And a group of Alaskans who don't like how the state is running the program are scrambling to collect enough signatures to get an initiative on the 2006 ballot.

The program began around the Interior village of McGrath after local residents complained that moose were scarce and said it was because wolves and bears were eating too many calves. The state expanded the effort last winter to five areas of Alaska. Wolves can be shot from the air in some areas; in others, the airborne hunters must land before shooting.
Initiative sponsor Jans is a hunter and author of "Grizzly Maze," a book about Timothy Treadwell, the bear videographer who was killed, along with his companion, Amie Huguenard, by a grizzly on the Katmai coast in 2003.

He said having private hunters do the state's killing leads to abuses. Soldotna hunting guide David Haeg, who was working with the state's predator control program, was recently convicted of killing nine wolves by shooting them from his aircraft while outside of an allowed area.

Jans said he believes such abuse is widespread but it's just too hard to catch the culprits. State officials called Haeg a "bad apple," and pointed to his harsh sentence, which included spending 35 days in jail, losing his airplane and giving up his guiding license for five years. Wayne Regelin, Fish and Game deputy commissioner, argued that in today's Alaska there's not many places people can hunt from a plane completely unnoticed.

Wolf Hunters Must Stay in Bounds: No Cowboys

Anchorage Daily News
November 12, 2004

The two men, David Haeg and Tony Zellers, have pleaded not guilty. They are due their day in court.

But the story already is discouraging. Aerial wolf hunting is controversial enough without even the suspicion of teams far exceeding their state permits. Game biologists disagree on the effectiveness and need for the program, but this much they and all Alaskan's can agree on: Alaska's wolf-control program is not a declaration of open season wherever airborne shooters care to open fire.

What's encouraging is the state's apparent determination to press charges and not turn a blind eye to suspected violations of permit terms and Alaska law.

And what's particularly satisfying in this case is the skookum work of wildlife enforcement trooper Brett Gibbens, a trapper who knows both the area's wolves and the work of aerial hunting. That kind of expertise and dedication is what the state needs to keep the wolf-control program under control.

Aerial wolf hunting is about fish and game management and providing more moose for hunters. It's about cutting competition at the top of the food chain. It is not about fair chase. But that doesn't mean it's management without rules. Those entrusted with this job must be law-abiding Alaskan's who know what they're doing and why – and know when to stop.

Violators should pay a stiff price.

Trooper Who Caught Accused Wolf Poachers Should Get Commendation

Anchorage Daily News
November 14, 2004

It will very interesting to see how the state handles the case of David Haeg and Tony Zellers, the two men charged with killing at least nine wolves outside the predator control area, one 80 miles outside, leaving wolves to rot after killing them, and catching wolverines out of season ("Aerial wolf hunters face charges," Nov. 10).

We will be watching.

Alaska's wolf-control program deserves to be killed itself

Fairbanks Daily News-Miner
November 23, 2004

The unlawful wolf-killings that prompted the criminal charges imposed on one of three hunter-pilot teams permitted by the state to shoot wolves near McGrath is utterly predictable. Permit-holders may well view the shooting opportunity as open-ended, and go anywhere to kill wolves. It's lucky that David Haeg and Tony Zellers were caught.

Originally, the McGrath area included 1,700 sq. miles. Wolf killers couldn't find any wolves in this area despite Alaska's Department of Fish and Game's (ADF&G's) assurances that the area contained too many wolves, so ADF&G expanded the control area to provide wolves to kill.

The latest control program to be authorized for the Fortymile region may illustrate better than any others the state's dishonesty. From 1997-2001, the state completed a so-called non-lethal wolf control program in that region in which wolves were sterilized and relocated. The promotions surrounding that effort promised that if caribou numbers increased to the specified objective, wolf numbers would be allowed to not only recover but increase above their pre-control level. Fat chance. Although caribou numbers have increased beyond the objective, the state is reneging on its promise and is replacing it with yet another aerial control program.

Exhibit 15

RECORDINGS OF ROBINSON

haeg@alaska.net

From: "Chuck Robinson" <chuck@robinsonandassociates.net>
To: "Dave Haeg" <haeg@alaska.net>
Sent: Saturday, September 10, 2005 12:44 PM
Subject: RE: Question from Dave

Dave and Jackie:

I don't think we need Fitzgerald. Brent is sufficient since he was Dave's lawyer and not Fitzgerald. However, as I told you earlier, Brent says that the "open sentencing" deal wasn't that firm. I don't know what utility will come of having to question Brent's credibility as your own witness.

As far new information, I spoke with Jayo the day after out last status hearing. He knows that we have sent a subpoena for him to appear at the sentencing hearing. He's ok with that and he will be available to testify on Sept. 29. He doesn't go on his trip outside of the country until Oct. 3. He is going hunting in Kurdistan.

I think it would be in Dave's best interest to gather right now as many letters he can get about his good character to give to the judge for sentencing. Also, early on I spoke to him about getting a letter from the people of Lime Village in support of him.

Chuck

From: Dave Haeg [mailto:haeg@alaska.net]
Sent: Wednesday, September 07, 2005 8:30 AM
To: Chuck Robinson
Subject: Question from Dave

Chuck,

Dave called yesterday and was wondering if we should subpoena Kevin Fitzgerald? Dave thinks that he should have known of the deal that Brent and Leaders had to originally go to McGrath and do open sentencing since Tony was going to go out there also and testify and he was Tony's lawyer. He also was wondering if you can question Leaders about the original agreement on the stand - under oath?

Dave also wanted me to ask you if there is anything knew he should know about? You can either give me a call if you like or just send me a note. Thanks.

Jackie
262-9249

Meeting with Mr. Robinson Robinson dated 1/5/06
Present at Meeting Chuck Robinson, David Haeg,
Bonnie Burger, Jackie Haeg and Greg Stoumbaugh
Transcribed Tapes

Haeg: Ok. Um - remind me again why we didn't pursue the deal Brent Cole had because I'm – I've been thinking about that and thinking about that and thinking about it.

Robinson: Uh you're asking me why you didn't pursue that deal?

Haeg: Why we didn't pursue the deal Brent Cole had – we

Robinson: we

Haeg: you and I

Robinson: I wasn't part of that deal. You couldn't get me until after Brent Cole.

Haeg: Ok - what – ok – I guess - however that is. Um you had an approach that uh the State failed to swear to the charges. And thus the whole proceeding was

Robinson: flawed

Haeg: flawed – right and you said that if we continued on we would definitely win with that and

Robinson: I never said you would definitely win anything. I've never guaranteed you a thing.

Haeg: You said the argument was so compelling you recommended I didn't even put on a defense. Do you remember that?

Robinson: That was a strategy. That was a strategy suggestion that we had – yes.

Haeg: that you made to me. I didn't bring it up, you did.

Robinson: I don't understand it. So what is your point?

Haeg: My point is you were willing to rely upon your defense to a very great deal. And I spent a lot – you said if we put on evidence it would cost me a lot of money... you said that what Brent Cole did was – was – you were stunned when we told you what Brent Cole had us do by giving the State

Robinson: Yeah I told you ...

Haeg: a complete

Robinson: that I may not have recommended that you give that statement to the State. That's what I told you.

Haeg: Well my recollections is you were shocked, couldn't believe it, and you were like how could...

Robinson: I told you my general rule is don't talk to the police. That's my general rule.

Haeg: what happens if you do make a deal.

Robinson: Under – under – under – under - under rare circumstances...

Haeg: ok

Robinson: if there is a deal it should be in writing.

Haeg: And if you did – and in the rare circumstance you did it would be in writing?

Robinson: It should be in writing, yes.

Haeg: Ok so when I told you Brent Cole had me give a 5 hour interview to Assistant Attorney General Scot Leaders and Brent Gibbens that worried you, you didn't think that was correct or that was right is that – is that

Robinson: if I was in the situation I would say David don't talk to the police, period.

Haeg: Ok I'll put it this way how many attorneys out of 100 would do what Brent Cole did?

Robinson: I have no idea how many would attorneys out a hundred

Haeg: Take a wild guess.

Robinson: I'm not taking any wild guesses. I'm just telling you this. That as my general rule and the general rule of other attorneys I know that practice criminal law that they advise clients not to talk to the police.

Haeg: Yep

Robinson: And the deal is let say the deal is ok we want you to come in and give the statement to the police about everything you know about this case, turn State evidence on other people if

you know of anything else – like testify against a co-defendant or whatever – I usually want to get that in writing.

Haeg: Ok

Robinson: If the client agrees to do it get that in writing. Just say that this is just – you know this is – we're making this agreement here that we're goanna do this.

Haeg: Yep and most other attorneys that you know of would follow the same approach?

Robinson: That's a reasonable approach to follow.

Stoumbaugh: Dave seems to think that since – uh - Brent Cole had made this deal with the State and then he didn't get anything in writing that - that was a definite clear-cut case of ineffective counsel. I'm mean he actually just pretty much said "here - here's Dave's hide, take it".

Haeg: And do you Chuck – do you – do you know what ineffective assistance of counsel means?

Robinson: I just want to know whether you're dissatisfied with anything that I've done? Because if you are we need to get that out on the table now.

Haeg: Um – have you ever heard of ineffective assistance of counsel?

Robinson: Yes I know what ineffective assistance of counsel is – I represent people...

Haeg: Do you think that there would be any case against Brent Cole for ineffective assistance of counsel?

Robinson: On what issue?

Haeg: Him giving – having me – telling me that it was virtually mandatory to give the State a 5-hour interview and maps and having nothing in writing. What do you think about that?

Robinson: Having nothing in writing as to what you were going to get in exchange for that?

Haeg: Exchange or anything in writing whatsoever for anything.

Robinson: Well that you were not going to get something in exchange for it or – or what David? I'm not quite sure I understand where you're going. Well here's the problem is that I wasn't there...Scot's position is "I didn't back out of a deal. David Haeg backed out of the deal".

Stoumbaugh: His point here...

Haeg: Ok – ok

Robinson: And so...

Stoumbaugh: He had this deal or was lead to believe he had this deal...

Robinson: right

Stoumbaugh: ... and then he spent this great deal of money...

Robinson: and time

Stoumbaugh: ... and time...

Robinson: right

Haeg: gave up a whole years hunt

Stoumbaugh: comes the very moment that its time to go there and then Brent tells him "no".

Robinson: Well I'm just trying...

Haeg: we sent back – how many dollars in deposits?

Mrs. Haeg: I think about $50,000 dollars.

Haeg: We sent back $50,000 dollars in deposits.

Robinson: $50,000 dollars

Haeg: Ok. We do all this because Brent says there's a deal happen – coming along.

Robinson: And you didn't hunt during the fall.

Haeg: Exactly or the next spring...

Robinson: Do...

Haeg: do is - ok we have this deal that Brent has been working on -supposedly working on with Mr. Leaders and we've now - what we - what I would call detrimental reliance on that deal. Do you - Mr. Robinson do you know what detrimental reliance means?

Robinson: Well it has a lot of meanings – but the meaning that I understand is that you took some steps that you would not have ordinarily taken in reliance on something else

Haeg: ok

Robinson: to your detriment

Haeg: would you say that by me giving up a whole years income and giving the State a 5-hour interview and a map that I was relying upon something?

Robinson: I can only assume that you were relying on something.

Haeg: Would a reasonable person do that? Any reasonable person do that?

Robinson: I know a lot of reasonable people that have been charged with crimes that do a lot of things in retrospect I think are unreasonable even though I think that they are reasonable people.

Haeg: Ok – ok.

Robinson: But all I'm saying is that if you...

Haeg: Do you think I would of just – I wouldn't – I'll put it this way I would not think your reasonable if you just took off right now and cancelled all of your whole thing and you've got kids in school and stuff and you depend on that money - if you did that I would think boy there's something going on.

Robinson: I'm not...

Haeg: You have a reason for it.

Robinson: I believe that you did that in anticipation of getting something in return from the State.

Haeg: Ok.

Robinson: I believe that. Ok.

Haeg: And do you also believe that I gave them the interview to get something in return from the State?

Robinson: I hope so. I mean I hope you would have.

Haeg: Well – well my problem is I never got anything for that stuff.

Robinson: But – I know - but the question is – the question is...

Haeg: I'd like – I want you to say that again – I KNOW.

Robinson: But that doesn't address Ineffective Assistance of Counsel. It may have been something you lost but it doesn't necessarily represent Ineffective Assistance of Counsel.

Haeg: Without a doubt it does, Chuck.

Robinson: Well not if...

Haeg: Because

Robinson: not if you

Haeg: because we had a binding deal

Robinson: but not if

Haeg: and Brent Cole never raised his hand at arraignment and says we had a deal your honor and anytime your attorney fails...

Robinson: I see

Haeg: to represent you he's done – he's finished. Do you agree?

Robinson: Well no I can think of times when I would failed to represent somebody and I may be done but not necessarily...

Haeg: If your whole life was resting on a deal that you'd had given up everything and your attorney failed to at arraignment before the judge and say that we had a deal you think that would represent a breach of my attorneys representing me?

Robinson: I can only say this – if I was convinced that we had a binding agreement with the State and at the moment of pleading or whatever on the charges the State changed it's mind, I would say "your honor I thought we had an agreement".

Haeg: Would most reasonable attorneys say that?

Robinson: I think so.

Haeg: So when Brent didn't what does that make him – an unreasonable attorney?

Robinson: No...

Haeg: Ok Chuck that's - that's the catch 22. Either he had a deal or he didn't. If he had not deal he screw – it was Ineffective Assistance of Counsel. Right?

Robinson: If he had a deal.

Haeg: If he didn't have a deal then...

Robinson: No if he didn't have a deal then he – if there was no deal – no reasonable attorney would tell the court that he had a deal – if there was no deal.

Haeg: Ok but he told me had a deal. Brent told me he had a deal and then he never raised his hand.

Robinson: All right. Whether it's true or not I don't know I'm just saying that's what he says.

Haeg: Ok but if Brent told me, his client, there was a deal set in stone and I spent $6000 dollars dragging everybody from around the countryside and when we showed up on his doorstep and he waved something in our face and he says "he just got that" and now I can prove that he knew for 4 days ahead of time that he - he knew the deal was goanna be broke and then he lied to us there and I told you I think at some point "that" but that I think that adds into the significance of what's is going on – that he just fed us to the – I mean that he just lied to us, and he just let a deal that he had go by without raising his hand. Either he had a deal or he didn't have a deal. He told me he had a deal. If he told me that he had a deal didn't – wasn't his professional obligation when we went before the court to stand up...

Robinson: If he thought he had a deal...

Haeg: No I'm not saying that. If he told me, who's paying him, that he had a deal he should've stood up whether he had a deal or not...

Robinson: No

Haeg: ... because if he didn't have deal...

Robinson: Then he just lied to you.

Haeg: he just lied to me...

Robinson: I understand that...

Haeg: Now - now

Robinson: I understand that but I'm just saying...

Haeg: Ok what – now Chuck - Chuck

Robinson: Listen what I'm saying is that what a lawyer reasonably would be required to do is that if there really was a deal and at the last minute the State says "oh we don't want to go through with the deal" then he should stand up and tell the court I thought we had a deal and this is what the deal was.

Haeg: Ok let me ask one question. Is an attorney – when it's proven that an attorney lies directly to his client is that Ineffective Assistance of Counsel? And I want it on the tape.

Robinson: <u>That and in amongst itself may not be Ineffective Assistance of Counsel.</u>

Haeg: So you're telling me you're lying to me right now?

Robinson: No I'm not lying to you about anything.

Haeg: How do I know if you're not precluded from lying to me? Tell me that.

Robinson: Ineffective Assistance of Counsel has to do with at a certain level of competence that deals with defending you in a criminal case.

Haeg: I have it right here.

Robinson: It deals with competency it doesn't deal with honesty it deals with competency. So the question is whether or not a certain level of competency was afforded to you as a client in a criminal case.

Haeg: How can I get any competence from you if you can lie to me?

Robinson: I guess...

Haeg: Bonnie Burger -

Robinson: ... it depends on what the lie is...

Haeg: Bonnie Burger

Robinson: I guess it depends on what the lie is...

Haeg: ... Chuck's paralegal stand up please. You say if I can be your attorney and I can legally lie to you am I giving you Effective Assistance of Counsel? And this is Bonnie Burger on the tape...

Robinson: my guess is no

Haeg: yes or no

Burger: That would - I'm not an attorney I can't say that...

Haeg: Ok would you think you're getting Effective Assistance of Counsel?

Burger: As an ordinary person I wouldn't think that it would be effective if he was going to lie to me...

Robinson: About what?

Burger: ... but in legal terms I don't know...

Haeg: Anything.

Robinson: Well that's the problem.

Haeg: That is the problem...

Robinson: No I mean that...

Haeg: ... either I was lied to

Robinson: I understand that but

Haeg: ... or I didn't get the deal I agreed to

Stoumbaugh: his point is pretty much one of either Brent or Scot Leader's is lying...

Robinson: Right

Stoumbaugh: He was thrown to the vultures by his own – he paid the man a fortune to turn on him. I mean this is a guy that actually told Dave "I don't want to ruffle their feathers cause I got to make deals with these people in the future".

Robinson: Yeah he told me about that.

Haeg: How can my attorney come and tell me – lie to me then – I am guaranteed by the United States Constitution and the Alaska State Constitution to a reasonable - here I will quote it to you "you are – you are – your are uh has a right to reasonably competent assistance of an attorney acting as a diligent conscientious advocate". Now when my attorney lies to me does that mean I have a reasonably competent assistant who is diligently and conscientiously advocating for me? I don't think that I'm getting my United States Constitutional right or Alaska Constitutional rights

Robinson: If your attorney is lying to you and said there was an agreement and the State says no there wasn't an agreement – then what?

Haeg: I was just denied my constitutional rights

Robinson: I – I understand that – if – but on the other side of this coin

Haeg: don't matter

Robinson: it does matter

Haeg: does – absolutely does not Chuck. I'm guaranteed to have a competent attorney for my $250 dollars an hour.

Robinson: I understand that you are entitled to competent attorney for whatever amount of money you are paying well even if it is free – like some people don't have to pay for attorney fees.

Haeg: Doesn't – I don't give a shit has nothing to do with it – my attorney lied to me and said I have a deal and I spent a shit load of money on it and that deprives me of my right – constitutional right for effective assistance of counsel. It's a done deal Chuck it's over. It's over. You listen to this under the Sixth Amendment of the United States Constitution and article one of the Alaska State Constitution a criminal defendant has a right to reasonably competent assistance of an attorney acting as a

Robinson: I understand what assistance of...

Haeg: quiet down... as a diligent conscientious advocate – quotes – lots of case history -

Robinson: I understand

Haeg: A claim of ineffective assistance of counsel

Robinson: I've done ineffective assistance of counsel cases David you don't have to read the bible to me.

Haeg: You don't mean – ok do we have one against Brent? Tell me that.

Robinson: I don't know.

Haeg: You tell me that.

Robinson: This is what I'm trying to...

Haeg: have you ever thought of it?

Robinson: Are you goanna to listen to me?

Haeg: No – have you ever thought of it? I'm paying you – you're not paying me. Have you ever thought of it?

Robinson: Are you listening – but you're not listening to me.

Haeg: Have you ever thought of it? My turn – I'm paying.

Robinson: Have I thought of what?

Haeg: An Ineffective Assistance of Counsel against Brent Cole?

Robinson: No I haven't thought of it.

Haeg: It never crossed your mind?

Robinson: No.

Haeg: All the nasty things that he had me give up and had fuzzy deals and all that...

Robinson: You're not paying me for Ineffective Assistance claim against Brent Cole.

Haeg: Why not when that would reverse...

Robinson: No – no – no – no – no – no David

Haeg: everything that I'm in and it would take

Robinson: I'm sorry David

Haeg: away everything all of the – all of the evidence that they got

Robinson: I'm not saying that he did or he didn't but I'm just saying that you're paying...

Haeg: you're supposed to defend me even at his expense.

Robinson: I'm don't I'm not suppose to defend you in an Ineffective Assistance claim against Brent Cole.

Haeg: Yeah you are.

Robinson: How am I supposed to do that?

Haeg: Because I was denied my rights to have affective assistance of counsel and that's a defense against this whole nightmare that I've been in. Bonnie stand up please.

Burger: I knew I was in here for a reason.

Haeg: If – if I'm acting as your attorney

Burger: Mm hmm.

Haeg: And your whole life is on the line and me the new attorney knew what the old one did and if I file Ineffective Assistance of Counsel all your troubles go away and I never tell you about it. Do you – is that fair of your new attorney am I not suppose to tell you how to make all your troubles go away...-

Robinson: I don't – I don't agree necessarily that you have an Ineffective Assistance claim against Brent Cole.

Haeg: we have about 100 United States Supreme Courts decisions.

Robinson: because you didn't take the deal?

Haeg: No because I got screwed by my own attorney.

Robinson: So what was the screwing? Because you didn't take the deal?

Haeg: No because he lied to me.

Stoumbaugh: Cause see he - he got hosed.

Robinson: But see I think that part of the problem here however nobody wants to deal with all the circumstances the totality of it.

Haeg: Case after case after case after case

Burger: Mm hmm

Haeg: Ineffective Assistance of Counsel

Burger: there are a lot of them - yeah.

Robinson: David what I'm trying to tell you is that you are convinced that Brent lied to you...-

Haeg: He either lied to me or he didn't object when he should have.

Robinson: ok

Haeg: Can you see this Chuck? It's the State and the attorneys are working against me – it's so obvious now that I am ready to freakin blow. Brent Cole was sabotaging me from the beginning and you can't have an attorney sabotaging a client because then he is denied his Constitutional Rights and that's what's happened to me.

Robinson: He sabotaged you in the beginning?

Haeg: He sabotaged the shit out of me. He gave them – he had me go in there and give them a 5-hour interview, he had me give them maps, he had me do whatever and then when I wanted my return he didn't even stick up his goddamn hand.

Burger: I understand but let me ask you this question. Do you want Chuck to advise you on a claim of ineffective assistance of counsel against Brent Cole? Is that what you want?

Haeg: I want him to tell me if he ever thought of that?

Robinson: If I ever thought that it was an ineffective assistance claim against Brent?

Haeg: Yes.

Robinson: No I didn't think of it.

Haeg: Why?

Robinson: Because after I had Joe investigate it

Haeg: Yep

Robinson: After I got the writing from Scot

Haeg: Yep

Robinson: I wasn't sure there was a deal.

Haeg: Well didn't ever occur to you that ineffective assistance of counsel didn't have to mean that there was a deal...

Robinson: but what else would...

Haeg: ... but when – when Brent told me that there was a deal and there wasn't that's ineffective assistance of counsel. I mean it's as obvious as the nose on your face. You cannot bloweth both hot and cold Chuck.

Robinson: I sent my – I put my investigator on it to find out what the situation was

Haeg: yep

Robinson: And my investigator found out that it wasn't clear that there was a goddamn deal.

Haeg: it was fuzzy yeah

Robinson: so what – so then what – at that point then what am I suppose to say, "oh there's ineffective assistance of counsel because it is vague and uncertain"?

Haeg: Nope you should've said – you should've said how did you Brent Cole how did you why did you let Mr. Haeg pay $6000 dollars to go up tell them that there was deal, exactly what the parameters were, had him fly people in from around the country and then when he gets there tell him then that there's no deal.

Robinson: I didn't have an obligation to do that Dave.

Haeg: Yeah you did.

Robinson: All I said to you was "it is my general counsel to people" and Ms. Burger can back me up on this. Never talk to the f****** police.

Haeg: But there was time after time after time you said god if you just wouldn't have give...-

Robinson: But you did! I mean but you had already talked to the police.

Haeg: But you kept saying "if Brent wouldn't have had you talk to the police", "if Brent wouldn't have had you talk to the police", "if Brent wouldn't have had you talk to the police". Brent is screwed.

Robinson: All I'm saying is that's – that's my philosophy...

Haeg: You guys have no idea what I've been through. You have no idea what my family has been through.

Burger: It's been horrible.

Robinson: I can understand what you've been through David but I'm goanna tell you this and I'm goanna tell you what happens in the event of ineffective assistance of counsel claims and (words?) I don't know whether the United States Supreme Court would agree with it but our Supreme Court understands. That unless you can show that you're not guilty of the offense to begin with you really can't do anything against Brent.

Haeg: Wanna bet?

Robinson: Well no you can't do anything against him – you might be able to do something about your conviction. You can't do anything against him because as far as a malpractice suit is concerned because there has to be proof of innocence. I'll pull that Smith case for you.

Haeg: Ok. But I'll put – I'll tell you this right now Chuck this is the wolverine taking to yah

Robinson: Ok.

Haeg: there is goanna be a malpractice suit against Brent Cole.

Robinson: Ok I'm just telling you that under Alaska's standards in order to prevail you have to show basically that you weren't guilty.

Haeg: Ok well the malpractice that's – that's mine...

Robinson: It's a screwed up rule – that's a screwed up rule but that's the rule in Alaska.

Haeg: Yeah cause how can you...

Robinson: I don't know and I don't agree with it but that's the rule.

Conversation with Robinson: Dated 1/23/06
Transcribed Tapes

Haeg: Is there a way to stay the appeal and still have a post conviction relief?

Robinson: Probably not.

Haeg: Ok -um- how there is absolutely no way that going forward with the appeal on what you have told me with you know charges not sworn to, no jurisdiction, whatever can jeopardize my ability to have post...

Robinson: No.

Haeg: ...conviction relief and Ineffective Assistance of Counsel?

Robinson: Well if a person must be dropping back to reality on what you said on that telephone conversation I can't remember who it was with...

Haeg: Yeah. Why was not an arrest warrant issued right then?

Robinson: I guess you don't quite understand how the system...

Haeg: No I don't. What would have happened to me Mr. Robinson if I would've lied under oath right there? What would have happened to me? You tell me what would have happened to me.

Robinson: Well you're not in the fold David.

Haeg: No no no no no I just want you to tell me what would have happened to me.

Robinson: You may or may not have been charged with perjury but the point is that you are not in the fold. If you're in the fold...

Haeg: What's the fold? Tell me about the fold.

Robinson: The group you know...

Haeg: Ok what's the group?

Robinson: The group they protect and don't do anything against.

Haeg: Oh so they can just troop - trot in Trooper after Trooper to lie against me like Gibbens did also. I don't know if you realize that he lied - perjured himself.

Robinson: I know but it's the "good old boys system". It's the American way.

Haeg: Well how do you get through the "good ol' boy system" Mr. Robinson?

Robinson: I don't know.

Haeg: Well I'm goanna find out.

Robinson: You don't know how our good ole Judge Murphy got around that.

Haeg: Yeah yep - yep "oh that didn't enter into it". How can you have 8 hours of testimony at your sentencing and you know - you know what physical frame of mind I was in there at testimony. I was no longer there...

Robinson: Right.

Haeg: ... I was out to lunch.

Robinson: I was barely there.

Haeg: I had been up for 30 hours straight.

Robinson: I was barely there by like 11:00. Yeah but I you know I warned her I said like, "look we don't need to go through this is irrelevant, he's not been charged, he's just bringing up this stuff to enhance sentencing, make things look bad, there's nothing here". "Oh well we'll hear it then decide it". So in the "good boy network" you have not only the prosecutors, and the cops, but you also the judges and the magistrates.

Haeg: Yep well so are we goanna deal with that same judge when I go to uh am I goanna deal with that same judge if I go to post conviction relief.

Robinson: Post conviction relief. Probably - you have too.

Haeg: Ok well we'll just see - we'll just see how big of hole she's willing to dig.

Robinson: Even she lied about what she said at arraignment.

Haeg: So how does - how's this how's this trial goanna look. This whole prosecution and trial from day one I'll be able to just go wham wham wham. First my attorney feeds me to the wolves, and the prosecutor feeds me to the wolves, the judge lies, the Troopers lie. I'm goanna be interested to see how all this plays out Mr. Robinson. Because you know what I'm goanna play everyone of them cards and they're all goanna be labeled one two three four.

Robinson: Right absolutely.

Haeg: And then when I start appealing and when I get to the United States Supreme Court and I have all this case history as to Ineffective Assistance of Counsel. You know we have yet to find one as egregious as what happened to me? You know I have looked through...

Robinson: You're the worse case scenario?

Haeg: I'm the worst case that I have found in probably 400.

Robinson: I don't understand why Brent didn't say on November the 9th...

Haeg: 400.

Robinson: ... "we had a deal judge"? At least you could've had a hearing as to whether you had the deal or not.

Haeg: I mean he wrote me letters that we have this big deal and then he doesn't raise his hand. He's freaking screwed.

Robinson: He should've (*indecipherable*)...

Haeg: He is screwed.

Robinson: I would've - I would've said, "wait a minute we had an agreement here and this is what we're goanna do".

Haeg: But what I'm saying Mr. Robinson is if you start from day one and I show this whole thing and they say that you're suppose to look at a trial and a Semblance of Justice is suppose to permeate through the whole trial...

Robinson: Right.

Haeg: I can show from goddamn day one to day Z that I didn't get justice anywhere - nowhere.

Haeg: ...of that - and then you know what's even worse is at the time I wanted to stand up and say, "I had a deal and Brent Cole sold me out and all this shit" and I was so freaking down and out I couldn't even speak. I put that on record. "I'm so wore out I don't even know what the f--- happened to me here".

Robinson: We were all worn out that night.

Haeg: Well that should be illegal.

Robinson: We didn't get out of there...

Haeg: Is that legal for them to run a sentencing like that? I think that deprives me of my Constitutional Rights. I was up for 30 hours straight there - 30 hours straight and you know the stress I was under?

Robinson: Well normally...

Haeg: You can't - you can't have your defendant there you know what time we got up in the morning to get there? We got up at 3 in the morning, and we drove to Anchorage, and we flew out there, and it started at 11:00 am and the goddamn moose thing went till 7:00 pm and then by the time I got my freaking word in I was gone I was sleeping.

Robinson: I think it went till 8:30

Haeg: So no matter what she says she deprived me my rights. I should've been fresh and ready to roll and I was denied that, maliciously. Because you said it should've never been in there and she overruled you.

Robinson: Right.

Haeg: I had a freaking attorney Mr. Robinson that sold me out. He told me to do all this. When I pay somebody $13000.00 dollars for their advice and when I'm paying you Mr. Robinson you know what I'm paying you for?

Robinson: My advice.

Haeg: But when I'm paying you - you know what my moneys going for? One thing and one - it aint paying for a goddamn hundred thousand dollar airplane to fly around. It's paying for words to come out of your mouth that I can use.

Robinson: Right.

Haeg: I could prove that son of a bitch now lied to me over a multitude and multitude of things that guys going down. He is - Brent Cole's goanna hit the table so f---ing hard he is goanna flatten out and spread out and ooze off the edges Mr. Robinson.

Robinson: Well like I told you about your hunting when you wanted to go bear hunting in the spring.

Haeg: We already cancelled people. The damage was already done. Most people book hunts 4 years in advance Mr. Robinson.

Robinson: No I'm just telling you...

Haeg: I know.

Robinson: ...that my position was that you still had your license you should go hunting.

Haeg: It's hard to switch gears.

Robinson: I just could never understand why he told you not to that was my point.

Haeg: I just wasted a whole bunch of money that I could spend on attorneys to give me advice is what I did. I just slit my own throat at my own attorneys freaking recommendation that's what happened. And he probably - as far as I see I think they're probably, "F---ing a we got Mr. Haeg really screwed. Hey Leaders we got Mr. Haeg really screwed now we made him give up a year he's gotta be getting broke we can really screw him over now he's got no money to hire nobody now. We broke the deal now we want his plane.

MR. **ROBINSON:** What - how he could then say that you had agreed to bring the moose thing in is ridiculous. I don't understand why you would have ever agreed to that.

Haeg: Well it's goanna be so ridiculous I hope to see that man behind bars. That's how ridiculous I think its goanna be.

Robinson: I don't understand how you could have ever agreed to that?

Haeg: Well we'll see how agreeable he thinks I was when he's looking out between the iron posts that are two inches thick welded top and bottom. We'll see how he thinks about that.

Robinson: Don't get too excited about that, David.

MRS. HAEG: just calm down.

Robinson: He's still part of the "old boy system".

Haeg: Well the "old boy system" has got me looking at the "old boy system".

Robinson: The old boy system - they take care of their own.

Phone Call with David Haeg, Chuck Robinson, & Bonnie Burger Dated 2/1/06 (Transcribed Tapes)

Robinson: I've got Bonnie here with me. Anyway I got a call from Phil Weidner –uh- last week and he told me you were seeking to file an Ineffective Assistance claim against me. If that's the case we have a conflict of interest, David.

Haeg: Really?

Robinson: Yeah we do..

Haeg: Why's that?

Robinson: (*laughs*) Because I can't represent you if you're goanna be filing a claim against me for Ineffective Assistance of Counsel.

Haeg: Well I was just going to I felt like another party to see if that was an option and I don't – you know I never hired Phil Weidner.

Robinson: I understand you didn't hire him but if you – but if that's your position we have a conflict of interest.

Haeg: Well am I allowed to explore the options that are available to me as a defendant?

Robinson: Yeah you can explore whatever options you want to but if one of your options is to sue me for Ineffective Assistance of Counsel.

Haeg: Well I didn't think that was suing you I thought that was a remedy to get me out of my trouble. I never said anything about suing you.

Robinson: Well you'd have to bring a claim of Ineffective Assistance of Counsel.

Haeg: Well I thought there was a possibility of an Ineffective Assistance of Counsel against Brent Cole and you told me you had no obligation to fix what he did. And I think that in an Ineffective Assistance of Counsel is how one attorney fixes the problems created by another attorney. Is that correct?

Robinson: That's what I'm asking you David. What specific problem, with Brent, was I suppose to fix?

Haeg: Him essentially selling me out to the - the State and then lying about it like I've showed you and told you over and over again. I guess...

Robinson: Well I – I – you've told me that he's lied to...

Haeg: You've never asked for proof. I mean I could have showed you proof but if I tell you and alls you'd have to say Chuck is "show me the proof" and I would've laid it right out in front of you but you never even asked about that.

Robinson: But as I...

Haeg: So now it feels to me like this "good ole boys club" that you talked to me about the - the cops, and the prosecutors, and the judges I feel like there's a "good ole boys club" with the lawyers – that's what I feel. I feel like a hunted animal Chuck and you know what I'm the youngest master guide in the State of Alaska and I know what it is to be hunted.

Robinson: I don't know because I don't know what the claim would be. All I'm telling you is that if you have in your mind a suit against me for an Ineffective Assistance of Counsel <u>we have a conflict</u>.

Haeg: What I'm saying - I guess what I'm saying is I think that you know and I'm not a lawyer - you know - I just read like a maniac – you know – I'm catching up to you lawyers fast is that I think that there was the possibility of going back and showing ineffectiveness of Brent. I mean I don't see how you can dance around – like you say I'm dancing around whatever – well I'm learning from you guys – dance around the fact that if your attorney's lying to you he could be anything but ineffective and if Brent was ineffective it would've rolled back the clock to before I ever hired him. That's – that's what I feel and that's just me reading the books. That's not me having – you know - experience in it that's me just reading the <u>bare law</u> and what happens to my brain when I read the US Supreme Courts definition of Ineffective Assistance of Counsel – Jackie did find one case where an attorney was proven to lie to his client his case was overturned. I can prove that my first attorney was lying to me, I feel my case should be overturned because he put me in such a bad position that there's no matter how good of an attorney you were Chuck I was still goanna sink and I think that you – you know I think that you should've used that avenue to help me get out but I have my own personal feelings that you know the "old boys club" you talked about with the Troopers, and the Judges, and the DA – I think there's a "old boys club" in the lawyers club. Is there an "old boys club" in the lawyers, Chuck?

Robinson: No not that I'm a part of. But...

Haeg: So you would not help – you would not pull a few strings to help Brent Cole from being...

Robinson: No I wouldn't - as a matter of fact I'm the one that told you the things that I thought he did wrong.

Haeg: Well why Chuck then did I pay you for a subpoena for Brent Cole and Brent Cole never showed up? Now that's one that I can't get over.

Robinson: Because Brent Cole's testimony was not relevant to the question...

Haeg: I demanded him testify, Chuck, and everybody heard it and Brent Cole never showed up and we got on your billing records that he called you right after he got Jackie's ticket that she bought for him so I could look him in the eye. He called you and then he never showed up Chuck!

Robinson: Well you knew he wasn't goanna show up David that was no surprise when we went to McGrath.

Haeg: I bought him a ticket, Chuck.

Robinson: You bought him a ticket I know.

Haeg: And I never talked to him after that and I said I wanted to look him in the eye.

Robinson: (indiscernible) a witness fee to but before stepped our foot in that courtroom in McGrath you knew he wasn't coming to testify.

Haeg: I don't remember that Chuck. Tell me why I knew that?

Robinson: Because – because we talked about it and I told you there was no need to call him because what he had to say is not relevant to your <u>guilt</u>!

Haeg: It would have been <u>relevant</u> to my <u>sentence</u> and you know it.

Robinson: Why would it have been relevant to your sentence David?

Haeg: Because we had a <u>deal</u> that I'd given up a year of my freaking guide license for a bunch of other shit and I wanted that Judge to know that I in good faith just like she told Tony Zellers "you going in and given statements and everything is rehabilitation" and none of that ever came out that I went in and gave them a five hour interview and I wanted that man to be asked that and I wanted him to be asked why he never

stood up for my deal and I wanted that judge to know that I'd been sold down the river. And it never happened and I paid for it.

Robinson: Well David I think that you obviously think that I was ineffective so we have a conflict of interest so I am goanna have to withdraw from your case and your appeal date has now been moved – the brief on your appeal date has now been set back to February the 17th. It's over 2 weeks from now.

Robinson: Well all I'm saying is that David I hope that you don't believe that I have been against you. I have never been against you.

Haeg: Well I do believe that you were correct when you told me about the "good ole boys club" and I believe in my heart that there's a "good ole boys club" in the lawyers department too. And you tell me that there isn't – you've told me that there isn't.

Robinson: Right as far as I'm concerned I don't belong to that club and I've never been against you but...

Haeg: So is there a club like that though out there?

Robinson: Well you apparently said there was a club between Brent and – and – and – and Scot Leaders that Brent probably thought – told you something that indicated that at least he was inside some kind of club with Scot.

Haeg: Well I don't know – alls I know is Brent told me "when Leaders screwed you he really screwed me" and I don't know if that was in a club or whether they – whether Brent just trusted Leaders to just do the right thing and then when Leaders just took – didn't do the right thing and started just ripping me apart old Brent he should've just stood up to the plate and took the bullet and he freaking ran. He left me there, naked, that's what Brent Cole did and you know it and I know it. I'm a smart man, Chuck. That's like me, as a big game guide, when you wound a brown bear, Chuck, it's my turn to step up to the plate and take that bear out. It aint my place to run and you know what, Chuck Robinson, I don't run, I stand up to the plate and I f---ing take bear out or I die trying and that f---ing Brent Cole he didn't step up to the plate, he f---ing ran and he left me there defenseless and I know it and you know it!

Robinson: Well I tried not to leave you defenseless, David.

Haeg: You knew Brent Cole left me defenseless and you were just goanna let him alone and that's my honest feeling. You were goanna just do the best you could because you're such a great lawyer and you are a great lawyer, Chuck, but I have my doubts to your integrity at times because we should have went right after Chuck – or right after Brent we should have said that this man abandoned his client he abandoned his client when his client needed him most and

that's what Brent Cole did and you know it. You tell me if he didn't. You say yes or no if Brent Cole abandoned me.

Robinson: I thought you abandoned Brent. I thought you were the one that...

Haeg: Oh yeah when that deal came up and he didn't make a squeak that's when the bear was charging, Chuck, and you know it. That bear was charging when they charged them harsher charges and I had that deal – Brent Cole ran and he never put up his hand he abandoned me there. After that when I abandoned Brent Cole that's like – that's like you telling me, Chuck, after I let you get mauled by that bear and you paid me twenty grand to freaking stand there and protect you "oh – oh I abandoned my guide" well Jesus Christ Chuck you gotta abandoned a guide that won't stand up and do his job.

Robinson: Can I ask you one question?

Haeg: Yes.

Robinson: In our relationship whenever I have mentioned a tactic to you and we have disagreed I've considered your tactic and usually followed it, right? Am I right?

Haeg: No.

Robinson: (*Chuck laughs*) All right. Well the question is this if you didn't think that Brent was doing the right thing at that time of that arraignment did you say "Brent stand up and tell them about the deal"?

Haeg: I was scared shitless but you know what I have eight witnesses, five minutes after the phone was hung up, and I said "Brent Cole I wanted to stand up and say something so bad". You know what he told me?

Robinson: Well not that you wanted to stand up and say something that you told Brent Cole...

Haeg: What the – what the hell difference is it Chuck?

Robinson: I'm just...

Haeg: If I feel like have to do my own lawyering what the f--- am I paying him for? And when I asked him if I could've stand up and he told me he says, "well that judge would have told you anything you say can and will be used against you", in other words Brent's threatening me not to do it, and then he says "that judge would have not done anything" she would have not done a single thing and I have witnesses upon witnesses to testify to that. In other words Brent Cole said Dave when you got f---ed over --

Robinson: Wait a minute.

Haeg: by me and Leaders the judge didn't care, the judge is in on it to, were just out to screw you it doesn't matter that the rules say that different.

Robinson: I'm just asking you whether or not you in fact, before Brent told you about what the judge wouldn't do or would do, you asked him to tell the judge about the deal?

Haeg: I told him over and over and over and over again and he told me the <u>only</u> possible thing he could do was to call Leaders boss, some woman. I called Brent probably 25 times after that asking if he had contacted her. I actually asked Brent for <u>her</u> phone number so I could contact her. And you now what Brent told me? "Oh it wouldn't be appropriate for you to contact <u>her</u>". I mean goddamn Chuck I was doing everything I could to

Robinson: So you did tell Brent, at court when - when Scot came in with the new charges that you thought were against the deal, that you said "Tell Magistrate Murphy about our deal"?

Haeg: I don't remember if it was in court Chuck because my brain was numb with fear but immediately after and Kevin Fitzgerald was there, Tony was there, everybody was there I says "Brent, why didn't you say that we had a deal?" and he's like "well – they – you know I don't know - I just – blah uh – the only – she wouldn't have done anything" and I'm like "well I wanted to jump up and say we had a deal" and he's just "blah – blah – blah" you know god he's a spineless freaking worm. You know gee-whiz I'd like to see Brent Cole when a 10' brown bear charges out of the brush at 5' away, teeth and claws snapping at him. He'd be a good person there because that's what that was. I didn't real – I understood it Chuck because at that moment I had more fear in me then when a 10' bear comes after me.

Robinson: Ok.

Haeg: I was incapable of movement but that's why when you hire me Chuck to take you brown bear hunting you will be incapable of thought or movement when that bear jumps out of the brush. But you know what I'm trained in that situation and I take the bear out, I do the job. That's what you hire me for isn't it? When you – when you hire me for a brown bear hunt you hire me to protect you right?

Robinson: I imagine I would want you to protect me, if you could.

Haeg: Why do I hire an attorney?

Robinson: You hire an attorney to...

Haeg: To protect my interest - to protect me when he can.

Robinson: That's right – when he can, exactly.

Haeg: Well Brent Cole could have right there and he ran and I don't care what you say. You can have your head in the sand but

Robinson: I'm not saying anything. I'm just saying that when you extrapolate from Brent Cole and make a claim in your mind against me then we've got a problem.

Haeg: Yep but you know I just – I don't know – you know I've looked at what your appeal is I think they're goanna say that it's harmless error because I've looked at it so long. You know you're relying on law that's Salter's what 1909 1906? You know some of the other cases that you have to back it up I don't even think really backs up our position –um- what is it Gerstein and Pugh and those other ones. I look at it - I think that's so thin a defense, Chuck and then when I look at Ineffective Assistance of Counsel that's guaranteed by the US Constitution and the State Constitution - I look at that and that's a big freaking brick wall if we can get behind it. That aint just a you know a – you know when the magistrate overturned or you know overruled your motion to dismiss you know I was like well I don't know how she can do this so I'll try to find out if there's anything on her side and there is. I showed up in court – I showed up in Court there with Brent of my own free will and most of the time they say that – that suffices for establishing the courts jurisdiction over you. I mean right there we lost our argument.

Robinson: As far as personal jurisdiction is concerned but it still doesn't – the question is subject matter jurisdiction, which I keep telling you about.

Haeg: I know and I've look all through that and I don't know – you know there's what is there three types of jurisdiction there's personal, there's area jurisdiction, and subject matter. Well area jurisdiction I am in – I'm in the State of Alaska and the State of Alaska is around me so...

Robinson: The question is subject matter jurisdiction. Are there facts that give the court subject matter jurisdiction and without them being sworn to - our position is no.

Haeg: Well I don't know. You know I don't know if there's and Ineffective Assistance of Counsel against Brent because first I'd have to prove that and if there was and you didn't find it and do anything yeah then there is but if there isn't against Brent then there probably aint against you. But I don't know how you can have a goddamn attorney lying to you and expect that you're getting effective assistance of counsel. Maybe – maybe Chuck my problem is that I grew up out in the Bush and I read the goddamn words and what the words say I believe. I don't believe what your interpretation or Brent's interpretation or Magistrate Murphy's or whatever. When I read what the US Supreme Court put down on paper and have you – did you ever read Thurgood Marshall's dissenting opinion on that? Now you read that it is so blazing clear to me that if your attorneys lying to you you're getting f---ing hosed against your Constitutional Rights that it's not even funny. But everybody dances around it blah – blah – blah – well - like you "well just because he's lying to you doesn't mean he wasn't doing you a good job." Well goddamn that's like me saying "well just because the bear was charging and I ran the other way doesn't mean I

was a bad guide". Well what the hell does it mean Chuck? I'm a good guide? Yeah I'm a good guide for me. I think it's a bad guide for the poor son of bitch that's left there by himself shaking with fear when the bear mauls his ass and eats him. Do you know what Chuck Robinson I've been mauled by a bear. It's not a fun thing.

Robinson: I've been in an airplane crash it's not a pretty thing to happen either. I understand those things David.

Haeg: Well if you're in a plane and your pilot jumps out with a parachute when the engine quits how highly are you goanna think of that pilot when you don't have a parachute?

Robinson: Well not very highly at all.

Haeg: And you don't have an opinion that when I can prove my first lawyer was lying to me and never stood up for deals he said I had that he's ineffective? You're saying that you're just remaining mum on that subject, is that correct?

Robinson: No I'm not saying I'm remaining mum on that subject I'm saying I don't have an opinion as to whether or not he's the pilot that jumped out of the plane and left you without a parachute.

Haeg: Do you think he did wrong?

Robinson: In what regard, David?

Haeg: By lying to me.

Robinson: No lawyer should lie to another – to their client.

Haeg: So you said Brent Cole did wrong, by me?

Robinson: No lawyer should lie to their client.

Haeg: Chuck

Robinson: Bottom line.

Haeg: Chuck don't do the lawyer shit to me Chuck.

Robinson: Oh he may have lied to you about certain things that aren't important but he should never lie to you about something that's important.

Haeg: What about lying to me about whether I had a deal or not? Is that important to me and my family, Chuck?

Robinson: If he said you had a deal and you never had a deal that would be wrong.

PHONE CALL – 2/06/06 (Excerpt)
Attorney Arthur "Chuck" Robinson & David Haeg

HAEG: -Um- yeah. I -uh- had a couple questions for you. One is -um- the -um- oh the cases that supported your points of appeal… Do you… I think there was like 3 or 4 of them. Can you tell me which ones they were because they're… All my stuff still up at Phil Weidner's office and he's… I kind of got a little miffed at him because you know it's almost been almost a month since I went and seen him and all that… So he's not going to represent me but I'm still trying to work and I don't have some of my stuff – so wasn't it like Salter and stuff and then weren't there Gernstein and Pugh and there was one other one that I can't remember right off the top of my head for your basis for appeal.

ROBINSON: I'd have to… I'm goanna have to go back and look through my stuff and find out exactly which cases you're talking about on the failure to have a – have a – have the information under oath in a misdemeanor case.

HAEG: Ok well I know there was – there was like ex parte Flowers and I know there was Salter but then there was Gernstein and Pugh and there was one other one. -Um- and I… Like I said I don't have that and I've been looking -um- actually wasn't it like Albretch – or bret – Albright or…

ROBINSON: Albright.

HAEG: Ok. Well I… Like I said I don't have any of my stuff and I'm just – we're kind of grinding along here. Also -um- you know I talked to or I've been trying to find somebody -um- you know I've got a couple irons in the fire but most everybody said it's almost impossible to do an appeal without the court record. And if that's the case how – how can you be doing it without the court record?

ROBINSON: What do you mean an appeal without the court record?

HAEG: Well without the – the tapes of the actual trial or…

ROBINSON: The only – but - but the question is the error…

HAEG: … or the transcript.

ROBINSON: Well I don't know who you're getting your advice from but the entire court record when it… But first of all when it – when – when you're dealing with a district court case to the Court of Appeals they get the whole record. Now they won't get transcripts but they'll get the tapes. The Appeal Court will. But with regards to the points on appeal though the points you want to make on appeal you just have – you refer them to the *parts* of the record that are important for your appeal points. And so the parts of the record for the appeal points really are just the motion practice on the questions about the legality of the prosecution to begin with, then there was that tape we had while we were in McGrath about the 2nd amended complaint, -um- the arraignment. But I can't think of any other *part* of the record that necessarily addresses any of the points on appeal.

HAEG: Ok so I get… And I thought that maybe the case. That you – you kind of… you have the records that you think are important and everything else that happened that you don't have records you don't thinks important. Is that – I guess is that fair?

ROBINSON: Don't go to your point on – points on *appeal*.

HAEG: Ok because you – you don't remember anything happening other then what you now have on record that would have been worth appealing?

ROBINSON: Right.

May 20, 2005

Robinson & Associates
Attn.: Chuck
35401 Kenai Spur Hwy.
Soldotna, AK 99669

RE: Written Letter to Magistrate

Dear Chuck;

I would like this written to Magistrate Murphy:

After I explained Mr. Leaders motion to Mr. Haeg he requested that Mr. Leaders current motion and your coming decision be put in writing.

Mr. Haeg cannot understand how Mr. Leaders can now claim that the issue of whether he was governed by predator control regulations or hunting regulations is now a legal issue rater than a factual issue when in response to my motion for dismissal Mr. Leaders stated "the mere fact that the defendant could have been charged under AS 16.05.783 does not preclude the State from proceeding under AS 8.54.720. The issue of whether the defendant killed the wolves in question under the authority of the predator control permit is a factual issue to be left up to the trier of fact and is not a basis for pretrial disposition of this case."

Mr. Haeg cannot understand how you can strike down his motion on the basis it is a factual issue for the jury to decide and then even consider granting Mr. Leaders motion on the basis it is now a legal issue not for the jury to decide.

Mr. Haeg again requests Mr. Leaders current motion and your response to be in writing.

Thank you Chuck, if you have any questions please give me a call.

Sincerely,

Dave Haeg
P.O. Box 123
Soldotna, AK 99669
262-9249

Robinson Sentencing Questions for Tom Stepnosky

Did Mr. Haeg ask Mr. Cole what could be done about Mr. Leaders breaking of the rule 11 agreement by filing harsher charges?

What was Mr. Cole's response to Mr. Haeg's question?

Do you remember if Mr. Haeg on multiple occasions asked Mr. Cole if he had been able to lodge a complaint with Mr. Leaders boss?

What was Mr. Cole's response?

Did you drive to Anchorage the afternoon of November 8, 2004 to meet with Mr. Haeg's attorney Brent Cole and with the intention of flying to McGrath at 8:00 am November 9th to execute the Rule 11 agreement between Mr. Haeg and Mr. Leaders?

Why were you flying to McGrath?

Did you fly to McGrath the morning of November 9th?

Why not?

Robinson Sentencing Questions for Tony Zellers

Did you fly from Illinois to Anchorage the afternoon of November 8, 2004 to meet with Mr. Haeg's attorney Brent Cole and with the intention of flying to McGrath at 8:00 am November 9th to execute the Rule 11 agreement between Mr. Haeg and Mr. Leaders?

Why were you flying to McGrath?

Did you fly to McGrath the morning of November 9th?

Why not?

Robinson Sentencing Questions for Drew H.

Did you fly from Silver Salmon and drive to Anchorage the afternoon of November 8, 2004 to meet with Mr. Haeg's attorney Brent Cole and with the intention of flying to McGrath at 8:00 am November 9th to execute the Rule 11 agreement between Mr. Haeg and Mr. Leaders?

Why were you flying to McGrath?

Did you fly to McGrath the morning of November 9th?

Why not?

Robinson Sentencing Questions for Jake Jedlicki

Did you drive to Anchorage the afternoon of November 8, 2004 to meet with Mr. Haeg's attorney Brent Cole and with the intention of flying to McGrath at 8:00 am November 9th to execute the Rule 11 agreement between Mr. Haeg and Mr. Leaders?

Why were you flying to McGrath?

Did you fly to McGrath the morning of November 9th?

Why not?

Points to make to the Judge

(For Robinson at sentencing)

1. With Mr. Leaders history of failing to positively swear or attach affidavits to 3 different informations, violating Rule 11 agreements, violating Alaska Rules of Criminal Procedure Rule #7 prohibiting the changing of charges when amending an information, lying about who broke the Rule 11 agreement, lying about the State ever informing anyone of an intent to file charges in connection with Doug Jayo's moose hunt, and lying about some deal we made to allow discussions of the moose hunt so that we wouldn't be charged. I understand all to clearly the likelihood of malicious prosecutions.

2. Can I sue Mr. Leaders for perjury, the loss of a whole guide season's income, all my lawyer bills, and all the pain, stress, and agony caused to my family and me when the maliciousness of his prosecution is proven? Or, since he never swore to the charges is he exempt? Is then the judge that allowed the prosecution to go forward liable? Who can be held responsible?

3. The State in breaking the Rule 11 agreement after obtaining so very much put me in an impossible position. They negated the tens of thousands of dollars I had already paid Brent Cole in negotiating the agreement, they negated the entire seasons hunts I had already cancelled, negated all the thousands spent to get people to McGrath on November 9 to conclude the Rule 11 agreement, and apparently they get to preserve my agreement to discuss Mr. Jayo's moose hunt, and utilize my map and interview at trial.

4. How could I ever make another Rule 11 agreement with Mr. Leaders that required me to give up my PA-12 airplane when I knew he could change the deal and yet keep my airplane?

5. As soon as Mr. Leaders successfully broke the Rule 11 agreement he knew he held all the cards – he had all the information to convict me, had cost me most of the money I had for a legal battle, and could continue to see if I would foolishly give anymore of what I had left in non-binding Rule 11 agreements to avoid trial.

6. I cannot believe this is a legal way to conduct a prosecution. The unfairness of it is unbelievable. The only recourse left was to fire my attorney that placed his future dealings with the prosecutor ahead of my interests, hire a new attorney, and go to trial to secure my right to file an appeal to right the injustice done to me.

7. Please look at the price I have already paid so far for my actions – loss of the income from the airplane I use for all flight seeing, banner towing, and fishing trips for 2 seasons, loss of a whole seasons guide income for both my wife and I while still having to pay State lease fees of $8000.00, $40,000.00 in lawyer fees, $6000.00 in preparing to get to McGrath on November 9, 2004, reputation as a guide and human being torn to shreds by the media, and terrorizing my family life for nearly 2 years. This loss of close to $200,000.00 has just about bankrupted us.

8. Now you get to finally proscribe the punishment I officially am sentenced to. Do you get to consider what we have been through and gave up for the Rule 11 agreement the State broke? I sure hope so. Does the maliciousness of Mr. Leaders matter? I sure hope so. You only have to look at your records to know he was the one who maliciously broke the Rule 11 agreement. Ell me any other reason he would fax you, Mr. Cole, and Mr. Fitzgerald an amended information mere <u>hours</u> before I was supposed to appear before you to settle <u>everything</u>.

9. There is absolutely no doubt that after we gave Mr. Leaders everything he decided to increase the punishment I was to receive. Are you going to let him go unpunished or even reward him for this?

10. I want you to realize I surrendered my entire defense to Mr. Leaders and knelt before him in submission and he then kicked me in the teeth with a steel-toed boot. You must understand I am fighting for the only way I have to put food in my kids' mouths and that I will fight to the death.

<u>Notes for Chuck dated October 15, 2005</u>

Chuck,

Here is some more stuff about the appeal:

1. In chapter 8 of NC Defender Manual it states "The petition is the official pleading in a juvenile case, and "like an indictment or warrant in a criminal case, confers jurisdiction on the court".

2. Also, almost everywhere, it states "an indictment, fair upon its face, is sufficient to confer jurisdiction upon the court". How can an information, without any verification, written and not sworn to by the prosecutor, confer that same jurisdiction upon the court?

3. Justice Frankfurter's quote:

The reason for this separation of functions was expressed by Mr. Justice Frankfurter in a similar context:

"A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication." McNabb v. United States, 318 U.S. 332, 343 (1943).

4. Ex parte Flowers - #2. INDICTMENT AND INFORMATION — Preliminary Proceedings — Sufficiency of Affidavit. An information, based upon a sworn affidavit, or sworn testimony filed in the county court, charging the commission of a misdemeanor, is sufficient to give such court jurisdiction of the subject-matter of such charge.

5. I also think it significant that leave of court is not needed in Alaska for an information to be filed. This shifts even greater responsibility tot he prosecutor to insure the information is sufficiently verified that jurisdiction will attach.

6. Many states require leave of court before an information is filed and that the court must be satisfied there is probable cause before doing so. (see Albrecht v. United States) http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=273&invol=1

7. Did Leaders file the information under his "official oath" which in some instances is sufficient to confer jurisdiction? If he didn't we need to point this out!

8. Also should we point out again the information uses much of my statement made in plea negotiations?

9. Should we also point out Leaders states he "has provided a sworn factual basis for the charges in the Second Amended Information" yet in fact he failed to do so? This reinforces the idea the information was not made on his "official oath".

Appeal Notes dated August 18, 2005

Dear Chuck,

I very much would like to have this included in our appeal. I strongly feel we should start bringing out how poorly I've been treated by the State and I do feel that this is a legitimate basis for appeal. The one weak item I can see is that we never did assert our right or privilege to go to open sentencing before going to trial. Yet if you follow through with my line of reasoning we were indeed penalized for trying to assert our right or privilege. In a way I think it is much like how you can be penalized for actually committing a crime or attempting to commit a crime. I would almost like to include the hardships that have followed since Mr. Leaders changed charges: going to trial, being convicted of the harsher charges, wear and tear on me and my family, all the expenses, etc, etc… I don't know if this could possibly be included in your appeal but as I said I would like to see it added if you think it has any merit what so ever. I also understand that the annotations are not the actual part of the Constitution but they must have a valid standing in fact somewhere. I even think that it would be nice to include just how many of the States requirements that we fulfilled before the State changed the deal. Such as giving them a map pointing out the wolf kill sites, my & Tony's interview with the State, and canceling my first years hunts. Thanks again.

David

IN THE DISTRICT COURT FOR THE STATE OF ALASKA AT BETHEL

SUBPOENA TO APPEAR/PRODUCE

TO: Brent Cole
DOB :
Home Phone:
Home Address:

Other Info:
SSN:
Work Phone:
Work Address: 745 W. 4th Ave.,
Suite 502 Anchorage, AK 99501

You are commanded to appear at the State Courthouse to testify in the case of:

Case Name: State v. David Haeg
Date: 9/1/05 Time:- Case No. 4MC-04-24CR
Court Address: McGrath

If you fail to appear and testify as ordered, a warrant may be issued for your arrest. This subpoena shall remain in effect from the date you are required to appear until you are granted leave to depart by the court or by an officer acting at the direction of the court.

You are ordered to bring with you:

You are entitled to witness fees and (if you live more than 30 miles from the court) travel and living expenses. You are not, however, entitled to advance payment of these fees if this subpoena is issued at the request of the state, city, borough, Public Defender Agency or other court-appointed counsel. Contact the attorney's office listed below to arrange for payment of fees. You must contact the attorney's office before you travel if you want to be paid travel expenses.

This subpoena does not require you to appear anywhere except the court at the above address. However, please call the attorney's office listed below on the afternoon of the working day before your scheduled appearance to find out whether you are still required to appear, the time to appear and other instructions. *Failure to call the attorney's office may make you ineligible for payment of witness fees and travel and living expenses.*

August 22, 2005
Date

"s/"
Natalie Alexie, Clerk of Court

Arthur S. Robinson
Attorney for: David Haeg
Address: 35401 Spur Hwy. Soldotna, AK
Telephone: 262-9164
If you have any questions, please contact the attorney listed above.

RETURN

I served the above subpoena on the person to whom it is addressed, on ,20 , in Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance, except as provided in Criminal Rule 17.

Signature Title Type or Print Name

CR-340 BETHEL (1/02)(st.3) Crim. R.17
SUBPOENA TO APPEAR/PRODUCE Admin. R.

COMPLETE THIS SECTION ON DELIVERY

A. Signature (x) Agent
X - "s/" ( ) Addressee

B. Received by (Printed Name) C. Date of Delivery
"s/" 8/25/05

D. Is delivery address different from 1? ( ) Yes
If YES, enter address below: ( ) No

3. Service Type

(x) Certified Mail ( ) Express Mail
( ) Registered (x) Return Receipt for Merchandise
( ) Insured Mail ( ) C.O.D.

4. Restricted Delivery? (Extra Fee)

2. Article Number 7003 1680 0002 5117 0876
(Transfer from service label)

RECEIVED
AUG 29 2005 Robinson & Associates Lawyers

From: "Alaska/Horizon Airlines" Alaska.IT@AlaskaAir.com
To: <haeg@alaska.net>
Sent: Friday, January 27, 2006 12:15 PM
Subject: Alaska Airlines/Horizon Air Confirmation Letter for 9/29/05

For questions, changes or cancellations on an Alaska Airlines or Horizon Air purchased or Mileage Plan award ticket, please call 1 -800-ALASKAAIR (1 -800-252-7522) for Alaska Airlines, or 1-800-547-9308 for Horizon Air. (If calling from Mexico, precede these telephone numbers with 001 .) For questions, changes, or cancellations on an American Airlines, British Air, Continental Airlines, Delta Air Lines, Hawaiian Airlines or Northwest Airlines Partner Award ticket, please call the Partner Desk at 1-800-307-69 12.

Confirmation Code: ETDMSD
Name: Cole/BRENT
Ticket Number: 027-2 128444 143
Base Fare: 0.00
Tax: 0.00
Total: 0.00
Mileage Plan: None

REMINDERS AND RESTRICTIONS
This electronic ticket is not transferable. If you choose to change your itinerary, any fare increases and a change fee will be collected at the time the change is made.

PAYMENT INFORMATION
The amount of $0.00 (USD) was charged to the Visa Card * ***** * * * * ** 1740 held by JACKIE Haeg on 9/28/2005, using electronic ticket number 027-2128444143. This document is your receipt.

ITINERARY
September 29 2005
PenAir 235
Depart: Anchorage, AK at 8: 15 AM
Arrive: McGrath, AK at 9: 15 AM
September 30 2005
PenAir 236
Depart: McGrath, AK at 9:45 AM
Arrive: Anchorage, AK at 10:45 AM

Exhibit 16

EXCERPT OF RECORD PROVING MURPHY & GIBBENS RODE AROUND TOGETHER DURING HAEG'S CASE

[TR 1262]

MR. **ROBINSON:** Before we get going again I think we're going to need about a 10-minute break.

THE COURT: At least. I have to get to the store because I need some....

MR. **ROBINSON:** So why don't we take long enough to go to the store and....

THE COURT: 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.

MR. **ROBINSON:** All right.

THE COURT: All right, Trooper Gibbens?

TROOPER GIBBENS: Well, yeah.

Exhibit 17

DEFENDANT'S REPLY TO OPPOSITION TO MOTION TO DISMISS INFORMATION May 6, 2005

...There is another piece of evidence that needs to be addressed. 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 plea agreement. During the plea negotiations defendant 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 plea agreement 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 in violation of the evidence rule.

DATED at Soldotna, Alaska this 6 day of May 2005.

ROBINSON & ASSOCIATES
By: "s/"
Arthur S. Robinson
ABA No. 7405026
Attorney for David HAEG:

Certificate of Service
I HERBY CERTIFY that a copy of the forgoing was served on DA Scot Leaders by fax and courier on this 6th day of May, 2005.
By: "s/" Laura R. Haiman
For: Arthur S. Robinson

May 6, 2005 - In the District Court for the State of Alaska at McGrath, State v. Haeg, Case No. 4MC-04-024 Cr.

AFFIDAVIT OF DAVID HAEG

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.

"s/"
David Haeg
SUBSCRIBED AND SWORN to before me this 6th day of May 2005.
"s/" Irene Robinson, Notary Public in and for Alaska

Exhibit 18

Trooper Gibbens sworn testimony at trial

[TR 418-420]

PROSECUTOR LEADERS: These wolf kills that you investigated there, they were where?

TROOPER GIBBENS: 19-C and B.

PROSECUTOR LEADERS: 19-C and B?

TROOPER GIBBENS: Yes.

PROSECUTOR LEADERS: Okay. So some of it's in 19-C?

TROOPER GIBBENS: Yes.

TROOPER GIBBENS ADMITTING, ONLY AFTER CONFRONTATION, TO THE STATE'S PERJURY AT

[TR 478 & 479]

MR. ROBINSON: Now it's your testimony that all four of those kill sites part of which were in 19-[C] and part of which was in 19-B?

TROOPER GIBBENS: No, sir. Actually I'll -- I'll correct that if you like.

MR. ROBINSON: Sure.

TROOPER GIBBENS: Those -- those four kill sites are in the corner of 19-D.

MR. ROBINSON: All right. So they're all within 19-D?

TROOPER GIBBENS: 19-D -- not 19-D east, 19-D.

MR. ROBINSON: I understand, but within 19-D?

TROOPER GIBBENS: Yes, sir.

MR. ROBINSON: Not 19-C, not 19-B, not 19-A, correct?

TROOPER GIBBENS: No, sir.

MR. ROBINSON: Correct?

TROOPER GIBBENS: Correct.

Exhibit 19

TOBY BOUDREAUX'S TESTIMONY PROVING PROSECUTION USE OF HAEG'S IMMUNIZED STATEMENT

TOBY BOUDREAU I found out at the board meeting in March in Fairbanks that David Haeg and Tony Lee had been sent letters or called up and -- and issued permits, or -- or given (indiscernible).

MR. ROBINSON Or given an application?

TOBY BOUDREAU No, that their applications were -- or had been granted, they were going to give out permits.

MR. ROBINSON Okay. So even though they didn't actually get the permit until March of 2004 you knew in December of 2003 that they were going to get a permit?

TOBY BOUDREAU No.

MR. ROBINSON When was this meeting -- the board meeting?

TOBY BOUDREAU The board meeting was in March.

MR. ROBINSON Oh, I'm sorry.

TOBY BOUDREAU The board meeting was in March and I found out from my supervisor's supervisor that he had gone ahead and issued permits to Mr. Haeg and Anthony Lee.

Exhibit 20

56 QUESTIONS FOR BRENT COLE TO BE ASKED AT SENTENCING

1. Did David Haeg hire you in April 2004 to represent him against the State of Alaska?

2. Did you advise him to cooperate with the States investigation so as to obtain a satisfactory plea bargain that Mr. Haeg could live with?

3. Did this advice include giving the State a very detailed map of all locations, dates, and times including the over half the State had no knowledge of?

4. Did you also advise Mr. Haeg to give the State an interview in which you urged him to give a very detailed description of his activities? Also including the over half the State had no knowledge of?

5. Did this interview take place in your office with Mr. Haeg, Stepnosky: , Mr. Gibbens, Mr. Leaders and yourself present?

6. How long did this statement take?

7. Was Mr. Haeg's statement made before Tony Zellers made any such statement?

8. Did you advise Mr. Haeg to cancel all magazine advertisements in anticipation of the plea agreement?

9. Did you advise Mr. Haeg to cancel all hunts after June 1, 2004 in anticipation of the plea agreement?

10. After Mr. Haeg's map and interview was given to the State was this information leaked to the press in violation of the rules governing plea negotiations?

11. On or about November 1, 2004 did plea negations end with a Rule 11 agreement between Mr. Leaders and Mr. Haeg in which Mr. Haeg agreed to plead to AS8.54.720 (a)(8)(A) main charges and other lesser charges, with opening sentencing with the agreement Mr. Haeg would discuss Doug Jayo's moose hunt and that he would loose his guide license for 1 to 3 years – to be decided by Magistrate Murphy in McGrath on November 8, 2004?

12. Did Mr. Haeg in the week between the making of the Rule 11 agreement and the breaking of it ask 3 times whether or not it could be broken?

13. Did you tell Mr. Haeg each time "No, it is a binding agreement"?

14. Did Mr. Leaders then break this Rule 11 agreement about a week later when he faxed you, Kevin Fitzgerald, and Magistrate Murphy an amended information at 1:00 pm on November 8, 2004 which changed AS8.54.720(a)(8)(A) charges to AS8.54.720(a)15(A) charges?

15. Did these new charges carry a much more severe penalty?

16. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be open-sentenced by Magistrate Murphy?

17. Do you think these new charges were filed to penalize Mr. Haeg for exercising his right or privilege to be allowed to complete an agreed to Rule 11 agreement?

18. Did the breaking of the Rule 11 agreement by Mr. Leaders happen only 5 business hours before yourself, Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Kayla Haeg, Cassie Haeg, Drew Hilterbrand and Jake Jedlicki were committed to fly to McGrath to execute it?

19. Did you know Mr. Haeg was flying Mr. Zellers in from Illinois, Drew Hilterbrand from Silver Salmon Creek, taking Mr. Jedlicki from work, Kayla Haeg from school and costing Mr. Haeg nearly $6000.00 in airfare, hotel, and driving expenses to comply with the Rule 11 agreement?

20. Did you inform everyone in the Haeg party when they arrived at your office at 4:00 pm November 8, 2004 that you had just hours before received a fax from Mr. Leaders which contained "bad news"? Did you inform all of them that the bad news was that the charges Mr. Haeg was to plead to in McGrath the next morning had been changed too much harsher ones?

21. Did Mr. Haeg ask you how could this be after your assurances in the days before this could not happen?

22. Did you tell Mr. Haeg, Mrs. Haeg, Tom Stepnosky, Tony Zellers, Drew Hilterbrand, Jake Jedlicki, Kayla Haeg, and Cassie Haeg that because of the new charges they shouldn't go to McGrath for the completion of the Rule 11 agreement on November 9, 2004?

23. Did Mr. Haeg ask you if there was a way to force Mr. Leaders to honor the agreement?

24. Did you tell Mr. Haeg the only thing you could do would be to file a complaint with Mr. Leaders boss – a woman you had formerly worked with?

25. Did you ever file this complaint?

26. What is the lady's name?

27. Did Mr. Haeg repeatedly ask you if you had filed the complaint?

28. What was your response?

29. Do you remember saying, "I left her a message and she hasn't got back to me"?

30. Why did you fail to enforce Mr. Haeg's right to have the State honor the Rule 11 agreement?

31. Did you tell Mr. Haeg "I can't piss Leaders off because after your case is done I still have to make deals with him"?

32. In the weeks after Mr. Leaders broke the rule 11 agreement did you make this same statement 2 more times?

33. Why did you never tell Mr. Haeg the agreement he had with Mr. Leaders was a binding one called a Rule 11 agreement?

34. Are you sure it wasn't because you didn't want to fight for Mr. Haeg's rights against Mr. Leaders?

35. Wouldn't you agree the $200 per hour Mr. Haeg was paying you included defending Mr. Haeg's rights?

36. After you failed to defend Mr. Haeg are you surprised that he fired you?

37. Why would you advise anyone to accept a Rule 11 agreement with the State if the State can change the conditions of the deal and then force the defendant to accept it? And if they don't go through with the change of plea with the new conditions set by the State the State gets to claim the defendant broke the deal and still make the defendant pay the price demanded by the State while the State then honors nothing, nothing, nothing on their part?

38. When Mr. Haeg asked you if he could complain to Magistrate Murphy about Mr. Leaders actions did you reply, "She will tell you anything you say can and will be used against you in a court of law"?

39. Was this to discourage Mr. Haeg from complaining of Mr. Leaders breaking of the Rule 11 agreement?

40. Would you agree that after you agreed to represent Mr. Haeg for $200 per hour this included defending Mr. Haeg's rights to conclude the Rule 11 agreement you negotiated?

41. Do you think it just that Mr. Haeg is now being forced to comply with the parts of the Rule 11 agreement required by Mr. Leaders yet not receive any of the parts required by Mr. Haeg?

42. Do you think it just that Mr. Leaders can ignore the concessions made to the Rule 11 agreement by Mr. Haeg such as providing the map, statement, cancellation of a whole seasons hunts, and all the money and time wasted on the McGrath trip of November 9, 2004?

43. At any time did Mr. Leaders indicate he was going to file charges in connection with Doug Jayo's moose hunt in September 2003?

44. Was there ever a deal that in return for Mr. Haeg to discuss the moose hunt he would not be charged in connection with the moose hunt?

45. Wasn't the exact opposite true?

46. That Mr. Haeg requested he be charged in connection with Mr. Jayo's moose hunt so it could not influence the outcome of the wolf issue?

47. Did you ever state to Mr. Haeg, "When Leaders screwed you he also screwed me"?

48. Did you ever make a statement to the effect that Mr. Leaders broke the Rule 11 deal because it was likely Magistrate Murphy would be lenient and not order forfeiture of Mr. Haeg's airplane?

49. Mr. Cole have you ever been a prosecutor for the State of Alaska?

50. Do you think Mr. Haeg has been treated legally, fairly and with justice by you, Mr. Leaders, and the system so far?

51. You have maintained there were "many deals" yet is it not true there was only one deal that both Mr. Haeg and Mr. Leaders agreed to?

52. The same one Mr. Leaders broke on November 8, 2004?

53. Did Mr. Haeg ever agree to forfeit the PA-12 airplane without that being decided by Magistrate Murphy?

54. After Mr. Leaders broke the first Rule 11 agreement did he offer to make a new Rule 11 agreement which first required Mr. Haeg to forfeit the PA-12 airplane?

55. If the State broke the first Rule 11 agreement yet got to keep what was conceded by Mr. Haeg why would they not break the second Rule 11 agreement and keep the PA-12 airplane?

56. What is the sense of anyone making a Rule 11 agreement with the State if the State can break it and keep what was given up and promised by the defendant?

Exhibit 21

TROOPER GIBBENS FALSE TESTIMONY THE STATE DID NOT KNOW WHY HAEG HAD GIVEN UP ONE YEAR OF GUIDING

[TR 1335]

TROOPER GIBBENS: -- the only hunting period that he opted not to guide would be that fall, '04, for whatever reason it was...

COLE'S ABA TESTIMONY – 7/11/2006

COLE: ... there was some discussion at the – in some of the hearings that – that I told David not to hunt or – and to cancel their hunts -um- in – starting in the summer of 2004. That's correct.

Shaw: ... to a date when somebody voluntarily stopped hunting?

Cole: And they – and he was goanna do it in this case too.

Exhibit 22

JUDGE MURPHY'S FALSE SENTENCING JUSTIFICATION

THE COURT: ...since the majority, if not all the wolves were taken in 19-C.... where you were hunting. Others that take into consideration things that you may not think of, such as the politics involved. Such as the affects of the wolf kill program. [TR 1437-1441]

Exhibit 23

ROBINSON'S POINTS OF APPEAL

COMES NOW David Haeg, appellant in the above referenced case, by and through his attorney, Arthur S. Robinson, of the law firm of Robinson & Associates, and hereby files the following statement of points on appeal:

1. Did the trial court err in failing to dismiss the information in this case because the court lacked subject-matter jurisdiction to proceed with the case where information is unsupported by oath or affirmation before judge or magistrate?

2. Did the trial court err in failing to dismiss the information in this case because the information on its face was insufficient to charge a crime?

3. Did the trial court err in failing to dismiss the information in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 14 of the Alaska Constitution?

4. Did the trial court err in failing to dismiss the information in violation of the Due Process clauses of the Fourteenth Amendment to the United States Constitution and Article 1, section 7 of the Alaska Constitution?

5. Did the court fail to dismiss the information in violation of the equal protection clauses of the Fourteenth Amendment to the United States Constitution and Article 1, section 1- of the Alaska Constitution?

6. Should the information in this case have been dismissed as to Counts I through V of the information because such charges violates defendant's equal protection under the equal protection clauses of both the United States and Alaska Constitutions?

6. Did the trial court err in permitting the information in this case to be amended over defendant's objection?

DATED at Soldotna, Alaska this 14 day of October 2005. ROBINSON & ASSOCIATES

By: "s/"

Arthur S. Robinson

Exhibit 24

TAPE RECORDINGS OF OSTERMAN – INCLUDING SWORN TESTIMONY AT REPRESENTATION HEARING

Phone Conversation 3/15/06

Between David Haeg & Mark Osterman

Haeg: I think that Brent Cole did me a big disservice by -you know- by having me give the State everything that I had to give and not – then not . . .

Mr. Osterman: I cannot believe any defense attorney in the world would do that and particularly any defense in the world would do that with Scot Leaders.

Haeg: Yep. Well I guess where I'm at is I'm . . .

Mr. Osterman: You've got an appeal due on April the 3rd on points of appeal that Chuck Robinson filed because obligated to under the Court rules and the rules of ethics and I don't necessarily agree with the points on appeal that he's [Robinson] got.

Haeg: You know- and at that time I wasn't really trusting of Chuck and I -you know- I guess my big fear with you or any new attorney -you know- I'm not – I'm not out to bust your chops it's just when I pay you like I paid Robinson $30,000.00 and I paid Brent Cole $15,000.00 when I pay you that kind of money I want you in my corner and not -you know- someone else's.

Mr. Osterman: I'm not goanna be with somebody else and then I'll be real honest with you. -Uh- I'm not real happy with Chuck's position not to go after Cole.

Haeg: Well I wasn't happy about it either. Especially when he started defending what Brent did and saying that lying to me about the law was not necessarily Ineffective Assistance of Counsel and I mean it may not be but it should have been brought out and then I guess really hurt me the most is at sentencing -you know- I wanted – I actually had Chuck subpoena Brent to my

sentencing because I wanted Brent to explain that I had this Rule 11 Agreement that the State broke.

Mr. Osterman: And he didn't show up.

Haeg: And he never showed up and there was a call I got billed for that went to Chuck's office the day before he was supposed to show up and they – they "conferred". I mean it says, "conferred" for a half hour. And I'm like I demanded he be there, I paid for the subpoena, and I have a Constitutional Right to guarantee that witnesses show up and he didn't show.

Mr. Osterman: Burns your – yeah.

Haeg: It – it – I mean -you know- and if – if -you know- if it seems like I have a hard time with attorneys I think I have cause

Mr. Osterman: I don't think – I – I don't – I don't begrudge you that.

Haeg: And I'm not and if I ever start.

Mr. Osterman: I looked at this and it was a disaster in it and what Chuck did was wrong – what Cole did was wrong. There's no two ways about it.

Haeg: And is there – do you have any compunction against utilizing that for me?

Mr. Osterman: No. One of the things you should know about Murphy she's never been in

private practice . . .

Haeg: She was in the army I believe wasn't she?

Mr. Osterman: Being in the army is so what she's still a government job. She's never – never run her own shop and she's never defended anyone. She's always been a prosecutor, she's always

been a government wacky and she has to have the government job to survive. Cause she'd never make it in the real world not with her attitude.

Haeg: Yep well and yeah I understand and there's some other stuff that she did. We proved to her and when I say proved I mean absolute proof that a Trooper perjured himself at my sentencing and we gave her the proof of the CD that had his voice on it that proved it and she didn't lift a finger and I don't know if she's suppose to but my complaint.

Mr. Osterman: No let me explain to you how the – the Grievance Commission is – there – there function is to protect the attorney.

Haeg: And not me?

Mr. Osterman: Not you – you're not a foreseeable problem to them.

Haeg: -Um- and may shouldn't even bring him up but he's kind of looked at what's going on and he used to be a criminal attorney he's like David you – you have solid basis for bad news for these attorneys.

Mr. Osterman: Well you do have bad news

Haeg: But you can't – you cannot have a malpractice suit unless you're found innocent or not innocent or unless your conviction is overturned – Chuck Robinson told me that.

Mr. Osterman: No Chuck's wrong, ok? He obviously was the malpractice of one attorney that put you in this bind. Cole has a malpractice problem a big malpractice problem.

Haeg: Well what Chuck said is that if my conviction stands he's – he was goanna show me the case in Alaska that said that you can't go after attorney on a criminal conviction – if in a criminal trial your conviction is not overturned because of the ineffectiveness of the attorney you can't go after him for malpractice. They said that the precursor . . .

Mr. Osterman: Well there is a (*sic*) out there that says that – I'll grant you but I don't think that that's -uh- I don't think that's the end of the statement. Because see it's not Chuck Robinson I would be focusing on. I would be focusing on Cole because Cole set up a by his conduct absolutely malpractice. You gave the evidence to the District Attorney to use against you because of Cole's conduct.

Haeg: Yep. But also what ramifications is it if I can prove that Troopers were perjuring themselves during my trial and sentencing? Will that not help in anyway?

Mr. Osterman: Well you're goanna have to raise the issue to the Court of Appeals -you know- that's one of the things that's goanna happen which is while that I look at the -you know- like I said the issues on appeal that you've got don't really seem to cover the issue on appeal.

Haeg: Yep.

Mr. Osterman: The whole goal would be #1 to stay forfeiture of the airplane and make sure all the other stays are in place with regard to the case, #2 would be to get caught up on the trial transcripts.

Haeg: Ok.

Mr. Osterman: Now in the meantime I don't mind going after Mr. Cole, ok? But I think that Mr. Cole ought to wait until after we've gotten our feet into the first round of appeals and feel comfortable about the issues we're briefing out.

Haeg: Yep ok.

Mr. Osterman: Then we can pursue Mr. Cole. We actually have 2 years from the date of malpractice, which is . . .

Mr. Osterman: Now the first thing we probably aught to do which I think you could do on your own is to write a letter to him informing him that you're making a claim for your attorneys fees

plus the losses you had sustained as a result of his misconduct. That's a hundred thousand dollar airplane, attorney fees, and at least a year of guiding, ok?

Haeg: Yep.

Mr. Osterman: and that you expect his insurance company to get in touch with you immediately with regard to this cause see by law he has to have insurance. And if not he has to inform you he doesn't have any.

Haeg: Well he never – I understand that – he never did inform me that so he has insurance so

Mr. Osterman: So right so by that now he's forced to go to his insurance company and make a claim and now a claims agent gets you on the phone to talk to you about what's happening. Ok? So in the meantime we can always – we can always say at some point in time we're getting ready to prepare a case for litigation but the insurance company is talking to you at your satisfaction. When you're not getting anywhere with them you're goanna drop them in on me.

Haeg: Ok.

Mr. Osterman: Ok and then we're goanna file a complaint for malpractice against Cole.

Haeg: Exactly yep.

Mr. Osterman: Ok? So those two things are beyond the scope of what you hired him for. Cause when you hired him you had an expectation of criminal sanctions and you were taking the dice and rolling it in the crap shoot ok and you did not realize he was goanna set it up so that their dang dice was always loaded.

Haeg: Ok I understand that.

Mr. Osterman: They were always goanna win.

Haeg: And you don't think I could go after more than a year because I got sentenced to five years plus the year that I already . . .

Mr. Osterman: No cause that was at the hand to Chuck Robinson so they're goanna attribute that to Chuck not to Cole.

Haeg: Ok.

Mr. Osterman: Although you can say -you know- I'm simply saying he's – lets face it he might – might have a quarter of a million dollars insurance ok. But more than likely he's a 100 300 kind of guide of guy, ok?

Haeg: Well they.

Mr. Osterman: Ok all that – all that's available under the malpractice policy.

Haeg: Well Dale Dolifka thought that they would have more than that. He said that most criminal – I actually asked him about him about it – he said that he would be surprised if they didn't have a million dollar limit or more. But that was what Dale said.

Mr. Osterman: I doubt it very seriously I mean – I'm a criminal malpractice guy and we carry a half million tops.

Haeg: Ok.

Mr. Osterman: A half million – one million.

Haeg: Ok.

Mr. Osterman: Ok so April 1st 2006 is his two years –

Haeg: that's when I hired him – I thought you said when I fired him is when it would toll?

Mr. Osterman: Well you got – you got a in between here – your April 1st to when you – when he committed the malpractice act which was selling the farm and then the fact that you fired him so we got three contingent dates. And my gut reaction is we shoot to the middle date. The date that he actually committed the malpractice. So we got the start up date of when you hired him. He didn't commit malpractice on that day.

Haeg: Ok.

Mr. Osterman: But anyway this – here's the situation is that you can do this on your own if you want. If you don't get any satisfaction with his insurance company then you drop it in my lap. . .

Haeg: Ok.

Mr. Osterman: then I call him on the phone, say hey I'm here what's the policy limits? You now and I'm goanna hold them by the nose and kick them in the ass for a while. And we'll bring suit and go after all we can get on the insurance and then anything else above that. Ok here's what I need – here's what I'm goanna need from you to consider this appeal.

Haeg: Ok.

Mr. Osterman: Ok? I'm goanna need 12,000.00.

Haeg: Really?

Mr. Osterman: Yes sir.

Haeg: You're not cheap.

Mr. Osterman: No sir. If you call any – any attorney in town who does appeals and anybody in Anchorage that does appeals they will tell you it's 3 to 5 thousand dollars an issue.

Ok? -Uh- I've had experience – the case I took into the Alaska Supreme Court should have been an open and shut case but we prepared huge briefs and huge transcripts and spent thousands of hours and that case was about $22,000.00, ok? I'm assuming because #1 we're in the Court of Appeals and things are goanna move a little faster which I hope is a good thing, second we're goanna have to get on this thing with a big stick. I mean there's no 2 ways about it. The other case dragged on forever we had to get this from Phoenix; we had that from there. You've got most of the stuff, you've got a good synopsis so I figure we're goanna cut a good $10,000.00 off of what I charged this last case by having the availability of this stuff in short notice.

Haeg: Yep.

Mr. Osterman: Ok?

Haeg: Well and -you know- I and I don't have -you know- I guess I shouldn't say it my wife kind of rolled her eyes she heard but it -you know- I'm in so deep -you know- I – I need to go forward and I appreciate -you know- and I'm willing to -you know- to give you the money I mean I don't – do you need it all at one time?

Mr. Osterman: Yeah I do. I'm goanna put it in my trust account and have it available to spend. Cause I don't want to get a phone call from you half way through the appeal that we're out of money Mark and I can't help you. That's goanna mean that I've gotta continue appeal for free and I don't like that.

Haeg: Ok I understand me.

Mr. Osterman: That irritates me.

Haeg: I don't have a problem with that -um- and -uh- I guess oh one other thing is. Does it -uh- -you know- I've put my heart and sole into this and I would like to stay involved just for my own .

Mr. Osterman: I want you involved.

3/20/06 MEETING
Attorney Mark Osterman, David Haeg, Greg Stoumbaugh, Jackie Haeg, & Cassie Haeg

OSTERMAN: Ok we have to review the transcripts of trial.

HAEG: Ok.

OSTERMAN: Second –um- after that we got to develop a timeline in the evidence - whether there were issues of motions that should've been or could've been brought that weren't –um- whether there were –uh- the big one the big give away the ineffective assistance by your first attorney. No doubt about it. And then second we got to make a strategic move. Let me explain to you we've raised the issue between PCR and the appeal. PCR is like the ace in the sleeve. We only pull that ace out when everything else fails, ok?

HAEG: Can you but don't you have to use – to utilize ineffective assistance of counsel don't you have to go back on a PCR to – to go back into the original trial?

OSTERMAN: Well yeah but see PCR is a post conviction relief that has a – I believe it's a two year limitation where as the appeal you filed for has a 30 day limitation. So to claim PCR we've got a while to go you yet and we should expect and anticipate with proper filing before the Court of Appeals you'll have an answer back before the two years is hit but if your appeal is pending for that period of time the PCR time folds.

HAEG: Ok.

OSTERMAN: But the issue is if we deal with PCR ineffective assistance now are we likely to get a reversal by the Court of Appeals? And I think the likelihood is yes. I think when the Court of Appeals sees the sell out...

HAEG: Ok.

OSTERMAN: ...that happened here. That your attorney told you to talk and you talked to a huge detriment.

HAEG: Yep.

OSTERMAN: And why in the world this guy never got any kind of a deal in writing (indecipherable) ...

HAEG: I gave up a whole years in[come], gave up guiding for a whole year also because the deal was suppose to happen before the guide season, got drug out and so the deal or the Rule 11 Agreement was suppose to happen before the guide season well I can't have hunters coming and just...

OSTERMAN: Nobody ever tried to enforce the Rule 11

HAEG: Well you know why? Because Chuck (exhales) it's a tangled web but I've – I have – we have it straightened out completely. I mean we've done immense amount of legwork. I can – I actually have it where I demanded Brent Cole come out and testify at my sentencing...

OSTERMAN: I know he didn't show up.

HAEG: And he never showed up but there was a call that I got charged for from Brent Cole to Chuck Robinson and I had 56 questions for Chuck to ask Brent on the witness stand. Fifty-six questions and it would have been shown that he committed malpractice, on the record, and that's why he never showed up. Cause Chuck kept him from hanging himself and giving away his whole business. I mean I have proof of that. I have proof of Jackie buying him a plane ticket - Brent Cole - I have everything and then he doesn't show up, after the phone call was made just hours before he was to fly out, to Chuck Robinson. And I asked Chuck what – "oh well Brent just said that he wasn't coming." Well I thought when you have a subpoena you come.

OSTERMAN: Had you sent it to him?

HAEG: I paid for it. I paid for the witness fee, I paid for - the subpoena was served and I have the green card from Chuck. Cause I said I want the green card in my hand not in yours. Right now I have one felony complaint against the one trooper perjured himself at [test] at my – uh- sentencing. The other –uh- felony complaint against the trooper...

OSTERMAN: Was he under oath?

HAEG: Yeah.

OSTERMAN: Ok. (indecipherable)

HAEG: Yep. The other trooper that falsified the affidavit for search warrants - absolutely false, lied on them, committed perjury there, committed perjury during my trial.

OSTERMAN: It's one thing to hold somebody back. It's another thing to get them down on the ground and stomp on their head with boots. Ok?

HAEG: Yep.

OSTERMAN: And what Scot Leaders did was stomped on your head with boots.

HAEG: Mm hmm.

OSTERMAN: He went way, way, way to far – ok?

HAEG: Yep.

OSTERMAN: And he violated all the rules that would normally apply in these kinds of cases and your attorney allowed him, at that time, to commit these violations.

HAEG: Yep.

OSTERMAN: Now the attorney – the attorney didn't just open the door – ok - he blew the side of the house off, with his conduct... That's the first incident but the timeline of events that we are goanna be able to put our finger in and press the button if we can get – number 1 Is the Court of Appeals going to be willing to completely reverse and send you back for a new trial? Number 1. Number 2 are we going to have - be able to re-litigate and revisit those issues that predate your confession? In the timeline of things I think the Court of Appeals is goanna be willing to back up to when your attorney committed malpractice.

HAEG: Ok.

OSTERMAN: Ok? I don't think the search warrant issues are goanna be necessarily covered and I don't think I can - I can get you to escape the complete and total liability – I don't think the Court of Appeals would be willing to do that.

HAEG: Well when I can show that the search warrants – see I've been doing my research – when the search warrants bad it's called the poisonous tree.

OSTERMAN: Fruit of the poisonous tree. But here's the situation. The Court of Appeals is only going to go back to what they can clearly identify as being the wrong feature in your case that produced all the wrong results.

HAEG: Well wasn't that one of them?

OSTERMAN: No.

HAEG: Why not?

OSTERMAN: Because the – the real problem occurred for you when you made all these confessions and handed them –uh- the keys to the crime, ok? And the search warrant was before that.

HAEG: Ok but doesn't – I mean so what your saying is once – but this – hey ...

OSTERMAN: The fruit of the poisonous tree applies...

HAEG: Ok just hang on

OSTERMAN: Ok.

HAEG: If Brent Cole did this ineffective assistance of counsel by having me do that confession it goes back to there – the confession never happened.

OSTERMAN: Right but it's my understanding the search warrant was issued before the confession or am I wrong on the timeline?

HAEG: No that's – that's – you're correct but why can't you – if – if people committed perjury and other things that you could have used at your trial or defenses – we pointed out to Brent Cole that – that the search warrants were wrong over and over again. He didn't use that isn't that – isn't that [ineff] – would a normal attorney...

OSTERMAN: Would it be ineffective assistance of counsel for the attorney to know that the warrant was defective and failed to challenge it? It depends on the – now you – here you got the Court of Appeals thinking.

HAEG: Yeah.

OSTERMAN: Depends upon the strategy – did the strategy of the search warrant (indecipherable) that the challenge could be made effectively that in such a way or is the – the lack of this evidence goanna cause you any greater problems in the long run.

HAEG: Ok.

OSTERMAN: Because lets face it the evidence arising out of the ineffective assistance of counsel...

HAEG: Ok.

OSTERMAN... is fueling all of the complaints from that point on ...

HAEG: Ok yep I agree

OSTERMAN: The Court of Appeals can go back to that point.

HAEG: Ok I didn't – I was never told that. Because I don't know what I was told that was lies and what was true. Now...

OSTERMAN: There's a lot of dickering going on I mean I did not make any phone calls to Chuck.

HAEG: Ok.

OSTERMAN: I did not identify Chuck as a being a problem.

HAEG: He's a big problem – he's a major problem.

OSTERMAN: Ok well – I mean I didn't identify Chuck as being a problem to the people that I've talked to. They don't know who the attorneys are in this case.

HAEG: But see then you can pull in that stuff and put it back into the Court of Appeals before they look at it. Because right now the Court of Appeals doesn't have the – the really bad stuff because Chuck Robinson kept it out of the trial. He fought tooth and nail like Brent Cole – he told me David don't you dare bring up that you had a Rule 11 Agreement and - and Brent Cole and – and –uh- Scot Leaders screwed you out of it. He said don't bring it up. I said why? He said it'll hurt – hurt my deal that you're goanna win on appeal. We might have to appeal all the way to the US Supreme Court and that's the information Scot Leaders filed wasn't sworn to. Well the last time that was upheld was 1906.

OSTERMAN: Over a whiskey bottle.

HAEG: Over a whisky bottle now when I'm betting my life and the way I put food in my family's mouth and I went ...How much paperwork did I read and you print on Chuck's thing? I'm talking stacks like that. And I came to him and I said, "Do you mean you're – you're goanna run me to the US Supreme Court and the last time it was won was in 1906?" And he's like "well we may win". I'm like – this is why I started getting scared of old Chuck Robinson.

OSTERMAN: You're telling me that these police officers committed perjury. If we can convince the Court of Appeals that they did - certainly the Court of Appeals will look back at that situation. It's normally called a collateral attach of the sworn testimony. As far as the Court of Appeals is concerned the testimony in the court was properly sworn to and is for all purposes truthful information. The Court of Appeals can't vary about whether we believe a police officer or not believe a police officer...

HAEG: Then and then – well then I bring it in and show it to Chuck and Chuck's like "It do[n't] - I don't re – I had my investigator". See I now I'm saying, "well you never even looked at what Joe did." Well "Oh yeah I did. To me it appeared there was no deal." Yet over and over Joe says, "there was a deal wasn't there and Leaders broke it" and finally Cole: Brent's trying to weasel out of it oh yeah there was a Rule 11 Agreement and Leaders broke it. He got him pinned down but Chuck now is saying that he never got that information from his investigator and I was there when we gave it to him and he read it. He's – he's trying to keep Brent Cole's law firm from taking a hit.

OSTERMAN: Yeah. I can't figure out why Chuck's protecting him. He screwed up - he screwed up that's the bottom line.

HAEG: That's the bottom line and Chuck by protecting Brent has done what? Screwed up.

JACKIE: Joe even wrote in his findings to Chuck he said. .

HAEG: To file a motion.

JACKIE: ... to do the motion against the Rule 11 Agreement

HAEG: Yep...

JACKIE: and then Chuck said they never found anything out.

OSTERMAN: Mm hmm.

HAEG: The trooper said it was 19C. Well during our interviews you know way, way, way before trial we said "hey on your search warrant you said that all these wolves were in 19D - or 19C where our lodge is. They weren't they were all in 19D and we can prove it". He's like "well I – I haven't read the regulation book." Come on the guy who polices the area he doesn't know where he's at?

OSTERMAN: Mm hmm.

HAEG: He knew but what he knew is it'd be more likely to get a search warrant if he said the wolves were in...

OSTERMAN: The area of your lodge.

HAEG: the area of my lodge. So he falsified that. Tony, the guy that was shooting the wolves, told him they were in 19D not 19C, I told him and then we have that on tape – us telling him that it was in 19D. And 19D was where it was legal to shoot wolves but not in that area of 19D. So – so if it came out that the wolves we shot were in 19D which is where the program was going on it would kind of be a violation of the permit and not violation as a big game guide guiding. Because the permit had violations and this is goanna be big one for your appeal.

OSTERMAN: Mm hmm.

Phone Conversation 3/22/06

Between David Haeg & Mark Osterman

Mr. Osterman: And our job is to get to the rainbow first.

Haeg: Yep but what I'm saying is you know you keep kind of bringing up this Rule 11 Agreement it wasn't in the trial so to get to the Rule 11 Agreement you might as well go back to the search warrants not being correct. Do you understand is – is during the trial what you could appeal on the trial the Rule 11 Agreement wasn't part of that anyway so you know if - if you're goanna go to the Rule try to say "oh well they broke this agreement" you might as well go all the way back and use everything that wasn't in the trial and I think the more I look at the law and everything on and how sticky they are for search warrants. Search warrants are a very – very – very tightly regulated thing and when – when a trooper lies on it that's a horrendous mistake. - Um- . . .

Mr. Osterman: Yeah.

Haeg: . . .at least from all the law that I've seen. So. .

<u>Mr. Osterman</u>: It - it – no – no doubt about it – it is.

PHONE CONVERSATION
Attorney Mark Osterman & David Haeg 4/6/06

HAEG: Well I'm just – as I told you I'm super suspicious of lawyers and I want to see what you guys got going and I want to have my two cents in and I under no circumstances do I want you guys sending in my brief without me looking at it.

OSTERMAN: Ok.

HAEG: –Uh- and...

OSTERMAN: You would – you would certainly be invited in to review the – the brief that we had – undoubtedly.

HAEG: You know I want to be – you know I kind of told you when all of this began that I wanted to be involved in it because I've –uh- I mean I've got stuff here that would just blow Brent Cole out of the water I don't know how many times over. Over what his actions in my case and I want to hit upon that so hard that there's no chance of not getting ineffective assistance of counsel. And I want to bring Chuck Robinson into it because I have him on tape saying you know Brent Cole lying to me about deals that we had and about all this stuff – I want him in there so that there's no doubt what's going on. How longs it been since I hired you?

OSTERMAN: 2-1/2 weeks.

HAEG: We've talked I believe maybe about 3 times of any significance where an actual exchange of ideas occurred. And I mean I know cause I keep track of this crap. And I'm not – you have to understand that I'm a damaged product because of what happened with the other attorneys. I know what my rights are. I know that if – if I was – if my own attorneys had an actual conflict of interest – which there's no doubt. I have absolute proof of that. It gets thrown

out. You bring that up and it will –uh- I think the appellate court has to look at that. And I guess I should let you know that they have a great deal of the stuff that I've already given you. Because when Chuck Robinson started going "well I don't have to look at anything Brent Cole did, everything no matter what he did doesn't matter" – I know understand that's absolutely a lie.

OSTERMAN: Well…

HAEG: I mean you can't have your…

OSTERMAN: Bear with me for a second. David I – I don't disagree with you.

HAEG: Ok.

OSTERMAN: Now I've been pushing my staff to get the draft completed as quickly as possible because I want to make sure we have more then ample time to deal with some of the issues that you've got.

HAEG: Yep well I guess I would just like to be able to -um-…

OSTERMAN: I don't want you to input anything at this point.

HAEG: Ok well then are you – I mean are you also making a claim that my first and second attorney[s] had actual conflicts of interest?

OSTERMAN: I'm not goanna claim that the second attorney had a conflict of interest of any kind.

HAEG: Why not? (10:13)

OSTERMAN: Because the issue of conflict of interest is a right of malpractice. Ok.

HAEG: Yeah well if your own attorney's lying to you – I have not even found – I have not found *yet* where an attorney was lying on a pretty sustained basis to his client. My case of ineffective assistance of counsel and automatic prejudice is greater then any I've found yet.

OSTERMAN: Bear with me for a second.

HAEG: Ok.

OSTERMAN: You've gotta take a look at did – was there any particular conduct of the attorney during the course of trial – *trial* not pretrial –trial that was so eggregarious – it's so –uh-

HAEG: Doesn't have to be trial.

OSTERMAN: Huh?

HAEG: Does not have to be trial.

OSTERMAN: Oh I think you better go back to the Strickland criteria.

HAEG: Nope not at all.

OSTERMAN: The Strickland's focus is on the subjective review of the attorney's conduct. It - it basis it upon –upon objective criteria.

HAEG: Has no – it can be pretrial or anything. Let me just find one here you. This is why I'd like to kind of come in and - and –uh-

OSTERMAN: Your not – bear with me for a second. We're not ready for you.

HAEG: Ok.

OSTERMAN: We're ready…

HAEG: I just…

OSTERMAN: … when we've got a draft in hand that has the spelling in it corrected – that we want you – that we're ready for you to see and take home and digest and then come back with us. Sit down in meeting form and deal with – where you think the issues are deficient. You've got to remember number 1 you may know the law sir but you have the inability to hang a shingle.

HAEG: You know and I guess you got so of the information but most of what's wrong happened not in the trial. And that's my – I guess my fear is that if we just look at what happened at trial Chuck Robinson is a – is a fantastic attorney. If he wants to manipulate a client – he is one of the best people maybe in the business for doing so. And I don't know did – have you seen some of the stuff that I taped – the conversations I'd taped with him - or did I even give you those? You know when he can tell me that it's effective assistance of counsel to have my own attorney lie to me that we can't even -um- ask the court to uphold a rule 11 agreement for which we'd given up a whole year of our income, had given them –uh- information that allowed them to over double the amount of charges, and spent 6 thousand dollars just for -um- and old case that had been closed to enhance my sentence. And he said that we can't even – there's no way for us to – to try to uphold it. And then when I said, "could I try to ask the judge," he says, "well that judge would have told you 'anything you say can and will be used against you' and that would have been it." Well is that really what would have happened when I told that judge that "for this rule 11 agreement my wife and I had given up a whole years income"?

OSTERMAN: You've – bear with me for a second David.

HAEG: I mean that's just stunning stuff. It's stunning.

OSTERMAN: I understand it's stunning stuff. Giving up a hundred thousand dollar airplane is stunning stuff... ok and I got to tell you right now if you don't trust my firm to perform the function we were hired to do we'll stop it now and rebate whatever we haven't spent. But you...

HAEG: Well I guess make out the check. Because I've done that twice and I've got burned both times. Do you understand that?

OSTERMAN: I - I completely understand that you've been burned by a couple of people.

HAEG: Ok.

OSTERMAN: What we have accomplished so far is I have told you I have nothing to share with you and all you've done is fight me about why I haven't. And all I've explained to you is I'm trying desperately to give you the best I can possibly give you...

HAEG: Ok.

OSTERMAN: ... in the way of support in review of your case to the Court of Appeals and you want me to add information that I don't think is relevant or pertinent or will be admitted by the Court of Appeals. Now I haven't looked at the information and cases that you say you have.

HAEG: Ok.

OSTERMAN: But I say it's not something that I'm interested in bringing –

HAEG: They told me that the brief was almost done – written. And...

OSTERMAN: You...

HAEG: ... that's the information I got. So I'm just sitting here going – I have all this stuff that I think is horribly important and I'm not being taken seriously and I understand how we both have two ways that we look at it but you know I'm – uh I guess I'll put it this way uh – uh Dale Dolifka said "under no circumstances should I hire another attorney in the State of Alaska". He said go outside the State, get a huge firm, come back in, and wipe these guy's ass. Because here I am – he said if it happened once shame on the attorneys, if it happened twice shame on me. He says don't do it again. We tried. I have stacks of information on firms down in the – you know down in Washington state and Oregon and stuff 6 inches high. I've had some of my attorney friends or - or client friends that are multimillionaires have their law firms check into people for me. So...

OSTERMAN: Mmm.

HAEG: ... it isn't just my suspicions. Dale Dolifka told me "David you got royally screwed twice". He said, "it's unbelievable." You know he said in my conversation [for] him he underlined 7 times that Chuck Robinson said it wasn't necessarily ineffective assistance of counsel to have your own attorney lie to you. I mean I don't know if you know Dale but that man has the most integrity any person let alone lawyer that I know and when he says I can't find an attorney in the State to trust I believe him. You know if you guys would have ran the brief in without me seeing it you would have seen me kind of come unglued. And that's just because of what's happened in the past. Do you understand that?

OSTERMAN: I understand.

HAEG: Do you understand that's a drop in the bucket because I've almost killed myself? Because when I found out Brent Cole and Chuck Robinson were lying to me Chuck Robinson was my friend. I've known him since I was like 5 years old. I've taken him halibut fishing. I've flown him around in my plane when I was 16 years old. He put his life into my hands. I put my life into that mans hand – hands and he was goanna screw me into the earth and screw my wife and my kids. You know how egregious that it?

OSTRMAN: Listen – I've – I've listened to a big piece of this trial. Ok and you're right...

MEETING – 4/11/06 (Excerpt)
Attorney Mark Osterman, David Haeg, Wendell Jones & Tom Stepnosky

HAEG: Is that legal to have a judge run your sentencing hearing until 2 am in the morning?

OSTERMAN: Well that's one of the things that we're discussing... I mean we've all agreed that at one point in time you'd flipped your top and the judge said listen we've all had a really long day and I'm goanna excuse the fact that you're being unruly because of the lateness of the hour and we're all really tired...

HAEG: Yeah.

OSTERMAN: ...and the minute that she said that she screwed herself.

HAEG: Really?

OSTERMAN: Well yeah. Recognizing that she – said we're all testy. Well hell if you're all damn testy you shouldn't be doing the damn hearing.

HAEG: Well I wasn't even there. He was actually there – well both you guys were there...

STEPNOSKY: Yep.

HAEG: ...and I was gone...

JONES: He was there in person but not in his mind.

OSTERMAN: Ok they should not have run this thing past any normal decent hour.

JONES: Mm hm.

HAEG: Well and she said over and over we're goanna finish tonight. We are goanna finish tonight...

JONES: Well...

HAEG: ...She kept saying that over and over and over...

JONES: Hmm...

HAEG: And I was like you know I'm – I could be badgered and badgered and badgered and I'm a tuff bastard but eventually I break.

OSTERMAN: Here's what...

HAEG: And I was broken. You - you told me about an ineffective assistance of counsel case that you were somewhat enthused about. What happened to it?

OSTERMAN: Work – it' in the hopper (4 different garbage cans with garbage in them).[1]

HAEG: Ok well can I see the hopper or can I have a copy and so I can look at this stuff and I can make copies...

OSTERMAN: Give me a second.

HAEG: ... and I can take it home and look at it. (13:54)

OSTERMAN: I thought I gave you that site over the phone.

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[1] He looked in garbage cans for it for nearly 30 minutes – and billed Haeg for this.

HAEG: Nope.

OSTERMAN: Cause we were talking about it.

HAEG: Nope. I asked for it and never got it.

OSTERMAN: Give me a second here. It was a 2nd circuit case.

HAEG: And did you then see what I had about Gibbens with the search warrant being perjury and all that other crap? I mean and that's in – that's in the trial.

OSTERMAN: Wait a second here.

JONES: And the falsification on the search warrant.

HAEG: Perjury because he swore under oath and that's perjury – even though he wasn't in a court.

JONES: Mm hmm.

HAEG: Any statement sworn under penalty of perjury is perjury...

JONES: Yep.

HAEG: ...if it's false.

OSTERMAN: I got a million cases running through my head. Not one of them is yours.

HAEG: (laughs) (Osterman continues to look through garbage cans)

OSTERMAN: ...The first, second and second circuit... Let me get... How to present a defense, search and seizure, sentencing, punishment, confrontation - confrontation, habeas corpus... This would have been a habeas matter as I recall. (Shuffling papers in garbage)

JONES: (clears throat)

OSTERMAN: Search and seizure (flipping papers in garbage) sentencing... That's all Michigan – and Michigan. No this is the old one. Damn.

HAEG: Hmm.

OSTERMAN: Give me a second then let me look in the index. Usually when we download a file we download it to a directory. Give me a second here. -Uh- I'll get you a copy of the case. See if I can find it. Whether I got another one of those sheets handy. Here we go. (Papers shuffling in garbage can)

HAEG: I like that thing. Retire keep enough to live. What? Give to kids.

OSTERMAN: Yeah they're talking about a State planning. (Papers shuffling in garbage can) I got a client he's got a little too much property.

JONES: (clears throat for 10th time)

HAEG: Well can you just get it back to me then? Find it and then...

OSTERMAN: Get it back to me that's right. Here we go. Is this it? Seizure, confessions, defenses, search and seizures, search and seizure, prisons, sentencing and punishment, ineffective assistance of counsel. Ok. Nope that aint goanna be the one. Soon as I get it I'll get it to you.

HAEG: Ok.

OSTERMAN: Ok.

HAEG: That will work. -Um- -um- do you have anything that you've made copies so I can take home and look at? Stuff you've been working on or not?

OSTERMAN: Nope. Not goanna give you a draft until we get though it. The reason being is I don't want you demanding and requiring changes until we get a finished product. Cause the...

HAEG: Well how can you... Why would you want a finished product if I'm goanna change it?

OSTERMAN: Number 1 who says you're goanna change it? You hired me for an appeal.

HAEG: I wanted to be involved in it.

OSTERMAN: I understand you want to be involved in it.

HAEG: I paid for it.

OSTERMAN: That's true. You did.

HAEG: I gave... You took my money and you said "yep we're goanna work with you."

OSTERMAN: I did.

HAEG: Well...

OSTERMAN: So why don't I want you in the process right now until we get a product for you to look at? And why have you already determined that the product isn't good enough for you?

HAEG: I want to make sure that the product... I can research and look because I'm pretty good at it and I've been burned 2 other times and I'm scared shitless about attorneys.

OSTERMAN: Ok fair enough.

HAEG: That fair enough?

OSTERMAN: You'll have a product.

HAEG: Can I kind of see as it's coming along?

OSTERMAN: Nope.

HAEG: Ok.

OSTERMAN: As soon as I get it finished and get it to you – you can make whatever changes you deem necessary and then we'll sit down and discuss whether these changes are goanna be very viable or not.

HAEG: Ok. -Um-

OSTERMAN: I'm not pursuing a perjury plea in the middle of this cause it's not goanna go anywhere. The Court of Appeals is goanna say "go to hell" and laugh like hell and throw the damn thing out.

HAEG: So if there's something in the court that – that points its finger behind what's on the record you can pull that in? So that's why Chuck kept out the rule 11 agreement. He just "uhhhh don't say anything that Brent screwed you over" and the whole thing... Didn't he?

OSTERMAN: No. Somebody's goanna say that that was a strategic move on his part.

HAEG: There's no reasoning for it.

OSTERMAN: Now Cole fucked you. Point blank. I don't know that Chuck...I don't know that...

HAEG: Got him on tape saying, "no matter what Cole did – well I couldn't use it." And you said Brent Cole fucked me and Chuck said, "I can't use it."

OSTERMAN: That's right.

HAEG: No it aint right. He could have went right back with ineffective assistance of counsel and just nailed that bastard to the wall.

OSTERMAN: Could – and how would that changed your case in front of this judge at a trial.

HAEG: It rolls it back until before Brent had me give all this stuff and we start fresh.

OSTERMAN: No.

HAEG: And I get a fair trial.

OSTERMAN: But see at trial nobody in the jury's goanna want to hear this. It's not material to the case. You can't point the finger at your former attorney or at the DA and say "these 2 people just screwed me".

HAEG: Yeah they did.

OSTERMAN: Well *I know they did but you can't do it at trial damnit!!* You can't do it in trial. This is where you're goanna have to go – you have to go to the – I mean you know you've been – you've got your balls to the wall on this one... You're – you're being banged on so the only thing you can do is go in and say "this is wrong – it shouldn't have happened".

HAEG: What I'm saying is not before the jury. Why did[n't] he make that arg – motion to the judge to just throw out everything?

OSTERMAN: Cause the judge wouldn't. You don't understand it's the judge's job to cure the evidence not stop it.

HAEG: You still have an obligation to try. When I hire you - you have an obligation to try.

OSTERMAN: Well I know it's true to some extent but let me tell you something...

HAEG: You know it's true the last extent. If you...

OSTERMAN: When...

HAEG: When you – if you take my money and I say something that is wrong and you don't do it – toast.

OSTERMAN: Well that's ineffective assistance.

HAEG: That's toast.

OSTERMAN: But if it's a *tactical* reason.

HAEG: What tactical reason did he not have the day after they took everything from me to not go in and say, "Throw this out"?

OSTERMAN: Ok.

HAEG: Tell me what the tactic is.

OSTERMAN: Well you're – you're – you're – we're loo – we're dealing with the perjury of this police officer, right?

HAEG: Tell me what the tactic was?

OSTERMAN: Well...

HAEG: For Brent not to try?

OSTERMAN: I...

HAEG: I don't care what... Tell me what his tactic was?

OSTERMAN: Brent's ineffective... I've already dealt – I've already dealt with that subject.

HAEG: So how do we – how do we utilize Brent's ineffectiveness?

OSTERMAN: Well we – we go in and we say he was not effective. He allowed these to occur, he didn't do his job...

HAEG: Then why don't we use that along with him not – me not – him not telling me this other stuff? You see how egregious it is?

OSTERMAN: Well I don't – don't misunderstand me... I see how egregious it is and in fact ineffective assistance is goanna be a big issue in this appeal.

HAEG: So we are goanna file for oral arguments?

OSTERMAN: They give it to us. You don't have to ask for it. They give it to us.

HAEG: They give it to us?

OSTERMAN: Yeah.

HAEG: Ok I'll ask you again this – have you heard from Brent Cole and Chuck Robinson personally?

OSTERMAN: No.

HAEG: Ok -um- why did you tell me if we u – if we try to go after Chuck and Brent the Appellate Court will throw case out? Why'd you tell me that?

OSTERMAN: Because they don't want to get involved in this.

PHONE CONVERSATION
Attorney Mark Osterman & David Haeg 5/1/06

OSTERMAN: You get a chance to look at that draft?

HAEG: Looked through it a little bit and uh you know just I don't know um. So got to look through it a little bit anyway.

OSTERMAN: Ok so here's where we're at. Uh we are pairing down the facts. We're trying to get this thing down to fighting size. If we're goanna be over the limit we are goanna be making applications to the Court of Appeals. We are goanna be over the limit but we are goanna try to get a statement of facts that is clean and clear.

HAEG: So what's that normally then?

OSTERMAN: Well it's normally 20 pages without any additions. But we have the ability to go over. We're not concerned about it. Except that we want it to be – the – the one thing that we want to get away from is being boring.

HAEG: Ok.

OSTERMAN: A dull brief is a dead brief. Ok.

HAEG: Ok - let me jot that down. Boring is dead.

OSTERMAN: That's right. I mean they're like anybody else. They don't want to read garbage.

HAEG: Ok.

OSTERMAN: So we – we – we're trying to spruce up the facts to make it a chitleread (??) As I recall we got about 12 pages of facts and I think after I talked to Joel and – and we looked back at it we're down to about 7 or 8 pages now of facts which is pretty good. Uh... (01:23)

HAEG: And what do you mean the facts? Like of us going out and doing what we did or what?

OSTERMAN: Well yeah if you'll remember the very beginning of that we have to recite to the court what happened. And then what happened in court. Now one of the things that's not necessarily in the statement of facts deals with what happened with Cole – necessarily.

HAEG: Ok.

OSTERMAN: Because the – the whole – the whole fact is we need to convince three members of the Court of Appeals this thing ought to be reversed. That there's been an injustice done. And the only way we can get that flavor to them is that we describe it. Ok. Case law be damned if we don't take care of the facts of the case and make this an easy read for them. They'll sacrifice us at the alter of stupidity. Ok?

HAEG: Ok.

OSTERMAN: So I need your input in this if you can get it to me by the end of the week.

HAEG: Ok.

OSTERMAN: With that we want this thing just simply a matter of the mechanics. We want – we have to go through – let me – bear with me – if you look at the bottom of each footnote you'll see a statement that just simply says citation. Or makes some reference to a hearing transcript. Well we've got to go through it and augment it – supplement it. And we also have to create a table of statutes, a table of um of cases, a table of authorities – generally, an additional table of authorities and then we've got to re-footnote everything and we got to run a master on the footnote for locations under a table of contents. So we've got a lot of mechanical

things that have to be done yet to the brief. Which is why as we're writing if we eliminate things like footnotes we don't necessarily have to renumber and we don't have to recreate the table of contents pages which are real confusing and difficult to do at times. Ok so that is why I'm saying I would like to be able to say by next week we are goanna go to work on the mechanics of putting the brief together.

HAEG: Ok and that's just – like I said that's just the oh the ...

OSTERMAN: All those tables I just talked about.

HAEG: Ok well I've already sent you most everything of what I felt of everybody – so.

OSTERMAN: Now we're ready for you to talk. Remember I told you...

HAEG: Yep.

OSTERMAN: ...until we had a draft we weren't ready for you to say anything. Give us the chance to get a draft together to find out what our shortcomings are for your standards.

HAEG: Well if you've got – I don't even know how many pages it is if you've got to pair it down to 20 pages there's not goanna be much room for anything that I have to say.

OSTERMAN: Now listen there's a – there's a kind of a unwritten limit at 20. Ok. That doesn't mean we're stuck at 20. It means we simply have to file that we're filing a long brief. That's all.

HAEG: Ok.

OSTERMAN: Now I'm not concerned about it being over 20. Except that we're too long winded. When I read this brief I was asleep about the 6th page.

HAEG: Ok.

OSTERMAN: Because the facts didn't reach out and grab me.

HAEG: You said, "Boring is dead".

OSTERMAN: That's right. We cannot be boring. That's why we started pairing down the facts. Trying to get the facts to be a workable fact and the members of the Court of Appeals – let's face it these guys are sitting in there every single day and all they do is read these damned briefs...

HAEG: Yeah. Well that's their job isn't it?

OSTERMAN: Ok if I make it fun for them to read and interesting and hit them right between the eyes immediately with the issues in the case.

HAEG: Ok.

OSTERMAN: I – I will win them over. Believe me we have attended – in fact I can tell you two years ago State Bar convention the entire panel of the Court of Appeals got up in bank and said "the biggest sin committed in briefs is you guys bore us. We're tired of being bored".

HAEG: Ok.

OSTERMAN: "These are lively cases about real people. Write these cases".

HAEG: Ok.

OSTERMAN: Ok. So I sat through their seminars. I've still got their materials. We purchased books and material to understand better how to write briefs. In fact while Joel was writing I found an editorial page in one of the legal magazines and snipped it out and gave it to him about how to liven things up and short circuit things a little bit.

HAEG: Ok.

MEETING
Attorney Mark Osterman & David Haeg 5/6/06

OSTERMAN: Ok. Did you get a chance to look it over?

HAEG: Yep.

OSTERMAN: You got any substantive changes we got to get them made. We've got about 2 weeks left. Actually a lot less then that now. So what didn't you like?

HAEG: Um I don't know – I looked at it and I would of – like I said when I came in here I wanted to – to go after Brent and Chuck because of the stuff that they did lying and - and stuff and there's very little of that in there and I don't know why that is.

OSTERMAN: Because we're appealing the merits. Not your unh[appyness] – your dissatisfaction with your other lawyers.

HAEG: Ok well why do you have - um I know at the first meeting we had you'd said that Brent Cole's ineffectiveness was the biggest thing that we had.

OSTERMAN: Sure.

HAEG: And now it looks like it's one of the...

OSTERMAN: at the end.

HAEG: Yep. Why is that?

OSTERMAN: You never put your focus issue at the beginning.

HAEG: What you are saying is don't focus on what you really want to focus on?

OSTERMAN: To some degree yes.

HAEG: Hmm. Ok.

OSTERMAN: You have stronger merits in your case then rubbing Cole and -uh- -uh- Robinson's nose in this case.

HAEG: Ok and what are the stronger merits?

OSTERMAN: What are the issues here? Do you disagree with the issues that we've outlined?

HAEG: Well I've sent – at least Jackie says she's sent you everything that I had problems with.

OSTERMAN: Yeah we had everything that you've had problems with.

HAEG: So you have everything that I have problems with?

OSTERMAN: Right. So do you disagree with the things that we've put in these issues?

HAEG: Well like your – this first argument. Trial court erred in failing to dismiss the first amended information in this case cause the court lacked subject matter jurisdiction to proceed with the case where the original information was unsupported by oath or affirmation before a judge or magistrate. Do you – do you think that has...

OSTERMAN: I think that has some merit.

HAEG: Ok. How much merit?

OSTERMAN: Enough I want the Court of Appeals to see it. There are a lot of things in here I don't want the Court of Appeals to necessarily look at. The statement of facts against you is a very negative statement of facts.

HAEG: Yeah and it was the first – I mean you guys did a pretty good of 15 almost 16 pages of that. I mean isn't that – isn't that the prosecutions job to make me out to be a bad guy? (Over 15 pages of a "very negative statement of facts" in a brief that is limited to 20 pages)

OSTERMAN: Uh huh.

HAEG: I thought you said that the thing – the big enchilada of Brent Cole we're – we're hiding it in the back and goanna spring it on them later?

OSTERMAN: The very first...

HAEG: What if it doesn't get sprung on them?

OSTERMAN: Well lets see if I got a copy of something handy here real quick... Every time the Court of Appeals begins a case – it begins a case with a factual statement. These are the facts of this case. Ok?

HAEG: And look for people that - I mean is that factual basis for what's going on?

OSTERMAN: Listen the factual basis of this case is that they brought you under criminal hunting license violations instead of under civil -um- permit violations.

HAEG: Well it still would have been criminal.

OSTERMAN: No they wouldn't have been.

HAEG: Yeah they would have been.

OSTERMAN: But taking that particular position what I'm saying is the issues that we're facing are not issues of broad general constitutional applications.

HAEG: Yeah they are...

OSTERMAN: No they aren't.

HAEG: ... Ineffective assistance of counsel is – that's one of the mightiest.

OSTERMAN: And it is one of the very last ones that we talk about because there's a...

HAEG: Why don't you on -uh- the ineffective assistance of counsel put in there that Brent Cole was lying to us? And I can prove it. Wouldn't that be something to note?

OSTERMAN: No.

HAEG: Why not?

OSTERMAN: Cause all you're – you're not after the ineffective assistance of counsel claim then. You're after the public humiliation and embarrassment seg - segment of it and it won't work.

HAEG: Ok. So in other words...

OSTERMAN: The issues...

HAEG: ... your attorney lying to you is effective assistance of counsel – is that what you're saying?

OSTERMAN: No. I'm not saying that. I'm saying it's not an effective argument to the Court of Appeals.

HAEG: If I was on the Court of Appeals and this poor bastard comes strolling in and says, man I can prove that my attorney was lying to me to the tune of 50 or 60 thousand dollars or my attorneys – I would say whew boy you didn't get your moneys worth there buddy. I don't think that you might even gotten effective assistance of counsel buddy.

OSTERMAN: Guess what?

HAEG: What?

OSTERMAN: I've written a lot of things for the Court of Appeals and the Supreme Court and you're wrong.

HAEG: So have you wrote to them about attorneys lying to their clients?

OSTERMAN: I have as a matter of fact.

HAEG: And what'd they have to say about it?

OSTERMAN: 9th Circuit Court of Appeals says they don't care whether you – whether your attorneys you believe lied to you – you have proof to do it. Did he appear in court and do his job properly for further mandates his oath of off[ice] or his oath of duty? What do you say now?

HAEG: Well I would say when he's lying to you about your rights as guaranteed by law and screwed you out of them I'd be pissed.

OSTERMAN: That's what we talked about in that particular area.

HAEG: I thought I came in here and I think these two people were in here when I came in and I said that Brent Cole and Chuck Robinson screwed me over and I didn't get my right to a fair trial and I wanted to go after them because I had proof – I don't know and I was pretty adamant about it. What do you guys remember?

OSTERMAN: You hired me for the purposes of an appellate brief.

HAEG: Ok well I guess lets just go through this here and I'll show you why this aint goanna work.

OSTERMAN: Ok.

HAEG: It says here in Albrecht versus U.S. the court declared that the 4th amendment required that an information be supported by probable cause. Speaking for the court Justice Brandeis - however you want to pronounce it - explained that the probable cause requirement was satisfied when a United States attorney issued an information under his oath of office. Now over here you say that "defendant asserts that all charges against him must be dismissed because no information based upon probable case is supported by oath or affirmation as required by the federal and Alaska constitutions has been filed against him and therefore no Alaska courts has jurisdiction to try him." Do you think that -uh- assistant attorney general Scot Leaders when he took his office do you think he had to swear on oath of office?

OSTERMAN: I don't believe he did.

HAEG: Ok I'll go onto the next one here. This one here trial court – 19 trial court erred in failing to dismiss the first amended information in this case because it was supported in part by statements made by the defendant during plea negotiations that did not end in a plea agreement in violation of Rule blah – blah - blah. Well I looked back through it – Jackie looked back through it – Chuck never asked the trial court to dismiss because it was -uh- the information was given by my statements.

OSTERMAN: So the trial court erred not dismissing the first amended complaint – you're saying there's no motion on the first amended complaint.

HAEG: Yeah there's was none.

OSTERMAN: So how – where did we – were did we get that information from?

HAEG: You tell me.

OSTERMAN: Ok.

HAEG: Well I thought that was kind of strange that he didn't even file a motion and site the law and file a motion to have something done.

OSTERMAN: Well we'll look into that.

HAEG: Well I would have wished that I could have been here and helped from the beginning you know like I'd asked.

OSTERMAN: Well what - what exactly could you have done? What do you think you could've...

HAEG: Oh I don't know...

OSTERMAN: ...done? This is...

HAEG: I don't know.

OSTERMAN: This is basically about the 4th draft. And we...

HAEG: This is the first one I've had.

OSTERMAN: Well it's the 4th one in this office because we wanted to make sure that you didn't get a bunch of misspelled errors and things like that in the first go around.

HAEG: Well there's a bunch of misspelled errors in here. I don't care about misspelled errors. But this all goes back to I didn't get a fair trial. When – when – when my first attorney, Brent Cole, when I showed him that the - the search warrant affidavit had in – had misleading and false information on it and he didn't stick up his hand. He just said, "It doesn't matter." We've actually went back through and all that has huge teeth. I don't know if you know that. Monster teeth. Why didn't Brent Cole do that? Ok. He says "oh that don't matter." He says "ah opening volley Dave. Give them a 5-hour interview. Oh give them some maps to while you're at it."

OSTERMAN: Yeah. "Show them all these things."

HAEG: Yeah. "Tell them everything."

OSTERMAN: "I'm goanna forget that I - I – I'm goanna forget all about the 5th amendment and the fact that we don't really have a deal."

HAEG: And then it comes along and "Oh Dave oh by the way you know this deal that you've got it's goanna – you're goanna have to - you're losing your guide license for at least a year...

OSTERMAN: Mm hmm.

HAEG: And then it – everything goes along and yeah we gave up the whole year of guiding - then when we can't – we sent back all the deposits. We now are relying on this deal coming along for this. Then "oh well fly everybody in Dave for this deal you know to talk about this moose hunt. And oh - oh by the way" when we show up there "oh it's off now. There's no yeah the prosecutor's filing these other charges and there aint anything you can do about it Dave. We can't file it..."

OSTERMAN: This was (undecipherable) 2005 right?

HAEG: 2000 – I don't know when it was...

OSTERMAN: October 2004?

HAEG: Well...

OSTERMAN: Was it 04?

HAEG: ... why – why would an attorney do that?

OSTERMAN: I don't know. I can't answer that question.

HAEG: Don't you think that's ineffective assistance of counsel when he...

OSTERMAN: I told you that several times, yes.

HAEG: ... when he's telling. Why isn't that in here?

OSTERMAN: It is.

HAEG: No it aint.

OSTERMAN: Last issue.

HAEG: No it aint.

OSTERMAN: It's the last issue.

HAEG: No it aint. That – that issue has that he told me – didn't tell me that my -uh- statements could be used against me. There's nothing in here about him telling me that I couldn't -uh- file a motion. He even told me that I couldn't even tell the judge that I couldn't – that I had a deal and I'd relied upon it.

OSTERMAN: That's a malpractice issues…

HAEG: No it aint.

OSTERMAN: Not ineffective assistance issues.

HAEG: No it aint. I gave up my constitutional right to conduct my business for a year. So did Jackie. I made her - gave up her constitutional right…

OSTERMAN: Hold on for a second.

HAEG: And he pissed it away.

OSTERMAN: We're – we're …

HAEG: We had a constitutional right to enforce that bargain.

OSTERMAN: Sure. Well you only made a bargain with him though. Cause he's the one that screwed up and never made a bargain with Leaders.

HAEG: He made a bargain with Leaders and I have it in *writing*.

OSTERMAN: To some degree, yeah.

HAEG: And we had – we had enough – do you know this is what makes me angry about all this…

OSTERMAN: Mm hmm.

HAEG: … this what makes me very – very – very – very – very angry? Did you know in every case that – that has come up where the courts have -uh- have said that everyone and I mean

everyone I mean all the attorneys and the State and the prosecution is goanna honor this gentlemen's *deal* that he thought he had. When they say *thought* they say that if that thought was reasonable he's goanna get that deal. You know why? Is because people like me don't know the law and don't know things should be in writing but you guys do. And when you guys don't do your job and – and tell me a bunch of stuff "oh do this - do that - the deals coming on - yeah this is what's going on" – I don't know it should be in writing because when it goes south they can all just say "well there was no deal." What do you think happened in my case? What do you think Brent is goanna to claim? There was no deal, right? What do you think Scot Leaders goanna claim? There was no deal. But where does that put me when they've led me to believe there were all these deals and nothings in writing? It leaves me in the shit hole. And the reason why they always reverse because of what was *reasonably* thought by the defendant is because they know the attorneys and the prosecutors when the – when the rub comes they're goanna run and hide. Cause they don't want to be sued for malpractice. The State doesn't want to have the conviction reversed. And they know that them people are goanna be doing anything they can to save their boat and the person that's goanna pay for them people running and saving their boat is goanna be the defendant. So if that defendant can show that there was any possible way he could *think* that this was the deal and he started relying on it he gets his deal. Brent Cole knew that, Scot Leaders knew that, and that's why they're all banding together, and Chuck Robinson knew that, that's why they're all lying, that's why they're doing all this shit, and that's why this is goanna come up and it's goanna eat the fucking State's lunch. Its goanna eat Brent Cole's lunch. Its goanna eat Chuck Robinson's lunch. Its goanna eat everybody's lunch that stood in the way of that.

OSTERMAN: Well...

HAEG: You mark my word.

OSTERMAN: I saw a statement in the file that indicated that you – that an offered been made and the – the -uh- you had started some negotiations – the only issue that was the hang up in the deal was the fact that they wanted your airplane. And there was some discussion about going open sentencing on the deal. And before you guys had a chance to make up your mind about how the opening sentencing was goanna be Scot Leaders had amended the complaint – the information.

HAEG: How long did we have the open sentencing agree – how long Jackie was it? When did I make the open – the request for open sentencing?

JACKIE: In August.

OSTERMAN: Everything went south in October.

JACKIE: 18th - 19th – something like that.

HAEG: Well that's quit a while isn't it?

OSTERMAN: Yeah.

HAEG: November when everything went south.

OSTERMAN: Ok.

HAEG: Now that's quit a while isn't it?

OSTERMAN: It is.

HAEG: And how come Brent Cole's is saying that it was merely *days* before November 9th that I changed my mind and wanted to go open sentencing? Now isn't that interesting?

OSTERMAN: It is.

HAEG: But – but on his billing statement that we sent you it says... Now that's why I start getting upset. Is because I knew they told me what I wanted to hear.

OSTERMAN: Ok.

HAEG: And then they all got me all out here, got me to give up my whole guiding season, got me to spend all of my savings, all of my kids college funds, and then they said "*fucking we gottcha!*" That's what happened.

OSTERMAN: Hmm .

HAEG: *And I'm fucking pissed*!

OSTERMAN: I understand that.

HAEG: I don't know if you understand it.

OSTERMAN: Probably not. You're right I probably don't understand it.

HAEG: Because they did that in violation of my constitutional rights. And when you have the State and your own attorney conspiring to deprive you of constitutional rights do you think you're in deep shit?

OSTERMAN: Well the only trouble of it is – it's not goanna help you to throw sand on them.

HAEG: Why - why is that not the case?

OSTERMAN: Because you're goanna have to get out of this case on your merits and if you can't...

HAEG: Oh I think I got merit. I think I got constitutional right to effective assistance of counsel.

OSTERMAN: You do. And you did not receive effective assistance of counsel.

HAEG: And why won't that reverse my conviction?

OSTERMAN: Listen *what* Cole *said* is not the issue. What Cole *did* is always the issue.

HAEG: Yeah he deni[ed] – he did – he denied me my constitutional rights to uphold that deal and he lied to me about when he found out to cover-up what was going on. And he just... And then he never even squeaked about them using all of my statements to file all these charges. Chuck Robinson could have used Brent Cole's ineffectiveness. It's so glaringly obvious that... And you may be you are correct when you told me that the Court of Appeals is goanna throw my case out if I go after Brent Cole and Chuck Robinson. You may be correct but you know what the Court of – the Alaska Court of Appeals is not my last court – my last court that I'll be seeing is it?

OSTERMAN: That's correct.

HAEG: Just – how that bear on the rest of it? Read the rest of it.

OSTERMAN: Ok. "The statement of the law is always true. The statements inadmissible if made at any point during the discussions in which the defendant seeks to obtain concessions from the government in return for plea, plea bargaining is to be evaluated according to the standard of 'caveat prosecutor".

HAEG: And what's that mean?

OSTERMAN: Caveat means beware. So beware Mr. Prosecutor. If you offer a deal you better beware.

HAEG: And what – so like when I was offered a deal why didn't he have to beware? Or why didn't he ever get his tit caught in a wringer?

OSTERMAN: Well that's what happens. See that's where Cole's ineffective assistance comes to play. Cole didn't jump on the deal with all four feet the day before trial. Robinson should have jumped on the deal with – I mean he should have come down...

HAEG: So why isn't Robinson's name come in there?

OSTERMAN: Cause why would Robinson be in here? Cole's the one who's negotiating ...

HAEG: Thought you said he should have jumped on it with all four feet?

OSTERMAN: He should have but we're talking about ineffective assistance of counsel not your immunity.

HAEG: Well if Brent, who was ineffective, - ok you answer me this one. If Brent was ineffective and Chuck Robinson never utilized that – isn't Chuck Robinson every bit as much as ineffective as Brent Cole and probably more so?

OSTERMAN: To some extent yes.

HAEG: Well why isn't that in there?

OSTERMAN: Well first of all...

HAEG: Why'd we just go – I told you I wanted to go in there – I just wanted to krrrr – lay down on the light – on the quad 50's and just nuke them.

OSTERMAN: Well why don't you just let me do my job? Thought you wanted to win.

HAEG: Well...

OSTERMAN: I could burn rubber – if you want to smoke – if you want to set things on fire.

HAEG: (laughs)

OSTERMAN: I can do that.

STOUMBAUGH: Is this goanna work?

OSTERMAN: I think it will. I do.

STOUMBAUGH: What are the odds?

OSTERMAN: Good.

STOUMBAUGH: 55%?

OSTERMAN: Well I'm not an odds maker. Hell if I were odds maker I wouldn't be here would I? The -uh- well the fact of the matter is – is that's the reason that we took it is because we thought there was some merit to it. Second we took it because it was a Robinson washout and I knew enough of the tales of this particular case and the tales being – not stories being told but the – having heard about this case going on from a lot of other people. -Uh- and I heard Chuck Robinson once stated he really was f-ing pissed that this case had gone the way it had gone. And he blamed Scot Leaders for a lot of bullshit.

HAEG: Well -um- I guess what I keep coming back to is – Jackie how much law have we found that just says that we've been screwed from point A to point Z?

JACKIE: A lot. I mean...

HAEG: Reams of it.

JACKIE: ... we were on Westlaw for two weeks.

OSTERMAN: Yeah.

HAEG: Now why is that and how come we don't utilize that stuff in here?

OSTERMAN: We – we have utilized that stuff.

HAEG: No you haven't.

OSTERMAN: We're not goanna type search terms and push the button and take the first thing that comes along. One of the things that happens in any case – remember I sent you that case – said "this case is an important case – this case is on all fours"?

HAEG: Yeah and...

OSTERMAN: On the effective assistance of counsel ...

HAEG: Yeah.

OSTERMAN: The 2nd circuit had reversed the case.

HAEG: Yeah. They hadn't though. It never was reversed.

OSTERMAN: It was – it was affirmed for other reasons.

HAEG: Yeah I mean wouldn't it make sense to utilize one of the *hundreds* that we've found where they *reversed* the decision then to use *one* that it wasn't reversed because of that? But another thing that kind of made me – I - you know - I don't know -um- you know to me it

looked like you know your – I mean to me I sent you the - the stuff that I wanted in or why I was so pissed about Brent Cole and Chuck Robinson.

OSTERMAN: And you're interested...

HAEG: And not hardly any of that - I mean none of it is in here. And I can't be that mistaken. I'm a very – very intelligent person. I read like the freaking wind. You know how much material I've been through?

OSTERMAN: Mm hmm. I understand.

HAEG: You don't think that any of that would rub off on me?

OSTERMAN: I think it would.

HAEG: But...

OSTERMAN: At the same time – here's the realization Dave. In spite of all that you've read - most of which deals with malpractice – not ineffective assistance. Different things. They are a *much* different things.

HAEG: How come there are always tied lied like this?

OSTERMAN: They're tied in the civil context like this. They're not tied that in the criminal context.

HAEG: How come every criminal malpractice claim had to have an ineffective assistance of counsel before it could happen?

OSTERMAN: True.

HAEG: So – ok because you know that don't you think that every criminal malpractice claim is something very important to look at?

OSTERMAN: Let me give you an example. Ineffective assistance of counsel is I don't call your wife as a witness, I – we leave her at home, we don't give her a subpoena, we don't invite her to come to the trial, she doesn't testify but she's the one who established your alibi – your whereabouts. If I don't call her is that a tactic error or is that a technical error?

HAEG: I don't know.

OSTERMAN: To me it's a fatal error. Ok. Any attorney who doesn't listen to his client's witnesses is a damn fool. So if you tell me here's 15 names. I'm subpoenaing 15 names. Ok. I'm goanna send out subpoenas. Why...

HAEG: What happens if they don't show up?

OSTERMAN: Then I go to the Court and say, "here is the subpoena Your Honor. I want this person arrested now..."

HAEG: Then why didn't – why didn't Chuck Robinson do that – for when Brent Cole never showed up?

OSTERMAN: I can't answer for Chuck Robinson.

HAEG: Ok.

OSTERMAN: I'm not here to speak for him.

HAEG: Ok.

OSTERMAN: In this particular case you *did* testify at trial.

HAEG: And I'm curious about why Chuck had me testify at this point.

OSTERMAN: I don't know why Chuck had you testify. I would not have permitted it certainly.

HAEG: Oh Brent Cole means a lot to him.

OSTERMAN: No. Chuck has been around far too long number one. He's the old he wolf out there. He runs things around here basically is what he - you get that impression anyway. When he speaks people – listen – he heads up the criminal section of the local Bar, his wife's a former head clerk of the court for the Supreme Court, Chuck's got a lot of political pull, he's received awards for his dedication in defense work. Would I believe Chuck to do it absent some other evidence – no I would not believe it. I would not tend to believe that Chuck would do that.

HAEG: I wouldn't tend to believe it otherwise but I watched my case go from bad to worse – to worse – to worse and finally old Dave Haeg said "I'm goanna see what the fucks going on" – pardon my French.

OSTERMAN: In my opinion Chuck made a tactical error in putting you on the stand. I would have told you not to take the stand.

HAEG: Do you know that before trial – do you know – there is so many things that Chuck Robinson has done wrong that I'm digging up now.

OSTERMAN: Ok. So Chuck's screwed. The point being *Cole* – there's no ineffective assistance claim – or there's nothing in there that will keep you from not suing Cole. Cole was not your trial attorney – he did not cause the [d] – cause the downfall. But Cole did cause...

HAEG: He helped and Chuck never – Chuck – Brent was the beginning of the landslide and Chuck's job was to stop the landslide and all Chuck did was jump on ride the landslide.

OSTERMAN: Cause he thought he could control it.

HAEG: Well not when my constitutional rights and my ability to provide – provide for my family. I'm not goanna let him just jump onto the landslide.

OSTERMAN: Do you think that Chuck could stand in front of a jury and point a finger at Cole?

HAEG: I sure could. If I can why can't Chuck?

OSTERMAN: Not relevant.

HAEG: Why not?

OSTERMAN: Cause that's – irrelevant to a jury – to your jury. He couldn't do that in front of a jury.

HAEG: He doesn't do it in front of a jury – he just – he should have brought it to the – the judge...

OSTERMAN: That's what I said. He thought he could control a landslide. Chuck – Chuck...

HAEG: What is the reason legitimate reason? There is none. Well my attorney that I paid thousands of dollars for comes and tells me "you got screwed and that's the way it is" and it was his job to not let me get screwed.

OSTERMAN: Ok. So the documents contained here you have a lot of trouble with the first two. You have a little trouble with the 3rd and you don't think that the 4th and 5th are tight enough.

HAEG: I didn't get a fair – this whole system. This whole and I guess I'll bring it up because I already brought it up. -Um- would you classify Dale Dolifka as an intelligent man?

OSTERMAN: Fairly - yeah.

HAEG: Would you classify him as an honest man?

OSTERMAN: Yes to the best of his ability. Yeah. I know Dale thinks you got screwed. Dale's not in my business anymore.

HAEG: Then when Dale Dolifka and everybody else comes along... You know what I think has happened here? I think these attorneys thought that I wasn't smart enough and I think it was a big case and I think that the prosecution kind of made it known it was goanna be a big case and they wanted to kind of have their way with me and that anybody standing in their way would not be on the best of terms with the prosecution ever again. And I think what happened is everybody just kind of fell I the line – all except me.

OSTERMAN: Mistake yeah you won't do that again will yah?

HAEG: Well you know what? Before that you know people on the Alaska Board of Game were telling me "David you end up shooting wolves outside the area you just make sure you say they were inside."

OSTERMAN: I don't doubt it. Of course I'm just a (undecipherable)...

HAEG: ...Brent Cole and Chuck Robinson had no input in this?

OSTERMAN: No.

HAEG: So you mean to tell me that Brent Cole or Chuck Robinson never called you to have any input? And you never called them?

OSTERMAN: No. We called – we called Robinson's office to get information about things that were missing in their file.

HAEG: Ok.

OSTERMAN: That's it.

HAEG: That's it? So when you wrote this – because to me this looks like something that was written to keep Brent Cole and Chuck Robinson out of trouble.

OSTERMAN: No.

HAEG: And you said you didn't write this – so who wrote it?

OSTERMAN: That was actually – the writing of the – the document was done by Joel. He's an attorney that works out of this office. He works 2 doors down.

HAEG: So there's no chance of Chuck Robinson and Brent Cole talking to him without you knowing about it?

OSTERMAN: No. We *will* be tuning this brief up.

HAEG: Well see this is what kills me – is I came in here and told you that I'd been – I felt that I'd been screwed by two attorneys and I've done all this research and I had all this evidence and case law...and I don't see any of that in here and if – if now you're saying you want my input in here well I've...

OSTERMAN: I wanted to hear...

HAEG: ... given you from the beginning my input.

OSTERMAN: The Strickland test is the test that every - every court goes to - to function on ineffective assistance. There is not an ineffective assistance case that does not focus on Strickland. And the first thing Strickland says is you have to look at the overall totality of the circumstances or totality of the performance by the attorney as contrasted against...

HAEG: Or *attorneys*...

OSTERMAN: ...or attorneys as contrasted against what a normal routine attorney would do.

HAEG: It's so vastly different. It's unbelievable what would happen.

OSTERMAN: I cannot input ineffective assistance to Chuck Robinson.

HAEG: (exasperated laugh) Why not?

OSTERMAN: Cause it's not his performance.

HAEG: You want to bet?

OSTERMAN: It is not his performance. His failure to act against Cole is malpractice.

HAEG: Isn't that equated?

OSTERMAN: No.

HAEG: Chuck has an obligation to utilize all legal defenses for me, correct? That'll help me?

OSTERMAN: No.

HAEG: Ok.

OSTERMAN: He's obligated to the standards of an attorney under the circumstances. Under the circumstances how many attorneys would jump up and point the finger at Cole and say "ineffective assistance"?

HAEG: Every attorney.

OSTERMAN: See he can't do anything. If he stands... Look Cole...

HAEG: Anytime he realized it he should have said it. And what got... What's goanna come back and eat Chuck's lunch is when he said he had no obligation to utilize any of that. And I believe both of you were there when he said that with two tape recorders running.

OSTERMAN: See I don't think he has an obligation.

HAEG: He has every obligation to tell me the defenses I have. And he deliberately mislead me and didn't tell me and then when I brought it up he says "oh well I don't have to tell you that" and "an attorney has no obligation to tell the client the truth about the law". He actually told me that.

OSTERMAN: I think that's a little too far fetched.

HAEG: Well I'm thinking that's real far fetched. And then when he -uh- anyway you know and then when I [subpoena] Brent Cole to be there to testify that I had done all this stuff for this rule 11 agreement...

OSTERMAN: Mm hmm. He doesn't show.

HAEG: And Chuck Robinson tells him he doesn't have to show.

OSTERMAN: Mm hmm.

HAEG: Is that my right or is that your right?

OSTERMAN: Bear with me – it's not an issue in this appeal.

OSTERMAN: He didn't tell you that whatever you said would be admissible?

HAEG: Well and truth be told they couldn't have been used against me according to Evidence Rule 410.

OSTERMAN: Yeah. But they were.

HAEG: So I don't even see why he would have had advise me one way or the other because he would have known that they…

OSTERMAN: But they used them against you.

HAEG: I know but doesn't that just - doesn't the – the - the mass of snow coming down just keep getting bigger especially when he tells me he can't do anything about it? .

OSTERMAN: I'm looking at your case and saying, "my god these 2 damn things collided – I've never seen anything like this before." I've never have. This is the strangest damn case I've ever seen. I mean talk about a pile up here. This is a pile up man. Ok. This collision occurred. Wasn't on my watch. I'm standing there going what the hell happened here?

HAEG: I asked them day one Jackie and I were in there I says, "the information or the search warrant affidavits had information that says all the funny stuff occurred in the same unit as my lodge and they have a map and coordinates and they don't jive." Well don't you think that was intentional of that Trooper? Don't you think a Trooper should know – you think a Trooper should know if he busts you for speeding here – do you think that he should say that he busted you on the Kenai Peninsula and not in the MatSu Valley?

OSTERMAN: Mm hmm.

HAEG: Yeah but don't you think that when you get a search warrant affidavit – search warrant and you have an affidavit that has to be sworn to under penalty of perjury. Correct to get a search warrant? You got to go before a judge and you have to pretty much say yeah this is the truth the whole truth and nothing but the truth. And there's some of the stuff on there that aint the truth and it could be an innocent mistake but there were many other areas where he could have put on there that were closer to where this actually happened but the one he happens to pick is where my lodge is. Don't you think that that's getting out there - don't you think that should have been looked at?

OSTERMAN: Again I can't tell you about the tactics of other lawyers. I can only tell you what my tactics are.

HAEG: What would have been the – what would have been the advantage of attacking that for me?

OSTERMAN: -Um- it might have possibly eliminated evidence.

HAEG: (laughs) yeah.

OSTERMAN: Ok.

HAEG: Eliminated – almost all of it would have been eliminated. They would have been left with a couple of red spots in the snow…

OSTERMAN: Most likelihood you would have been reversed. Most likelihood you would have won on a motion. And how do I know this? I've tried this it in front of that very judge.

HAEG: Don't you think it would have been nice to have that bullet in our pockets?

OSTERMAN: It's not ineffective assistance of counsel claim. You didn't bring the motion. There's nothing the Court of Appeals can do. You didn't raise the objection during the trial court level and they won't hear it.

HAEG: Don't you think that that shows Brent Cole's ineffectiveness right there?

OSTERMAN: No. It would show his ineffectiveness in a malpractice suit.

HAEG: So why wouldn't… So what you're saying is Brent Cole didn't object to that because he had some tactic?

OSTERMAN: He might have had some tactical reason that he did not share with you or share with me.

HAEG: And is begging for mercy from the prosecutor not pissing off the prosecutor? As he told all of us or me and her and a bunch… Is that a legitimate tactic?

OSTERMAN: I'm sorry?

HAEG: Is not pissing off Leaders a tactic?

OSTERMAN: Yeah.

HAEG: How come I have Supreme Court decisions that say anytime a [pro] a defense attorney basically hands the prosecution the defendant on a platter there are - that's gross ineffective assistance of counsel?

OSTERMAN: First of all too late in the day to be setting traps. Ok. So go set traps with wolves – don't use me. Ok cause that...

HAEG: Ok.

OSTERMAN: ...the situation is – is it a legitimate tactic? Yes it is...

HAEG: It can't be...

OSTERMAN: It is a legitimate tactic.

HAEG: It can't be. Because why wouldn't everyone of you then...

OSTERMAN: Stop.

HAEG: ...just say... Why wouldn't every attorney...

OSTERMAN: Stop and listen Dave.

HAEG: ...feeds – feed ...

OSTERMAN: Stop and listen.

HAEG: ...their clients into the prosecution?

STOUMBAUGH: Stop.

OSTERMAN: Stop and listen.

HAEG: And I'm not trying to trap you.

OSTERMAN: It is and you tried. Stop and listen for a sec...

HAEG: Not on this one.

OSTERMAN: Yeah. See when you combine...

HAEG: (laughs) no.

OSTERMAN: ...you combine what else he did then it is not a tactic and I agree with you. It is absolute evidence that there's ineffective assistance claim.

HAEG: So and like you said earlier why don't...

OSTERMAN: By itself...

HAEG: … you said it's cumulative. So why don't you add in all the cumulative things? It's a nail in the coffin. Like essentially what the Supreme Court said is that rarely do you nail your attorney in the coffin of ineffective assistance of counsel with one nail.

OSTERMAN: That's right.

HAEG: That's what their saying. It's cumulative. But you have – you have this big handful of 8-penny nails.

OSTERMAN: By itself…

HAEG: Do you just use one?

OSTERMAN: By itself…

HAEG: No I just go all around and I nail him in there.

OSTERMAN: That's right but by itself…

HAEG: And that is one of them. So why isn't that brought up?

OSTERMAN: By itself it is a tactic. Ok. By itself.

HAEG: But you just said it's not a tactic when it is shown with everything else.

OSTERMAN: No by itself it cannot be tac[tic] – by itself it can be a tactic. Ok. But with everything else it is not a tactic.

HAEG: Can I ask you this question? What is subject matter jurisdiction?

OSTERMAN: Subject matter jurisdiction is a matter that specifically set forward by its statute. That says you have jurisdiction in this case because. So let me put it – so a judge – a crime committed -uh- burglary is a felony. A felony is subject matter jurisdiction to a Superior Court.

HAEG: But not to a District Court.

OSTERMAN: Correct.

HAEG: Ok. But mine wasn't a felony so it…

OSTERMAN: a misdemeanor…

HAEG: … was subject to…

OSTERMAN: Subject to the District Court…

HAEG: So they had subject matter jurisdiction?

OSTERMAN: Right if a crime happen within the confines of the State, within a venue district...

HAEG: So why is that first one in there then?

OSTERMAN: Because they didn't have subject matter jurisdiction.

HAEG: Why didn't they?

OSTERMAN: Because they didn't have the right to the subject matter. You should have been charged with the permit not with a hunting violation.

HAEG: You know the last time it was thrown out on that was in 1909 and it was called Saltzer – well just Saltzer.

OSTERMAN: Mm hmm.

HAEG: It was the last time that ever worked...

OSTERMAN: Mm hmm.

HAEG: How come it hasn't worked since?

OSTERMAN: Nobody has been careful enough to do their dam paperwork correct.

HAEG: (laughs) no not a chance. There's hundreds of cases. It's all been determined that it was -uh- -um- harmless error because it wouldn't have mattered one way or the other if it would have been sworn to or not sworn to. If it would have been sworn to the same thing would have happened. Unsworn same thing.

OSTERMAN: Courts jurisdiction is only given by statutes. Ok anything else you want to talk about?

HAEG: I guess not. -Um- I just you know like I pointed out there's some pretty major problems with that. Your brief or whatever and that if you're goanna go after Brent Cole for ineffective assistance of counsel shouldn't you just nail ever nail in the coffin all the way

around? Rather then just picking one – probably not even a very big one? I mean I think him lying to me about my rights to enforce that agreement, lying to me and everybody else,...

OSTERMAN: What's that get?

HAEG: ...and – and lying... It shows that he's got a conflict of interest. Why else would an attorney lie to a client? Just tell me that.

OSTERMAN: I can think of a number reasons why they would.

HAEG: Would all of them include a conflict of interest?

OSTERMAN: No.

HAEG: And why not?

OSTERMAN: People lie for any reason not just for a conflict. Lawyers no better then anybody else. When they lie they lie. They lie because they didn't do something they were supposed to do,...

HAEG: Don't...

OSTERMAN: ... they lie because they took money they shouldn't have taken, they lie cause they're trying to hide some deficiency on their behalf...

HAEG: Exactly...

OSTERMAN: I can't tell you why they lie.

HAEG: Isn't that... Everyone of them isn't he... When you lie isn't it so that you end up with a better outcome yourself?

OSTERMAN: That I come in with a better outlook – or better outcome?

HAEG: Yeah – every person that lies - isn't normally the lie, in whatever fashion; doesn't it always come back to because it's a benefit to the person who is lying?

OSTERMAN: More then likely, yeah. Or a benefit to some other person or even the third party.

HAEG: Yeah a third party that will in turn will benefit...

OSTERMAN: Mm hmm...

HAEG: ... onto the person that's lying. It might not directly be beneficial to them but eventually it will get there. Right? Well isn't my benefit supposed to come first over the attorneys when I hire him?

OSTERMAN: Not necessarily no.

HAEG: Ok well I guess you've told me what I want to hear.

OSTERMAN: They're only out for their own benefits.

HAEG: Ok now I like this. This is a good – good portion...

OSTERMAN: You think about it for a second. Weidner, McCommas, Robinson – now you said Cole's a big hotshot in guide work ok. Me I'm nobody. Ok. And I'm probably nobody for all the reasons...By the way when was the last time one of these hotshot lawyers sent you back money or cut your bill?

HAEG: Brent Cole did and you did.

OSTERMAN: Mm hmm.

HAEG: -Um- I'm thinking Brent Cole's goanna cut me a lot more money back.

OSTERMAN: Before it's all over with probably.

HAEG: And Chuck Robinson is to.

OSTERMAN: When you look at these attorneys you ask yourself a question – did Jim McCommas really want to help me in my case or did Jim McCommas really want to take my money?

HAEG: Yeah but if you look at it – just look at it the way the truth is. Brent Cole was protecting his relationship with the prosecutor. If anybody says any differently their crazy.

OSTERMAN: I would - don't disagree with you the slightest bit...

HAEG: And then if he's lying to me to protect that relationship so we don't go and force... Do you think it would have angered Leaders to be sworn under and have all of us throwing questions at him that he had to answer under oath about that rule 11 agreement? Think it would have pissed him off?

OSTERMAN: Probably. So anyway I'm not here to defend him. I'm not here to defend other attorneys. I'm here to write a brief on your behalf. You tell me that mine's lacking. We'll get to work on it, we'll get you another copy, we'll schedule a date to get you in and hear from you

about this particular… Cause we're goanna get right to it. We're goanna get right to it and we're goanna get this brief out to your satisfaction and to my satisfaction. Deal?

HAEG: Well I'll have to think about it.

OSTERMAN: Ok.

HAEG: I'll -uh- …

OSTERMAN: Fire me at this late game – late date in the game?

HAEG: I'm goanna think about it.

OSTERMAN: Ok. Court of Appeals will never give you another extension. Tell you that right up front.

HAEG: Ok.

OSTERMAN: Ok. They won't.

Phone Conversation 5/19/06

Between Dave Haeg & Mark Osterman

Mr. Haeg: Ok well I'm you know like I said I told you I was just goanna think about things -um- I've just been looking back through my notes and -um- you know it just appears to me like your attitude has changed over when I first you know started talking to you about you know you you know so I'm – I just – I don't want you to get too excited about anything we'll keep looking at what's going on and I guess get back to you on Monday but -um- you know I don't think that you need to get too excited about anything.

Mr. Osterman: What does that mean?

Mr. Haeg: Well I looked back through my notes and when I came into you I told you what Chuck Robinson and Brent Cole had done and you had agreed totally with it, said it was a big disaster, and you couldn't believe Chuck Robinson didn't go right after Cole, and what Cole did with lying to me and all that stuff, and now none of that's in the brief and you know like I told you I'm kind of suspicious about it. To me it seems like you had good intentions to begin with and then as time went on you switched focus and ...

Mr. Osterman: You're concerned that I'm just not spitting fire like I was the first couple of times we met?

Mr. Haeg: Well and you know part of it is I've been burned before and I'd rather just go on my own then to be worried about whose with me is you know protecting the other attorneys. We went you know I just – that brief that you have is absolutely useless and when I first talked to you – you were like "the sell out that happened was just horrendous. The Court of Appeals is just goanna just freak out" and then you write this brief and you even said that Chuck Robinson's statements were or his points of appeal were no good and you didn't like them. Well here your brief comes and it has nothing but Chuck Robinson's things that I showed you are worthless and told you and sent you all the stuff. And then ineffectiveness thing about Brent has one very weak point that probably isn't goanna be upheld and has nothing in there about him lying to me, about not sticking up for the Rule 11 Agreement, none of that, none of the year I gave up, none of the important stuff's in there. What would you think?

Mr. Osterman: Well hang on a second now

Mr. Haeg: What would you think?

Mr. Osterman: Well hang on a second, Dave.

Mr. Haeg: Yeah I mean just tell me what you would think.

Mr. Osterman: Before you work yourself up into frenzy – what I think ...

Mr. Haeg: No I'm not working – I'm totally calm, cool, and collected.

Mr. Osterman: Ok. So what I think is not important. What's at issue here is what is the Court of Appeals going to think. That's the issue.

Mr. Haeg: You don't think – you don't think that you prove that your attorneys lying to you is important?

Mr. Osterman: Well bear with me for a second. You just twisted that handle. Don't do that.

Mr. Haeg: What do you mean twisted that handle?

Mr. Osterman: Well you just – you just had twisted the entire argument. You said, "I gave up a year of being a guide don't you think that that's important?"

Mr. Haeg: No I said that and the other stuff is important.

Mr. Osterman: They could give a shit less. Ok?

Mr. Haeg: Really you think so huh?

Mr. Osterman: This is not an equity argument, this is a legal argument. You're looking at binding legal president.

Mr. Haeg: Yep ...

Mr. Osterman: (inaudible-talking over each other) problem here.

Mr. Haeg: You ever heard of a thing called Detrimental Reliance?

Mr. Osterman: No, Detrimental Reliance occurs in contracts.

Mr. Haeg: Do you know that when you put Detrimental Reliance on a criminal plea Rule 11 Agreement it must be upheld?

Mr. Osterman: No kidding. That's exactly correct Dave. You're absolutely right.

Mr. Haeg: Why isn't there anything like that in your brief?

Mr. Osterman: Primarily because as I said before we were giving you a draft to see how these issues were goanna work with you.

Mr. Haeg: Yep and I sent you all the information that we had and you had read it the first time you came out of the gate all fat and sassy and telling me what I wanted to hear and then as time went on you ended up in a position ...

Mr. Osterman: Are you accusing me Dave - are you accusing me of – of -um- protecting other attorneys and not doing the job for you, is that what your accusing me of?

Mr. Haeg: It sure looks like it.

Mr. Osterman: Ok now you gotta tell me what action it is that you think I've taken that has caused that.

Mr. Haeg: Well telling me all the things that I had found and that you agreed with me right off the bat, were all excited about it – I mean you were just – you were just freaked – you were like "I can't believe that Brent Cole sold you out and Chuck Robinson didn't do anything about it - it's unbelievable". Those –

Mr. Osterman: Right.

Mr. Haeg: those are pretty close to your words. Well where is that in my brief?

Mr. Osterman: Well hang on a second now. That's right but I had not ...

Mr. Haeg: Where is that?

Mr. Osterman: Hold on a second Dave ...

Mr. Haeg: Where'd it go?

Mr. Osterman: Wow Dave it didn't get in there did it?

Mr. Haeg: It sure didn't.

Mr. Osterman: Well why do you think that is?

Mr. Haeg: Cause I think if it was in there old Brent Cole and Chuck Robinson they'd be -uh- flipping hamburgers after they got out of the ****** Federal pen.

Mr. Osterman: Well I got news for you that aint goanna happen here, you're not goanna get that to happen here, and I'm not goanna get that to happen here.

Mr. Haeg: Well you don't know me very well do you?

Mr. Osterman: If – if the things you had told me had been true, ok? Or that I could sufficiently document to raise as an issue we would do so. But a lot of the things that you neglected to tell me, including the fact that you testified at trial and confessed to an awful lot of the criminal activity, ok is a serious problem here. We did go back in and we did find that there may be a reference to a ca[se]– to a -um- the -uh- Courts advisement of your rights that may becoming a big issue and I'm – I'm trying to find that issue. We're also missing I think a tape and we need to verify that missing tape with you because there is an important Appellate issue were the Courts required to advise you that you have a right to testify or not to testify and that the entire right is yours and I can't make you, and defense attorneys can't make you, and prosecutors can't make you, and judges cannot make you testify. And that rule must be read or the case is automatically reversible.

Mr. Haeg: you know I remember the Judge telling me that.

Mr. Osterman: Well you didn't the other day in here. You remember – now I can tell you that the Judge said she was goanna talk to you later in the case and we've found a vague reference to something...

Mr. Haeg: Well it don't matter I think - you know it you know now old Weidner saying the same shit as you and Chuck Robinson had me testify because he said "Brent Cole ****** you when you went in and talked about it". Nobody told me they could have kept all that out. Chucks like you're ****** screwed get up there and testify you piece of shit. And I went up and testified –a- nobody told me about Evidence Rule 410.

Mr. Osterman: Now I know...

Mr. Haeg: They all hid that shit from me - so are you.

Mr. Osterman: Well no I'm not.

Mr. Haeg: I'm ****** pissed.

Mr. Osterman: I'm – I'm goanna tell you that the Court of Appeals is goanna say "he's in the case – he's in the case" because they're not goanna give you anymore time to file a brief.

Mr. Haeg: And I've had people in – you've noticed that every time I come in I have people there to listen so that I'm going

Mr. Osterman: You have a tape recorder in your pocket.

Mr. Haeg: They all – they all say the same thing – we go back through and I said what's going here – what's going on? And everybody – because I've been through this shit enough now. And it just keeps – and even you admitted you said, "I'm goanna go after these attorneys but I sure don't like it – I don't like going after attorneys". Well wouldn't it be better to have somebody

"boy I like going after attorneys", if that's what needed to be done? If you hired me to take you hunting which is what I used to do wouldn't you like somebody that likes to go hunting? Would you – would you hire me if I said, "you know what I really hate hunting. I'll do it if I absolutely have too". Is that who you'd hire?

Mr. Osterman: Hunting what - hunting people or hunting bears? Taking away and depriving people of their livelihoods is that what you enjoy? Are you so crass that that's what you believe? That's what you're asking me in essence to do is you're asking me to go on and interfere with another mans livelihood so I hesitate, I don't think it's the same as hunting a deer out in the woods.

Mr. Haeg: Mark Osterman what

Mr. Osterman: Come to think it's a (inaudible-talking over each other)

Mr. Haeg: what has all - all them attorneys that I showed you what they did what have they been doing to me? They've been hunting me. Exactly ...

Mr. Osterman: No they have not been hunting you.

Mr. Haeg: Want to bet?

Mr. Osterman: By some act of negligence or carelessness they've caused you harm. And granted they should pay for the act of

carelessness or negligence but those people are not out there with a gun trying to shoot you like you're trying to shoot them. As I said before ...

Mr. Haeg: No they've only put so much pressure on me that my wife takes tranquilizers and for every tranquilizer she takes I'll put a bullet in them not through the law but with the Law.

Mr. Osterman: Bear with me for a second. That is going to make me hesitate when I do that – hesitate yes, hesitate to be reflected yes ...

Mr. Haeg: you know what I don't understand Mark is I sent you information that you looked at and you said laid out exactly where the problem was – where – where did any of that information go in that brief?

Mr. Osterman: Ok so now you know the position that I'm in – I keep telling you that – the trouble is sir is that you haven't listened to me about much of anything. You want to tell me how smart you are. I've got news sir I'm not the one seeking a criminal appeal. So don't hand me how smart you are. Hand me how good you and I can cooperate and work together. That is a smart thing to do. That will be to your benefit. But firing me is not goanna be to your benefit. You're goanna be written off as some kind of weirdo kook – you think about that one for a minute and if you don't think it's true I can site you chapter and verse on that issue out of the Court of Appeals and the Supreme Court. Pro se's don't survive – pro se's seldom win.

Mr. Haeg: Well I'd rather go in on my own without thinking that people are out to get me and maybe I'm suspicious but do you know what -

Mr. Osterman: I won't think about it – you're dead wrong.

Mr. Haeg: Huh?

Mr. Osterman: You're dead wrong. I've met people 10 times smarter or better than you that persevered under the worst of conditions.

Mr. Haeg: Ok. That's good.

Mr. Osterman: No sir the fact of the matter is – is that – that is just the opposite is true. You're not being very intelligent.

Mr. Haeg: Ok.

Mr. Osterman: When the paranoia that you're experiencing can be solved with medication.

Mr. Haeg: Is that what you suggest – do you think I should be on ...

Mr. Osterman: (inaudible-talking over each other) I've got news for you

Mr. Haeg: hey

Mr. Osterman: there's nobody out to get you.

Mr. Haeg: Why did you say that they were, at the beginning then?

Mr. Osterman: Your attorneys committed – I did not say they were out to get you – I said they screwed you. There's a difference. You think these people are hiding in dark corners ...

Mr. Haeg: Then why is none of that in my brief now?

Mr. Osterman: You think these people are hiding in dark corners to do you harm.

Mr. Haeg: Well wouldn't that ******* make you suspicious?

Mr. Osterman: Well you're not dealing with what I consider to be the highest intelligence level in the Universe.

Mr. Haeg: Wouldn't anybody intelligent make that – wouldn't that make them suspicious?

Mr. Osterman: Well it ought to make everybody in the world suspicious but as I said you got under(stand) you know

Mr. Haeg: So your – you think I'm a kook?

Mr. Osterman: No I'm telling you everybody else is goanna think you're one.

Mr. Haeg: Well I guess I'd rather go out a kook when I go to US Supreme Court and show them that Brent Cole did nothing but sabotage my whole case and then Chuck Robinson jumped in and was goanna do a valiant effort. Well it's hard to do a valiant effort when your fighter, your man your advocating for they chopped both his legs off already. It's hard for him to win.

Mr. Osterman: I understand.

Mr. Haeg: Well you don't understand. Do you know that in the US Supreme Court they said that it's supposed to be a fight not maybe equal but neither is it the sacrifice of unarmed prisoners to gladiators and what the **** happened to me? They took every defense; they took all my money; they took all my weapons - and I'm goanna go – Brent Cole said that false information on a search warrant didn't matter, Brent Cole says give them a 5-hour interview nothing in writing-nothing, give up a whole year of your life, wipe out your kids college funds and everything, fly in everybody for this moose thing, oh they – they've changed the charges, used all your – your statement against you to file all these charges, oh it don't matter, you go to trial now that you're ******* screwed, defenseless, and penniless. That is not Constitutionally Right. You know it, I know it, and I don't care what the **** you say that you know it's going in there.

I thought you were my man, in my corner, when I called you and you said, "oh man it's so bad the sell out" – you said the sell out is the worse thing you'd ever seen. Well then you pick out one little portion of what the sellout was and water it down and put it in there at the last. –Do you know that I've got -uh- you still there?

Mr. Osterman: Yeah.

Mr. Haeg: Do you know that we've actually got West Law, we signed up to West Law. Now that's pretty dedicated. Do you think that was a smart move?

Mr. Osterman: I don't – I don't necessarily – I think there are better services then West Law, for the price.

Mr. Haeg: Ok well so anyway. We print off how to write a brief. You say "oh we want to hide your main issue until the reply brief". It tells us that you – first impressions are the utmost importance, utmost – do you know what that word means – utmost?

Mr. Osterman: Yes.

Mr. Haeg: Well it says how to write a good brief the utmost importance is first impressions. Do you throw in there what you have first in the brief that's absolutely useless – that the subject matter jurisdiction? We even looked up subject matter jurisdiction. You guys are blowing so much smoke it's not even funny. You're goanna go in there, the Court of Appeals would look at it and they'd go oh this guys ******. They won't even get to the Ineffective Assistance of Counsel because that's – they've already got their impressions made. I'm goanna go in there and you said to write a brief that grabs them by the balls. Well when they get this brief they're goanna look at it and you know what I don't even really care if they throw it out because it will

be on the record and when I get to the US Supreme Court they're goanna ****** sit up and go holy **** what are these attorneys doing to citizens that don't know the law in Alaska? They're goanna ****** freak, they're goanna send up the aircraft carriers, the destroyers, the tanks, and clean out this nest of ****** lawyers and Department of Law. They are ******* breaking the goddamn citizens Constitutional Rights for Effective Assistance of Counsel and for a fair trial because you know it, I know it with Murphy and Leaders and my own ****** attorneys working against me how do you get a fair trial? You don't. You end up getting screwed. What happened to me? I got screwed. I'm smart, I'm tough, if it could ****** happen to me Mark Osterman it would have happened to virtually everybody. No one would come out of it like I did and persevere and figure out the law like I did, but I did. My whole – my whole life I grew up on correspondence, I graduated with a 4.0 grade average, standing scholarships to Stanford, Harvard, and Yale. I can ****** get the letters for you if you want. I'm not smart – I aint been to college but I ******* read and I understand what I read and that's all you goddamn need. I don't care what you guys interpret. I'm ******* pissed. You guys water everything down and I'll tell you what - you guys better be ******* scared man because when this shit ******* hits the fan there's goanna be some shit ******* flying I'll tell you what so – anyway I'll talk to you Monday and go from there and thank you very much. Bye.

Phone Conversation 5/22/06

Between Dave Haeg & Mark Osterman

Mr. Osterman: I have no conflict of interest with your interests.

Mr. Haeg: Yeah you did.

Mr. Osterman: Do not.

Mr. Haeg: You said that you're not willing to interfere with other peoples livelihoods on my behalf even though they committed – what'd you say like -uh- -uh- I don't know what you – they committed horrendous and unbelievable acts.

Mr. Osterman: Are you there?

Mr. Haeg: And how do you bring – now this is one thing that really - really gets me. How can you bring up stuff that's not on the record for the ineffective assistance of counsel claim in what you put in there and not bring up the rest of it?

Mr. Osterman: Because the Ineffective Assistance claim goes to the ability of the clients per – I'm sorry – the attorneys performance on behalf of the client in the courtroom. That's the Strickland criteria. The Strickland criteria isn't whether he called you a dunce outside a courtroom or thought you were stupid. That's not Ineffective Assistance.

Mr. Haeg: So when on the - the issue that you did bring up how was that in the courtroom? Tell - just explain that one to me.

Mr. Osterman: Well – well it relates to substantial rights that you have since you have a 4th and a 5th amendment right those rights are substantial rights and he violated those particular rights on your behalf in judicial matters. In matters before the Court. In the matters before the Court were plea agreements because plea agreements are judicial matter. Don't believe me look up Rule 11 in the criminal rules. It deals with the conduct of plea agreements.

Mr. Haeg: And how come none of the stuff of him not -uh- saying that at my arraignment is in there? Because that was on the record?

Mr. Osterman: Well things that were on the record are certainly part of it. Bear with me for a second. You...

Mr. Haeg: They weren't anywhere to be seen in the brief.

Mr. Osterman: Listen – listen to me. You're the one that came to me and hounded me for a draft and I told you I wasn't happy about shipping you out a draft but I would see to it that you got one. Well you got the draft that came back to me from Joel Rothburg, that outlined the issues that were goanna be discussed in your case. Now you got all bent out of shape about what the orders goanna be, and what does this mean, and what does that mean, and I don't like this, and I don't like that, and I don't know what this word means, or that word means. I got news for you. The brief isn't written. You haven't seen the final product. You only saw the document provided to me by a person I retained on my behalf to help me with writing your brief.

Mr. Haeg: No because you told me that you told him about the ineffective assistance of counsel stuff and none of that was in any of the materials I sent you. So you were a part of that brief. That's what you told me ...

Mr. Osterman: That's right.

Mr. Haeg: So you telling me now that you weren't?

Mr. Osterman: Oh no I – I did very – had very little writing – in fact -uh- probably if you take – if you took a look at the ineffective assistance portion of that – that was my draft of that particular issue. Joel never wrote that I did.

Mr. Haeg: Hmm.

Mr. Osterman: That particular issue was put in by me ...

Mr. Haeg: Yep.

Mr. Osterman: -uh- dealing with that particular issue ...

Mr. Haeg: So ...

Mr. Osterman: ... because it was an important issue.

Mr. Haeg: ... anyway you told me you have a conflict of interest –

Mr. Osterman: I do not have a conflict of interest

Mr. Haeg: I don't want you as my attorney anymore. I'm goanna send you a letter, you're fired. You touch any of my stuff, do anymore, like you said you need something in writing it's coming. So as far as you, as far as of this moment right now you are no longer my attorney. Ok is that clear?

Mr. Osterman: -Uh- it's clear I understand it – I will continue until I get a written verification from you – you no longer want it and then I will make application to the Court of Appeals. Now you have to understand that whatever you send me in writing I'm goanna forward to the Court of Appeals.

Mr. Haeg: Very good I like that.

Mr. Osterman: Ok. And I got to tell you that if it's derogatory I also have the right to file a affidavit with the Court concerning your conduct.

Mr. Haeg: I like that even better.

Mr. Osterman: Ok. So I – I would be very careful sir about what you do because all you need to say is that you no longer have any faith and in trust and confidence in me. But if you go into grave detail about what's goanna happen, or what you think happened, or what I said, or what ...

Mr. Haeg: No what I have proof

Mr. Osterman: Or what I did

Mr. Haeg: – no it's what I have proof of happening. That's what I have. I have proof. I have you telling me when you took my money that Brent Cole and Chuck Robinson committed unbelievable acts against me. Unbelievable ...

Mr. Osterman: Right.

Mr. Haeg: and now I have you saying that oh you don't want to deprive people of their livelihoods. Well what happened to me?

Mr. Osterman: No I told you that before ...

Mr. Haeg: What happened to me?

Mr. Osterman: I told you before I go in to do something like that I'm very - very careful. I'm very cautious.

Mr. Haeg: And do you know why ...

Mr. Osterman: ... that raises the issues ...

Mr. Haeg: ... you want – now it's as obvious ---

Mr. Osterman: that ought to get your case reversed

Mr. Haeg: its as obvious as the nose on your face that the reason why you want to continue working for me is so that you can control the situation and keep two attorneys from paying the piper for their malpractice in representing me.

Mr. Osterman: I'm not out for malpractice. Told you that. We're not doing a malpractice case. We're doing an Ineffective Assistance of Counsel claim.

Mr. Haeg: The two are one in the same.

Mr. Osterman: No they're not.

Mr. Haeg: How come ...

Mr. Osterman: I'm not here ...

Mr. Haeg: ... when the Shaw case where the

Mr. Osterman: ... I'm not here for a civil case ...

Mr. Haeg: ... Alaska Supreme Court says that they are two in the – one in the same? I said you don't do two of – you don't do a malpractice case at the same time there's an Ineffective Assistance of Counsel because if you prove Ineffective Assistance of Counsel malpractice is virtually guaranteed.

Mr. Osterman: To some extent, yeah.

Mr. Haeg: Well now I start wondering ...

Mr. Osterman: But I'm not doing a civil case.

Mr. Haeg: Now I start wondering ...

Mr. Osterman: My focus is not civil.

Mr. Haeg: I start wondering Mark now if they're essentially one in the same and you don't want to harm these other attorneys and -uh- d – take away their livelihoods yet ineffective assistance which is my strongest claim if – I guess you wouldn't quit have to be a lawyer to understand that if I go after them and I win on Ineffective Assistance of Counsel I am effecting their livelihoods, correct?

Mr. Osterman: I guess – I guess Dave maybe you have all of these very negative and bad motives when you go to work for people like you exhibited with Fish and Game when they gave

you a permit to go shoot wolves within an area and you decided you were smarter then the people that gave you the permit. The whole situation here is that I'm not trying to protect Chuck Robinson nor am I trying to protect Mr. Cole. I'm trying to achieve one thing and that is to seek the reversal in the Court of Appeals for your case on issues because the reversal of that case is what you hired me to do. If you hired me to pursue Chuck Cole and – I'm sorry – Chuck and Mr. Cole I would not have been retained by you. And I told you at the outset. I told you I'm not interested in pursuing a legal malpractice claim against anybody else out there. But effective assistance of counsel is an issue that I can handle. And I will take an effective assistance of counsel claim. Now that doesn't mean that I'm goanna go out and be revengeful, and nasty, and mean on your behalf because that's what you like. I'm telling you I'm goanna go out and do the job for you to get the reversal that you need in your case so that we can get the right plea agreement in place, at the right time, or whatever, or get your sentencing modified to adjust it more like the co-defendant, and possibly not lose the airplane which I think is probably the most grievous factor here. That your guide license ...

Mr. Haeg: Well don't you – don't you agree that – that Tony Zellers attorney – Tony got screwed too – Tony's looked at what I've said he says "I got screwed too". My attorney never stood up for keeping my statements out of my thing either. Well what the hell ...

Mr. Osterman: Well I don't disagree with you

Mr. Haeg: ... is going on with these sons of bitches, man?

Mr. Osterman: Well I – but see I'm telling you right now ...

Mr. Haeg: What the hell is going on?

Mr. Osterman: ... these sons of bitches have been in this particular area of practice for so long they've been schmoozing so many people that when they hit Scot Leaders the new kid on the block they had no idea what was goanna happen. And it happened to them.

Mr. Haeg: Well wasn't it there duty to say "hey Scot Leaders broke the law"?

Mr. Osterman: Well damn straight they should have said ...

Mr. Haeg: Well why didn't they?

Mr. Osterman: ... no – no Scot didn't break the law.

Mr. Haeg: Yeah he did ...

Mr. Osterman: Well he broke a rule ...

Mr. Haeg: ... he broke the law

Mr. Osterman: ... he broke a rule – he broke a rule of evidence

Mr. Haeg: ... attorney fights it?

Mr. Osterman: No he broke a rule of evidence damn it. It's not a law.

Mr. Haeg: He – he – he broke the evidence rule to harm me and my co-defendant, correct?

Mr. Osterman: Absolutely I don't disagree with you. Ok. But how do I get to him? The only lawful to get to him is to go in and upset the case in the Court of Appeals. But you're tying my hands behind my back and decided you could do a better job and I've t – I've told you that going out there with a flame thrower to melt people down in the Court of Appeals is

not going to work effectively. The Court of Appeals is not going to listen to those kinds of arguments ...

Mr. Haeg: Oh they'll ---

Mr. Osterman: They'll throw you out

Mr. Haeg: ... they'll listen to this – they'll listen to this subject matter jurisdiction more so huh that last was upheld in 1909?

Mr. Osterman: I'm telling you the propriety of your case hangs on what Cole did to you and perhaps on the fact that Robinson failed to – to back it up. But at the same time I'm also telling you that when it comes to effective assistance of counsel as determined by that little short 2 page article with footnotes for the third page. Ok? If you read that, if you comprehend what effective and ineffective assistance are and measure it by the Strickland test I can't get to Chuck. Can't do anything with Chuck. Maybe something could be done ethically with Chuck. Ok? Through the attorney grievance commission for his conduct for not seeking to back it up. I don't know. I don't know that his – that his decision – I couldn't find anything in any of my research anywhere that said that his failure to shove that plea agreement down their throats was ineffective assistance. Ok? I couldn't find anything. And I couldn't find any indication or any other indicia that lead me to conclude that. Cause I made that statement to you – I just don't feel like I – that's it's my responsibility to run around and destroy people's livelihoods. And I don't give a damn if they're fishermen, or bankers, or whoever

they are. If I've got clear cut evidence that somebody screwed up they're goanna hang. Mr. Cole I've got clear-cut evidence of, Chuck Robinson I - it's not so clear. Not so obvious.

Mr. Haeg: Well what's the clear cut evidence of Brent Cole?

Mr. Osterman: Brent Cole obviously failed to appraise you, that statements made in a plea agreement could possibly come back on you in some fashion. And the fact of the matter is - is that he failed to secure the plea agreement. That is the – the – the – the qualifier. He ***** up. He ****** up royally. He ****** up cause you've been ...

Mr. Haeg: That's all he did?

Mr. Osterman: Well bear with me for a second he's been out there doing these damn game cases for so long that he – that he thought he was dealing with somebody else not with Scot Leaders. That's what I think was his **** up was his judgment but he hung you out to dry. His bad judgment should not be affecting your life. Ok?

Mr. Haeg: And isn't there – isn't there anymore proof like you said – you told me that -uh- Ineffective Assistance of Counsel was a cumulative thing. Is that correct?

Mr. Osterman: It is a cumulative thing cause it looks at and determines the entire performance. You have – you have objective and subjective criteria in the you – you – you look at that article and it will give you the answers.

Mr. Haeg: Wouldn't – wouldn't a wise attorney put in every thing that – that showed ...

Mr. Osterman: Listen

Mr. Haeg: ... the ineffectiveness?

Mr. Osterman: But well – not - bear with me for a second. Perhaps ...

Mr. Haeg: Or – or is that attacking the attorney too much?

Mr. Osterman: Well first of all bear with me for a second. How's the Attorney General in response to your motion on appeal going to claim that Cole's process was not ineffective? He's goanna have to go to the Strickland test and say, "Strickland doesn't apply". Ok?

Mr. Haeg: Why's that?

Mr. Osterman: Well bear with me for a second. Strickland is the only measure of Ineffective Assistance of Counsel. The Strickland test coming out of the Strickland vs. US case. Ok? If Strick – if the Strickland criteria is there – the State can go spit in the wind. Once you've established that criteria. If I go into the ad homonym attack. Well he did this, knowing that, and he did this knowing that, I give them fuel to say this is all bullshit judge and you ought to - you ought to just not even consider it. Because see all the emotional baggage in there causes damage to the claim. We want to – we want to face the claim in cold steel eyes and say here it is. In fact slightly understated makes the Court of Appeals understand the nature of the claim.

Mr. Haeg: Yep.

Mr. Osterman: Which is goanna lead us off into the bushes and we're not goanna go this, we're just goanna disregard the claim. But if the claim is on all fours, focusing on Strickland, which is why I sent you that case very early on. That case is on all fours. That case says "failing to

advise a client of the 5th amendment repercussions of making statements during plea – during - uh- plea negations is ineffective assistance." Boom that's it. But if I got that on all fours why do I need to elaborate? Why do I have to go beyond?

Mr. Haeg: I thought you said it was cumulative.

Mr. Osterman: It is cumulative but bear with me for a second.

Mr. Haeg: What does cumulative mean?

Mr. Osterman: What else did he do? He failed – he failed to get the agreement in, he failed honor rule 412 ok, he failed at a couple other issues ...

Mr. Haeg: I thought it was 410.

Mr. Osterman: But hey what he said to Dave is that important? No.

Mr. Haeg: Oh so him telling me that I couldn't seek enforcement of the Rule 11 Agreement that's – that's not important?

Mr. Osterman: Oh ok so what – what happens if you put that in? Do you know what's goanna happen?

Mr. Haeg: What?

Mr. Osterman: They're goanna ask him, Cole, for an affidavit about whether he said it.

Mr. Haeg: And what's he goanna say?

Mr. Osterman: Well he might – he might swear back an affidavit that at the time that was not a part of de – the overall discussion – in according to his recollection. Then you're goanna

wheeled out this tape see and then your goanna have all kinds of problems.

Mr. Haeg: And that's when they're goanna throw my case out.

Mr. Osterman: Well that – in my opinion that's when it's goanna get nasty and as I said before nasty is not what they want. This – look – look this Court of Appeals is a panel of 5 judges and 3 sit here and 3 sit there so there's always a guy moving around. I think Mannheimer's the swingman right now. And Mannheimer's a freaking Nazi.

Mr. Haeg: I thought the Court of Appeals was only 3 judges.

Mr. Osterman: It's 3 judges but there's 5 of them and they impanel themselves 3 at a time. You follow me?

Mr. Haeg: So who all – who are all 5?

Mr. Osterman: Huh?

Mr. Haeg: Whose the 5 judges?

Mr. Osterman: I can't tell you off the top of my head who all 5 are. I know Manheimer's there and I think Coats is the other one, -uh-

Mr. Haeg: Stewart?

Mr. Osterman: and there's another one but see there's – there's also I believe there's a panel out of Juneau, if I'm not mistaken. Anyway bear with me for a second the – the current – the situation involving this panel – as – as I said – I have only appeared twice in front of the Court of Appeals. And that was years ago. That was -uh- lets see probably 6 years ago. – -Uh- or there abouts. The -um- the – the situation with the Court of Appeals is if we've got

Manheimer on there that's all these guys do day in and day out is listen to tapes and look at briefs, listen to tapes and look at briefs. They each have two – two -um- law clerks. A pro clerk and a con clerk, ok? The con clerk – his job is to write the opinion – the negative opinion about the matter. The pro clerks job is to write a pro opinion about the matter. Then the two of them come in after oral argument and they make an appe – they appear before the Court of Appeals justice and make an argument about the matter.

Mr. Osterman: Scot Leaders ...

Mr. Haeg: And how did all that play out in front of ...

Mr. Osterman: ... could give a shit less as long as he gets you behind bars

Mr. Haeg: Oh.

Mr. Osterman: They're not goanna fire up old sparkey for you either. They did not – you know you think you've been the only one that had losses in fish and game cases. I suggest you go back and look at the newspaper articles and read them. There are a lot of people who suffer major forfeitures ...

Mr. Haeg: Well ...

Mr. Osterman: for violations of fish and game.

Mr. Haeg: Hey. Hey Mark you know what I figured out how they do it. Isn't that something? I think that when I figure out how they do it illegally that I think the public should know about that.

Mr. Osterman: Do what illegally?

Mr. Haeg: How the State utilizes your own attorney as a prosecutor in disguise. Because if you look at Brent Cole what did Brent Cole do that would ...

Mr. Osterman: I told you before what ...

Mr. Haeg: been any different then what he would've done if he was a prosecutor in disguise? Now let that sink into your brain for just a minute. Prosecutor in disguise – that means that although I pay him he's working for the State. What would be a prosecutors in disguise actions for his client? What would he – what would be the first thing that you would say if you were a prosecutor in disguise?

Mr. Osterman: I'm not goanna – I'm not goanna go there. I – I ...

Mr. Haeg: Well I thought about it for a long time. The first thing I would do is I'd say "man you are screwed", ok? "All that evidence of the falsification of the search warrant that don't matter your screwed. Hey come on in and give the prosecutor – he's goanna be – the prosecutor's goanna be ******* nice to you man. Come on in and give him a 5 hour interview because that's gee – gee wiz Dave – I mean I'm advocating for you, boy I'm pulling hard for you, come on in buddy. Ok. Oh next -uh- I guess it's time for you to give up your livelihood cause the prosecutor wants it. He's got to have it. Cancel all your income for a whole year and your wife's income for a whole year, because I'm advocating for you buddy. I'm – I'm behind you. Me I'm fighting Scot Leaders. Shit the last time Scot Leaders left the room I – he's not goanna walk for

a month I'm fighting for you so hard. So you roll along and I' m advocating for you boy I'm in your corner. That ******* Scot Leaders I'm ******* him up. He's – he's got broken legs – he's got – it's goanna be months before he comes out of the hospital because I hit him so hard with that you given up your livelihood for a whole year. Ok now – now he's got to – he wants to talk about this moose case and hey if you talk about it at your sentencing it might make the State look bad. You talk – oh man Dave now that – that gave Scot Leaders another broken arm. Having him be able to bring in that moose thing to -uh- - to -uh- enhance your sentence. Enhancing your sentence makes it better for you Dave. Enhancement of a sentence that's good. You like that yeah bring that in. Ok Dave we're coming along oh we got the deal of the century now Dave. For that thing fly in everybody from Illinois and from the bush and bring them on in so that your sentence can be enhanced. Yeah come on up we got a pre-sentence meeting here 5 business before your suppose to do it. Oh the deals changed. Old Scot needs some more stuff Dave. Throw in your plane. Scot wants to learn how to fly before your sentencing so he knows that - that plane is one of the best in the world for bush flying but man that's goanna break another one of Scot's arms by signing it over to him Dave. Yeah I'm advocating for you Dave. Oh boy I'm a working hard for you Dave. Oh – oh Dave – oh you don't want to give him the plane? Well you got to Dave. That's the way the games played Dave. I'm advocating for you Dave come on now. Scot that – your plane is such a badass plane that when he jumps in it – it'll break his arm. The torque of that engine's so powerful it will break his arm. I'm advocating for you Dave. Oh come oh ...

Mr. Osterman: Dave are you done?

Mr. Haeg: I didn't mention that I knew this 5 days before that he was goanna break the deal Dave but all that money that you spent I'm advocating for you Dave man I'm in your corner man. I'm in your corner."

Mr. Osterman: Dave.

Mr. Haeg: Now tell boy he was a good advo – now what would he have done differently if he would not – if he would've been a prosecutor in disguise what would he have done differently? Answer me that one question, please.

Mr. Osterman: I – I – I can't tell you I don't know.

Mr. Haeg: Because you agreed that if Scot Leaders had an evil twin and he somehow convinced me he was goanna be my lawyer he would have made the same exact plays, wouldn't he?

Mr. Osterman: I don't think so, no.

Mr. Haeg: Well – ok what do you think would have been different? They would have just said you're – they would've got the firing squad out or what?

Mr. Osterman: I just – I just don't share your ideal that everybody is behind the tree right here trying to gun you down.

Mr. Haeg: Well Brent Cole never - Brent Cole – ok admit this. -Um- I'm on a – a runaway freight train right heading for disaster. And Scot Leaders is trying to make the hill – the hill steeper and to keep us off the break, right? Now is it my attorney's job to step on the brake?

Mr. Osterman: No.

Mr. Haeg: He's supposed to soften the impact any way he legally can for me.

Mr. Osterman: the - the thing is I can't tell you what Brent Cole ever did ...

Mr. Haeg: Brent Cole actually committed crimes ...

Mr. Osterman: You're asking me ...

Mr. Haeg: actually lied to me

Mr. Osterman: You're asking me ...

Mr. Haeg: to protect what the State was doing. He actually lied to me in front of a whole pile of people to protect what the State was doing. Is that advocating for your, tell me?

Mr. Osterman: No he wasn't advocating – he – his mistake was in talking you into that plea agreement among many other mistakes that you may claim.

Mr. Haeg: That I may claim?

Mr. Osterman: That is the significant one.

Mr. Haeg: Oh and then another thing that interests me is you said that I lied to you. What have I lied to you about?

Mr. Osterman: You lied to me about not being – about not – (exhales) when did I say you lied to me?

Mr. Haeg: You said you have lied to me.

Mr. Osterman: When? Today?

Mr. Haeg: A conversation – no. I think it was on the 19th of this month. Three days ago you said you have lied to me, you have neglected to tell me stuff, and that's why your in deep shit.

Mr. Osterman: I don't recall ever saying that to you.

Mr. Haeg: Well you know I tape everything so you want me to play the tape?

Mr. Osterman: Well I know you tape everything – well I don't give a damn if you do or you don't.

Mr. Haeg: So what did I lie to you about?

Mr. Osterman: Well it's not the issue here. The issues lets go back. Do you understand ...

Mr. Haeg: No this is an issue I want to know why my attorney that I paid $12,000 dollars to tells me I'm lying to him. I want to know what I'm lying to him about.

Mr. Osterman: I don't recall that I said that you lied to me. In the mean time do you understand the requirements necessary to establish Ineffective Assistance of Counsel in an appeal?

Mr. Haeg: I understand that it's cumulative and I also understand ...

Mr. Osterman: Do you understand what case...

Mr. Haeg: I also understand this to Mark that everywhere it comes up it says because Ineffective Assistance of Counsel will rarely be on the record we will utilize – we will – we will grant great discretion in what the defendant wants to bring in to establish that because no attorney is going to jump up on the record and say "I'm a dumb ass I committed malpractice over and over" that comes out because if your attorney screws up he's going to hide it because like anybody he protects his own first.

Mr. Osterman: No I don't agree with that.

Mr. Haeg: Well it's human nature.

Mr. Osterman: I'm really tired hearing about the shark swimming in the water and too much sand and all that bullshit.

Mr. Haeg: So you don't think Brent Cole tried to hide the fact that he ...

Mr. Osterman: That's not the question ...

Mr. Haeg: Yeah it is.

Mr. Osterman: and not the statement that you made. No it is not.

Mr. Haeg: Yeah it is. I said that isn't it ...

Mr. Osterman: You said as a generality lawyers try to hide their own and that is a false statement.

Mr. Haeg: I tried to – I said that the courts have said that as a general rule ...

Mr. Osterman: That is not the general rule that is a case – a completely different case then the standards I've told you about. I've told you to focus on Strickland. If you're goanna write your own appeal Dave you'd better go back and look at Strickland and understand what the criteria is.

Mr. Haeg: I can damn near quote it to you verbatim.

Mr. Osterman: Then lets hear it.

Mr. Haeg: It says that there's two prongs. First prong is that you have to prove that there was actions of your attorney that would not be taken by a reasonably diligent attorney acting in a conscientious behalf on his client and it must be just you know that – essentially what they're saying is an average – a normal attorney would not commit the action. And then the second prong is that action had to have an adverse effect on your case. An adverse effect is there's a reasonable probability that the outcome would have been different. Well Brent Cole by having him do all this shit, and lying to me about not being able to keep the Rule 11 in place, so I ended up going to trial, and Chuck Robinson lying to me about me not being able to enforce the Rule 11 Agreement and whatever, I ended up with a 6 year license suspension. That will cost me close to 5 million dollars when it's borne out. Now the deal that I had was a 1 to 3 year license revocation dependent on my culpability in a moose hunt.

Mr. Osterman: Mm hmm.

Mr. Haeg: Well the old moose hunt came out and holy shit there's really nothing wrong so that would lead to tell me that it would have probably had the same outcome during that so I'd of had a 1 year license loss rather than 6 years. Now -um- Mark what other jobs do you have other then practicing law? Can I ask – and you don't even need to answer – you can say that that's none of my business. But I'll just assume that practicing law brings in most of the bacon for you.

Mr. Osterman: It does.

Mr. Haeg: Now – now if you were bringing in the bacon mostly from your law practice would a 1 year suspension of your practice effect you less then 6 years? I'm saying that by gum I think Mark might be going a little – maybe not totally not hungry for 6 years but there'd be a pretty big strain as you went back to school for some other thing you could do or maybe you just wanted to tool into McDonalds and start flipping burgers. Now I'm thinking that that would be a pretty big difference in your case. And along with -um- oh by gum at your sentencing none of this stuff came up about the deal, what you already did on your own, which the judge in sentencing Tony Zellers says is – is -uh- evidence of -uh- of your – your willingness to accept responsibility and proof – proof of your rehabilitation. Well none of that came up yet I did all that before Tony Zellers. Don't you think by gum the judge might – if that would've been brought out don't you think she would've might have had something along the same lines to say to me?

Mr. Osterman: Which is – which is one of the issues we raised on appeal is that the – it may not be there -uh- per say but I think that it – that – that we – I know we discussed it with Joel and I thought that I saw some suggestion of it there but one of the issues ...

Mr. Haeg: Well none of that's in there.

Mr. Osterman: One of the issues

Mr. Haeg: None of it's there ...

Mr. Osterman: ... that I've raised. Pardon?

Mr. Haeg: And another thing is you say that "oh we want to spring all this good stuff on them on the reply brief". Well I – I found an interesting thing. It says that anything that's not in your main brief can't even be brought up in your reply brief.

Mr. Osterman: (exhales)

Mr. Haeg: How do you bring up the stuff that you're goanna hide?

Mr. Osterman: We're not hiding anything.

Mr. Haeg: Well you said ...

Mr. Osterman: The issue – the issue is we're talking about the Ineffective Assistance of Counsel claim. That's the focus of the claim. The ineffective assistance claim we're goanna go bare bones and let them come in and argue that it's not Strickland. That once we've made the argument there – the issue is there then we can certainly heap on any evidence that we may have to add to – to strike home the point.

Mr. Haeg: Well if it's your main issue

Mr. Osterman: So if we don't raise the ...

Mr. Haeg: if it's your main issue why's

Mr. Osterman: The other issue that I raised – the other issue that I raised with you and still contend ought to be a part of the brief is the issue that the courts -uh- number 1 the courts should not do a 2 am sentencing...

Mr. Haeg: So how come none of that's in there?

Mr. Osterman: issue ought to be raised. Well I think that issue ought to be raised. Our problem is we've again – I told you before – we needed to see if these issues were goanna be effective with you. I intended to strike one or two of these particular or at least narrow them. I've already rewritten the facts – we're down to about 7 pages on the facts now that we can footnote out and get moving, ok giving us more space ...

Mr. Haeg: Well like I told you – you don't need to do any of that stuff.

Mr. Osterman: I don't – you don't need to waste anymore of my time ...

Mr. Haeg: Yeah there's just well you know I'm just trying to highlight why I am so upset and why I think that this whole process has disenchanted me that I mean the whole process has broken down for me. From my attorneys, to the prosecutor, to judge and to the troopers. It's not just anyone thing. It's cumulative over and over and over and many times ...

Mr. Osterman: David if – if you acted like you have with me with your attorneys I'm surprised things didn't go worse for you. Ok?

Mr. Haeg: Well do you know what – do you know

Mr. Osterman: and I'm surprised of that because ...

Mr. Haeg: do you know you can ask Brent Cole this. Do you know when I – you pro – I gave you the transcripts you should have read what – how – how gentlemanly like I was with him,

how respectful, how honest, and when he told me "I can't piss Leaders off because I have to work with him in the future". When I asked how we could make my Rule 11 Agreement stand do you see how my attitude may change?

Mr. Osterman: (sighs) I do.

Mr. Haeg: Right.

Mr. Osterman: And – and I also – and I also

Mr. Haeg: Ok.

Mr. Osterman: see how you carried that very same attitude when you left Cole with you to Robinson. And I've seen that very same attitude ...

Mr. Haeg: No – no when I left him to – don't you ever do that to me Mark Osterman. When I walked into Chuck Robinson's office I had known him from a child. I have pictures of him where I flew him across the Inlet, I had his life in my hands when I was 16 years old in my plane. I took him halibut fishing and I filleted his halibut to him – for him. When I hired him I was so relieved and so glad and so grateful I would have got down on my knees...And I went – he put me through ******* hell and I did everything that man asked, and I ******* did it on bended knee, and in grateful eye. When I found out he ****** me and my family I'm goanna come back like an avenging angle on that black **** because he was my friend and he utilized that against me. I ******* came in with my hat in hand begging and pleading and I paid that man $40,000 dollars and he ****** me and my family. Do you see how my attitude changed, Mark Osterman?

Mr. Osterman: I do.

April 4, 2006

Law Office of Mark Osterman
215 Fidalgo Drive, Suite #106
Kenai, AK 99611

Mark,

I've got a few things that I would like in my appeal if they are appropriate.

The main one which I feel has to be in the appeal is that Brent Cole and Chuck Robinson had actual conflicts of interests. Brent in preserving and enhancing his deal making ability with the State of Alaska (the proof of which is everywhere in all the lies we have documentation of not the least of which is in his lying to me that we couldn't even try to enforce the Rule 11 Agreement even though we had such great Detrimental Reliance on it), and his and Chucks conspiring together to keep Brent Cole from testifying at my sentencing to the fact that we had indeed paid so much for a Rule 11 Agreement that everyone told us could be broken by the State with no possibility of making them honor it. Chuck's actual conflict of interest is documented throughout all the tape recordings I have of him telling me no matter how bad Brent Cole was, how much he had lied to me, and how much damage he had done to me there was absolutely nothing we could do about it. Then when I found all the law about Detrimental Reliance and Ineffective Assistance of Counsel claims Chuck Robinson told me on tape in front of multiple witnesses that he had no obligation whatsoever to utilize any of this for my defense. I require these defenses to be put into my appeal. I want it very obviously stated that there was actual conflicts of interests from these two lawyers in their representation of me and that all of the other things that happened where just symptoms of this single problem.

If we prove there was an actual conflict of interest we don't even have to prove that there was prejudice. By the Supreme Courts definition the likelihood of prejudice is so great that case-by-case inquiry is not worth the cost.

``One type of actual ineffectiveness claim warrants a similar, though more limited, presumption of prejudice. In *Cuyler v. Sullivan*, the Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial

courts to make early inquiry in certain situations likely to give rise to conflicts, see, e.g., Fed.Rule Crim.Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest. Even so, the rule is not quite the per se rule of prejudice that exists for the Sixth Amendment claims mentioned above. Prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance.''

When we meet in person again I want to be able to talk to you and hopefully the person looking for tactics for my appeal and go over the many US Supreme Court cases which I believe you may have already copied which support our position. I also have found that the American Bar Association Standards point out many more situations Brent Cole was ineffective.

http://www.abanet.org/crimjust/standards/dfunc_toc.html

I have found a treasure trove of actions, which Brent Cole took while representing me, that are in direct violation with these Standards.

Standard 4-1.2 The Function of Defense Counsel

(a) Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused. In other words if there is no counsel for the accused there is no properly constituted court. Brent Cole in failing to represent only my interests cannot be considered counsel for the accused. Chuck Robinson, in representing Brent Cole's interests and not my own cannot be considered counsel for the accused.

(b) The basic duty defense counsel owes to the administration of justice and as an officer of the court is to serve as the accused's counselor and advocate with courage and devotion and to render effective, quality representation. Brent Cole never ever advocated for me, let alone advocated for me with courage and devotion, and I have yet to find anywhere where he rendered quality representation. The very first moment my wife Jackie and I stepped foot in Mr. Cole's office he made every effort to impress upon my wife and I that there was absolutely no hope and that the only thing we could do was to cooperate with the State. He said, ``The Prosecution has probably

already notified the Governor because this is such a politically charged case'' and ``we need to stop this before it snowballs out of control'' and ``I recommend cooperating with the State'' and ``One of the main jobs of an attorney is to keep the client from the stress of having to deal with the prosecutor by himself''. Chuck Robinson placed protecting Brent Cole's career and law firm far above advocating for me and thus gave me neither devotion nor effective, quality representation.

(d) Defense counsel, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of courts, and codes, canons, or other standards of professional conduct. Defense counsel has no duty to execute any directive of the accused, which does not comport with law or such standards. Defense counsel is the professional representative of the accused, not the accused's alter ego. Although defense counsel has no duty to execute any directive of the accused which does not comport with law or such standards I believe this implies that defense counsel has every duty to comply to execute any directive of the accused this does comport with law or such standards. Brent Cole lied to me on many different aspects of the law to avoid executing my directives. Chuck Robinson, on tape and in front of multiple witnesses, refused to utilize Brent Cole's gross and intentional sabotaging of my case for my defense, even though I asked him directly to do so. Chuck Robinson told me on tape that he had NO duty to point out or utilize this intentional sabotaging of my case. Chuck Robinson even told me that Brent Cole lying to me about the law and my rights did not constitute ineffective assistance of counsel. In a later taped conversation Chuck Robinson admitted that if Brent Cole lied about anything of substance this WOULD constitute ineffective assistance of counsel.

(f) Defense counsel should not intentionally misrepresent matters of fact or law to the court. I believe the single most important obligation of an attorney is to not intentionally misrepresent matters of fact or law **TO HIS CLIENT**. This rule is so obvious that I have yet to find it spelled out in any book of rules or professional conduct. Yet Brent Cole and Chuck Robinson, while taking money from me, deceived, misrepresented, and lied to me about the law to sabotage my case. Although this is not spelled out directly anywhere in the Rules and Laws of Professional Conduct I believe this is implicitly implied anywhere it states that an attorney owes his client his entire loyalty free from conflicts of interests. **AN ATTORNEY WHO IS LYING TO HIS OWN CLIENT IS FAR WORSE THAN THE CLIENT HAVING NO ATTORNEY AT ALL! THE CLIENT IS ACTUALLY PAYING TO SABOTAGE HIS OWN CASE!**

Standard 4-3.2 Interviewing the Client

(a) As soon as practicable, defense counsel should seek to determine all relevant facts known to the accused. In so doing, defense counsel should probe for all legally relevant information without seeking to influence the direction of the client's responses. Brent Cole never allowed me to discuss the case with him and in fact when I brought out things such as perjury to obtain the search warrants Brent Cole dismissed them as not important. Chuck Robinson was extremely careful to never admit that there was the huge Constitutional defense of Ineffective Assistance of Counsel even after I and everyone else with me told him of the unbelievable actions of Brent Cole in lying about my rights and the law to me. Chuck Robinson also told me that the perjury to obtain the search warrants ``didn't matter''. I had to literally hire Chuck Robinson's investigator myself to have him help me look into Brent Cole's lying and deceit. The investigator and I found all kinds of evidence proving Brent Cole's intentional malpractice. Chuck Robinson also told me if I told anyone of Brent Cole's actions it would jeopardize his ``tactic'' which I (and many other attorneys) later proved was absolutely worthless.

Standard 4-3.5 Conflicts of Interest

(a) Defense counsel should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests. Brent Cole had an obvious and actual conflict of interest by trying to represent me while preserving and enhancing his ability to make deals with the State. Once the State made it extremely clear how big of a deal it was for them to convict and sentence harshly on such a high profile case (Politically charged National News) it made it more improbable that Brent Cole would do anything on my behalf that would jeopardize his relationship with the State Prosecution. Chuck Robinson protected Brent Cole's gross malpractice and thus career and law firm at my expense-even though I paid Chuck Robinson almost $30,000 to represent ME AND MY FAMILY. And if representing me meant exposing Brent Cole's gross malpractice that is exactly what he should have done.

(b) Defense counsel should disclose to the defendant at the earliest feasible opportunity any interest in or connection with the case or any other matter that might be relevant to the defendant's selection of counsel to represent him or her

or counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest. Brent Cole in his written contract with me stated he does not and has not represented the State of Alaska and that nothing will affect his representation in this matter. After Brent Cole sabotaged my case and I became suspicious this is what he told me: ``I can't piss Leaders off because after you're done I still have to make deals with him''. In other words he started lying when he wrote my contract with him. Chuck Robinson never gave me a hint that he was protecting Brent Cole at my expense until I put two tape recorders in front of him and asked him point blank. Chuck Robinson even CHARGED ME for the very conversation with Brent Cole when they figured out how to keep Brent Cole from attending my sentencing that I had subpoenaed him to. I have a Constitutional Right for

(e) In accepting payment of fees by one person for the defense of another, defense counsel should be careful to determine that he or she will not be confronted with a conflict of loyalty **since defense counsel's entire loyalty is due the accused.** Brent Cole's loyalty was to the Prosecutor and not to me even though I had hired him. This is shown absolutely by the way he avoided ``pissing Leaders off'' (the State Prosecutor) at my expense by lying to me about my rights and the law. Chuck Robinson's loyalty was to Brent Cole and not to me as shown by his statements to me of ``your not paying me for an ineffective assistance counsel claim against Brent Cole'' and ``I'm not supposed to defend you in an Ineffective Assistance of Counsel claim against Brent Cole''. Brent Cole stands to lose his entire career and law firm if his ineffectiveness and malpractice is exposed. Chuck Robinson and Brent Cole even worked together to deprive me of my Constitutional Right to a compulsory process to obtain witnesses in my favor when they arranged for Brent Cole to not testify at my sentence as he had been subpoenaed to do.

(i) Defense counsel who is related to a prosecutor as parent, child, sibling or spouse should not represent a client in a criminal matter where defense counsel knows the government is represented in the matter by such a prosecutor. **Nor should defense counsel who has a significant personal or financial relationship with a prosecutor represent a client in a criminal matter where defense counsel knows the government is represented in the matter by such prosecutor, except upon consent by the client after consultation regarding the relationship.** Brent Cole told me many, many times on tape and in front of witnesses ``I can't piss Leaders (the State Prosecutor) off

because after you're done I still have to make deals with him''. Chuck Robinson said I wasn't paying him to use Brent Cole's Ineffectiveness for my defense. This is an absolutely unbelievable statement. Just what did Chuck Robinson think I was paying him for?

``One type of actual ineffectiveness claim warrants a similar, though more limited, presumption of prejudice. In *Cuyler v. Sullivan*, the Court held that **prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties.** Moreover, **it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests.** Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see, e.g., Fed.Rule Crim.Proc. 44(c), **it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest.** Even so, the rule is not quite the per se rule of prejudice that exists for the Sixth Amendment claims mentioned above. Prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance.''

Standard 4-3.6 Prompt Action to Protect the Accused

Many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the accused of his or her rights at the earliest opportunity and take all necessary action to vindicate such rights. **Defense counsel should consider all procedural steps which in good faith may be taken, including**, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for change of venue or continuance, **moving to suppress illegally obtained evidence**, moving for severance from jointly charged defendants, and seeking dismissal of the charges. Brent Cole refused to look at my case with me and when I pointed out the search warrants affidavit was based upon perjury he told me it did not matter and took no action whatsoever. Chuck Robinson told me the same thing along with ``no matter what Brent Cole did it is too late now to fix it''. Chuck Robinson told me this over and over and over again.

Standard 4-3.8 Duty to Keep Client Informed

(a) **Defense counsel should keep the client informed of the developments in the case and the progress of preparing the**

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defense and should promptly comply with reasonable requests for information.

(b) **Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.** Brent never informed me that the deal was going to be broken when he knew it was going to be for 5 days previous, when he knew we had already spent hundreds of thousands of dollars on it and we were continuing to spend thousands more on it. He lied to 7 of us that he had ``just found out bad news from Scot Leaders'' when in fact he had known about the bad news for 5 days. There is no doubt that Brent Cole wanted to apply as much pressure on me without giving me enough time to think so that I would cave in for and give the State a ($90,000.00 plane) in addition to what I had already given them. If Brent Cole had given me the 5 days to think about it I very likely would have consulted with another attorney, asked friends what to do, and looked at the law myself. But after we had already driven to Anchorage and had flown in people from as far away as Illinois Brent Cole knew I could not do these things. He knew I would not have any time to do any research or call anyone. He lied to us that he couldn't enforce the Rule 11 Agreement or that we had every right to require both him and Prosecutor Scot Leaders to honor it. This might have "pissed Leaders off" and if you remember Brent Cole told me in front of witnesses that he couldn't piss Leaders off. How can he possibly represent me under these circumstances? I have him telling me on tape that he cannot fight the Prosecution because he has to make deals with them on the future. Brent Cole told me the State could publish everything we told them during plea negotiations and all the national newspapers and that was "how it was done". How in the name of God could I have a fair trial if these plea negotiations fell through after this had been published nationwide?

Standard 4-4.1 Duty to Investigate

(a) Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. **The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.** Brent Cole told me and my wife when we came into his office the first time that this was a huge case, that the Governor had already been informed about it

and the only way out was to "stop it before it snow balled out of control". After that I insisted on going over the case with Mr. Cole in detail looking for weaknesses such as the ones I found on my own where Trooper Gibbens committed perjury to obtain search warrants. Brent Cole declined to go over the case with me in detail and in fact told me that none of the mistakes that I found mattered. I had this documented and I have witnesses to this fact. I asked Chuck Robinson again and again to do something with Brent Cole's lying, deceiving, and malpractice and he never even tried looking into it. When I forced him to admit it should have been used he said ``I put my investigator on it and there was nothing there''. I was the one who had to hire his investigator because Chuck Robinson refused to put him on it himself and in the investigators own report he states ``don't to forget to motion on the Prosecutor breaking the Rule 11 Agreement with Brent Cole''

Standard 4-5.1 Advising the Accused

(a) After informing himself or herself fully on the facts and the law, defense counsel should advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

(b) Defense counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case to exert undue influence on the accused's decision as to his or her plea. This is exactly what Brent Cole did. He told Jackie and I it was going to be so bad we should accept anything the prosecution offered us. He said we needed to give them everything they wanted so they would know what to charge me with and give me a ``good deal''. I now know this to be insanity and automatic Ineffective Assistance of Counsel (Wayrynen v. Class 586 N.W.2d 499 (S.D. 1998) Chuck Robinson told me ``why would you want to go back and fight for your Rule 11 Agreement and be convicted when I can get you off free and clear with this nearly unbeatable defense and not have a conviction?'' I later proved, confirmed by every attorney I consulted with, that this ``tactic'' was absolutely worthless and was used so I would not try to go back and expose Brent Cole's malpractice. After I was totally committed to this coarse of action Chuck Robinson told me ``we may have to appeal this all the way to the U.S. Supreme Court'' knowing I had no hope whatsoever in ever winning. He even told me ``if you ever bring up you had a Rule 11 Agreement it will jeopardize my ``tactic''. When I asked him if this was the case why wouldn't

the prosecution bring up that there was a Rule 11 Agreement Chuck Robinson could not answer me. I was to be, in effect, Chuck Robinson's slave - working to supply the hundreds and hundreds of thousands of dollars needed to finance an appeal all the way to the U.S. Supreme Court where they would also refuse to change the thousands of decisions made since 1906 - the last year Chuck Robinson's ``tactic'' worked (that the prosecution was flawed because the information filed had not been verified).

April 4, 2006

Law Office of Mark Osterman
215 Fidalgo Drive, Suite #106
Kenai, AK 99611

Dear Mark,

Hi. In an entire month I still have not received the case law of Ineffective Assistance of Counsel you said you were basing my appeal on or any documentation or draft whatsoever of what you have done as I have requested. Jackie said on 3/22/06 she had included the motion we had drawn up for the stay of suspension of my guide license and forfeiture of my airplane in some paperwork she dropped off at your office. As I said in writing when I first hired you I wanted to request this immediately of the Court of Appeals. Why has this not been done in the month since then? As I explained to you earlier my guide license and plane is critical for providing for my family and paying bills.

Please let me know when you will make these motions and, as I have said, you have had my draft for a month to work from. If you are unwilling to do so let me know so I can file it myself.

Sincerely,

David Haeg

David Haeg
P.O. Box 123
Soldotna, AK 99669
907-262-9249

April 16, 2006

Law Office of Mark Osterman
215 Fidalgo Drive, Suite #106

Kenai, AK 99611

Dear Mark,

Hi. I'm still waiting for the case law of Ineffective Assistance of Counsel you said you were basing my appeal on or any documentation or draft whatsoever of what you have done as I requested when I hired you a month ago. Jackie said on 3/22/06 she had included the motion we had drawn up for the stay of suspension of my guide license and forfeiture of my airplane in some paperwork she dropped off at your office. As I said in writing when I first hired you I wanted to request this immediately of the Court of Appeals. Why has this not been done in the month since then? As I explained to you earlier my guide license and plane is critical for providing for my family and paying bills.

I'm not sure how things are going at my fee arbitration against Brent Cole but I could really use a lawyer. Can you tell me again why you can't represent me in this matter?

Please let me know when you will make these motions. If you are unwilling to do so let me know so I can file it myself.

Sincerely,

<u>David Haeg</u>

David Haeg
P.O. Box 123
Soldotna, AK 99669
907-262-9249

Memorandum

To: Mark

From: Joel

Joel Rothberg 283- 1456

Date: 4/26/06

Re: Ineffective assistance of counsel document

I have assembled the salient documents. I think the strongest spotlight falls on Brent Cole for not trying to enforce the agreement that appeared to be in place as of the date of the arraignment, but overall it is pretty tangled ball of yarn.

May 22, 2006

Mark D. Osterman, Attorney
Osterman Law Office, P.C.
215 Fidalgo Drive, Suite 106
Kenai, AK 99611

RE: Appeals Case No. A-09455

I, David S. Haeg, herby fire attorney Mark Osterman effective 5/22/06 at 11:00 a.m. Attorney Osterman is no longer retained on my behalf. I herby request Attorney Osterman cease and desist all action taken on my behalf in my Appeals Case No. A-09455. It has come to my attention Attorney Osterman has a huge, direct and irreconcilable conflict of interest in representing me on my appeal.

Please send us something back in writing that confirms your removal from my case and let us know when we may come by and pick up the file and all materials relating to my case.

Sincerely,

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
907-262-9249 phone
907-262-8867 fax

8/15/06 Remand Hearing In McGrath

Osterman and Other Witnesses Under Oath

MR. HAEG: I understand and I –uh- waive my attorney client privilege.

MAGISTRATE WOODMANCY: Ok and –uh- for the record Madam Clerk that was Mr. Haeg who spoke and he's waiving his attorney client privilege. –Um- so Mr. Osterman you wanted to say something, go ahead.

MR. OSTERMAN: Your honor I do not wish to be subjected to any inquiry by Mr. Haeg, under the circumstances. I am still his attorney as of this moment –uh- I would object to anybody in a pro se – taking a pro se position with regard to me.

MR. HAEG: –Um- ok Mr. Osterman what was your –uh- understanding about payment when I first hired you -- or what did you request of me?

MR. OSTERMAN: I requested a - a substantial down payment from you and informed that you since my office would be required to catch up, literally, all pretrial motions, pretrial hearings, trial tapes – all of those things would have to be put together, and would have to be reviewed. That we were looking at a substantial amount of money for an appeal. I told you that – that you would be depositing money with me that would be used as a retainer. Then that you could very well go over the amount of the retainer.

MR. HAEG: Ok –um- did you state that the sum that you would be –uh- that would take me clear through to the end of the appeal would be $12,000.00 dollars?

MR. OSTERMAN: No sir. I told you that would be the initial retainer to get me started. I explained to you that I would continue on with the appeal but would ask that you'd begin making some kind of a payment. I recognized at the time that we had to sit down and negotiated that price you indicated to me that you couldn't come up with that sum of money. I explained to you that an issue in the Court of Appeals cost about $8000.00 dollars an issue and that we had at least 4 issues. –Uh- I also explained to you that I would take your retainer in the understanding that you would be paying monthly toward me without interest –uh- once we breached the amount of that particular –uh- sum of money.

MR. HAEG: Ok Mr. Osterman on – I'm not very good at this I apologize. I lost where – did you - on 3/15/06 did you have a conversation with me where you stated that each point on appeal is between 3 and 5 thousand dollars?

MR. OSTERMAN: I may have given you that quote I thought I would say around $8,000 (sic)

MR. HAEG: So when you told the court – when you told the court that you told me $8,000 per point were you double what you told me then?

MR. OSTERMAN: I don't believe so –

MR. HAEG: Ok then did you say that since my case was – I was in state, the case was taking place in state, and that that I had done most of the legwork my case to completion would be about $10,000.00 less then the $22,000.00?

MR. OSTERMAN: I don't believe I said that.

MR. HAEG: Ok what Mr. Osterman what is the total billings without any –uh- oh –um- things cut off for that you said were overruns – what's the total billings that you gave me?

MR. OSTERMAN: I – I couldn't tell you that off the top of my head.

MR. HAEG: Could it be...

MR. OSTERMAN: I have no idea.

MR. HAEG: Could it be in the neighborhood of $36,000.00?

MR. OSTERMAN: I don't think so. But again I can't tell you off the top of my head.

MR. HAEG: Ok and –uh- is that $36,000.00 was that for the completion of my case?

MR. OSTERMAN: Again I don't know.

MAGISTRATE WOODMANCY: He doesn't know the amount – he can't (sic)

MR. HAEG: Ok. Have you Mr. Osterman have you completed my case?

MR. OSTERMAN: No I have not completed your case.

MR. HAEG: Ok well – I guess I'm supposed to ask questions. I was goanna make a statement. –Um- as far as the physical threats that you say that I made. Can you expound about how those alleged physical threats came about?

MR. OSTERMAN: –Uh- Mr. Haeg you had become so enraged in my office that I - I didn't know if you were be able to get yourself back under control.

MR. HAEG: Ok but you didn't answer the question of how the – the statement...

MR. OSTERMAN: The - the earlier statement about the tranquilizer thing?

MR. HAEG: Yes.

MR. OSTERMAN: (sic) to put your wife on tranquilizers and then for every tranquilizer she took there would be a bullet and then you stopped, and paused for a second, and smiled and said a legal bullet. And you said they'd be drilled against Chuck Robinson.

MR. HAEG: So I smiled? I – I...

MR. OSTERMAN: Also you (sic) a lot of anger towards Mr. Cole.

MR. HAEG: Ok and do you have a recording of any of these statements?

MR. OSTERMAN: I don't know - you probably made one. You were very good about carrying recorders into the meetings.

MR. HAEG: Correct and would you be willing, for the Court, to look at the transcripts of those –uh- statements where you say all this?

MR. ROM: I would object to those transcripts being admitted.

MR. HAEG: Ok may I – would you object...

MAGISTRATE WOODMANCY: Wait a minute – wait a minute. There's been an objection made Mr. Haeg you have to stop.

MR. HAEG: I'm sorry.

MAGISTRATE WOODMANCY: We - we don't have the original tapes on it. Don't know if everyone has copies. I haven't had time to review those –um- again I'm - I'm not sure what point you're going to with these. It's – it's clear that so far that you have a –uh- incompatibility with your attorney. What is the benefit about hearing these tapes and reading these transcriptions?

MR. HAEG: Well it goes to my credibility. –Uh- Mr. Osterman is saying that I'm going around making threats and I never did and I the have the tapes – original tape recordings with me. Mr.

Osterman would allow me to play those for the Court at some point in the future when you have a hearing or however it may be or whether we could admit the transcriptions so that it can be proved what actually transpired.

MAGISTRATE WOODMANCY: I guess Mr. Osterman would you mind if the court listened to the original tapes of the meeting?

MR. OSTERMAN: I – I do object at this particular point in time because it's obvious to me it isn't going to change my perception of your threatening actions or attitudes toward me or toward my staff or to other attorneys –uh- in the – that – that were handling your case or had handled your case.

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: Wait I –I'm goanna rule. We're not goanna listen to those tapes now –um- and if you want to present that you have expressed that you're goanna have a civil suit against Mr. Osterman that would be the venue for those tapes.

MR. HAEG: Ok. Mr. Osterman do you remember me asking you "Would you hire me if I said 'you know what – I really hate hunting. I'll do it if I absolutely have to. Is that who you'd hire?' Do you remember me making that question of you on 5/19/06?

MR. OSTERMAN: I have no idea what you asked me back in May the 19th.

MR. HAEG: Ok. Do you remember...

MR. OSTERMAN: I've - I've encountered hundreds of clients since then.

MR. HAEG: Ok could I have made that statement?

MR. OSTERMAN: You may have.

MR. HAEG: Ok. Could you – or did you... Do you remember responding, "Hunting what - hunting people or hunting bears? Taking away and depriving people of their livelihoods, is that what you enjoy? Are you so crass that that's what you believe? That's what you're asking me in essence to do is you're asking me to go on and interfere with another mans livelihood so I hesitate, I don't think it's

the same as hunting a deer out in the woods." Do you remember making that statement Mr. Osterman?

MR. OSTERMAN: I probably did and I think that it's quite out of context. I think it needs to be contextualized.

MR. HAEG: Ok. I had...

MR. OSTERMAN: You weren't talking about your appeal at that in time, sir.

MR. HAEG: Ok and...

MR. OSTERMAN: You wanted me to pursue...

MR. HAEG: ...you – you remember...

MR. OSTERMAN: ...a malpractice claim against your former attorneys and I said I would not do that.

MR. OSTERMAN: Your honor if I – if I could be heard?

MR. HAEG: And...

MAGISTRATE WOODMANCY: Go ahead Mr. Osterman.

MR. OSTERMAN: That you your honor. Mr. Osterman speaking here. I think part of what Mr. Haeg is trying to get to and can't really arti[culate] – can't put his finger on the articulation comes back to a fear that Mr. Haeg has that all of us attorney's have banded together and that therefore he cannot get fair representation. So under the circumstances he wants to establish or try to establish through me that there was collusion, -um- that –uh- people were trying to protect other attorneys – including and he – and he's goanna make the allegation that I did the same thing –uh- against him through other attorneys in the area as well. So I – I think that's the point he's trying to make Your Honor.

MAGISTRATE WOODMANCY: Is that correct?

MR. HAEG: That is correct.

MAGISTRATE WOODMANCY: And that has bearing on him being allowed to withdrawal. You want him to remain your attorney until this point rolled on or are you ready to discharge Mr. Osterman?

MR. HAEG: See it – it – it had several different concepts why this was remanded by the Court of Appeals. It says whether I knowingly – which we all know that I knowingly do it...

MAGISTRATE WOODMANCY: Mr. Haeg trust me...

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: ...I understand the decision I have to make...

MR. HAEG: And competently that remains to be seen because I'm sure all of you don't think I'm competent to do this and I'm the first to agree. So it would be a big step for someone that is incompetent – it would be like I don't know if Mr. Rom fly's a plane – let me just make an example. If he jumped in a plane and flew out of here without Trooper Gibbens at the wheel – if he did that by himself there's a pretty compelling reason he did so and that's what I'm trying to show is that it is an intelligent decision for me to forego my right to an attorney even though I understand completely the huge disadvantage. I've already had I don't know how many objections and Your Honor also tell me what I don't know what I'm doing. But in my mind that is an intelligent decision and the Court of Appeals has remanded this case for you to make a determination that it is intelligent also and that's a pretty big burden when somebody has the money to buy an attorney, such as I do, and they waive their right to an attorney, that is a fantastic thing in the history of the United States. To have someone with the money to purchase an attorney and waive that right and go on their own knowing that they're goanna probably just take a liken doing it. But you know what I'm goanna make a statement here – I would rather go into battle with no allies if the allies I have are behind me stabbing me in the back.

MAGISTRATE WOODMANCY: Ok. I understand where you are at with this.

MR. HAEG: Ok and Mr. Osterman...

MAGISTRATE WOODMANCY: I...

MR. HAEG: ...statements to me show that brutally clearly brutally.

MAGISTRATE WOODMANCY: That you should be allowed to proceed pro se?

MR. HAEG: No it shows – his statements brutally show the immense conflict of interest among a number of attorneys to protect what the first one did to me. And it's the most amazing thing

I've ever seen in my life. I have read – I have read likely hundreds of thousands pages – cases – case – or pages of case law and I have yet to find one case as egregious as what happened to me.

MR. OSTERMAN: Your Honor I could actually – I'm only about 5 minutes to my next appointment. I could actually be with the court for another 12 minutes.

MAGISTRATE WOODMANCY: Each side has 5 minutes. How's that?

MR. ROM: All right. Mr. Osterman you had –uh- a number of conversations with Mr. Haeg about this conspiracy of his former lawyers, is that correct?

MR. OSTERMAN: Yes.

MR. ROM: And have you fully aired that issue with Mr. Haeg in your conversations?

MR. OSTERMAN: Yes.

MR. ROM: And tell – tell the court how you –uh- perceived the notions that his lawyers have conspired against him.

MR. OSTERMAN: -Um- I – I – I don't fully understand why he believes that his lawyers have conspired against him. I will tell you I have concerns about some of the things that – that each one of his other attorneys have done but that's fodder for appeal –uh- that I tried to explain to him also. –Uh- I tried to explain to him the way that those – the issues would work in the matter of his appeal. -Um- I also want to indicate to you that Mr. -um- Haeg is nobody's fool -um- he has access to legal materials, I provided him with legal materials, -um- he's had access to some law library materials as well. -Um- he's not inarticulate, he's -um- he's very emotionally tied up in this...

MR. ROM: Did you find...

MR. OSTERMAN: ... -um- emotional state in this.

MR. ROM: Did you find any evidence that lawyers had colluded together against him to act not in his interest?

MR. OSTERMAN: No – but I can tell you that if – if I were in his shoes I could see why he would think to some respect with his first two attorneys why he might think that. But at the same time if he looked at what they were doing in response to issues involving him it would certainly explain some of that away.

MR. ROM: All right. Thank you that's all I have.

MR. OSTERMAN: A – a – I wanted to also add initially I had some concerns that I shared with – with -um- –uh- Mr. Haeg and we began pouring through the file –uh- those concerns became relieved.

MR. ROM: Except when you say concerns – concerns a – about the actions his previous – or his prior lawyers had taken?

MR. OSTERMAN: Yes.

MR. ROM: And as you went through...

MR. OSTERMAN: Except one of the things that happened in this case is we began talking – if the things that he told me were true then I would be greatly concerned and express those concerns to him. But as we began going through the record it became clear to me that there was another course being taken.

MR. ROM: And what do you mean by that?

MR. OSTERMAN: Yeah I began...–Uh- I'm sorry.

MR. ROM: What do you mean by another course was being taken?

MR. OSTERMAN: Well you know what – what could have appeared to have been –uh- malicious act by one attorney –uh- could be explained by the inaction of the client.

MR. ROM: All right. In the end –uh- in the final assessment did you determine that his lawyers –uh- had acted in his interest and at his direction?

MR. OSTERMAN: Not necessarily I felt strongly that there was an ineffective assistance claim –uh- in – with at least regard one attorney and in fact I felt that it was a necessary issue to raise –uh- in the appellate level and that was a part of the discussion that I had with Mr. Haeg is to how to present that particular issue.

MR. ROM: And did you explain to him that he could not bring –uh- ineffective assistance of counsel claim in a – on a direct appeal?

MR. OSTERMAN: Well not necessarily I mean my reading of the post-conviction relief statute would indicate that there's –uh- an ability to bring it but I told him that it was the strategic issue that one of the issues that we had in this particular case dealt with a plea agreement and how that particular plea agreement got there –uh- and – and what transpired of that particular plea agreement and that I felt that there was a violation of plea agreement issues and that I felt that ineffective assistance of counsel was a – if not directly at least a – a substantially tacit –uh- issue to be raised in that particular portion of the appeal.

MR. HAEG: Ok Mr. Osterman did you ever tell me "I looked at this and it was a disaster in it and what Chuck did was wrong and what Cole did was wrong there's no two ways about it. Did you ever make that statement?

MR. OSTERMAN: I probably did say that to you. I don't know when you're quoting it though. Unfortunately you know you have the advantage of having transcribed these tapes and gone through them. I don't have that advantage sir.

MR. HAEG: Ok well be that as it may -um- do you remember that being said?

MR. OSTERMAN: I more then likely said it.

MR. HAEG: Ok. Do you ever remember me –uh- asking what about not st – or we were talking about Mr. Cole and you had said –uh- something to the effect about him not telling me my statements could be used against me at trial if I made them and I asked you "what about not sticking up for a rule 11 agreement – you told your client to give up a whole years of his income for and a 5 hour confession" – do you remember me making that statement?

MR. OSTERMAN: Several times.

MR. HAEG: Ok. Do you remember responding "I think that's –uh- real big malpractice issue but it is a – an ethics issue?" – Do remember responding that way?

MR. OSTERMAN: I do.

MR. HAEG: Ok then do you remember me saying, "he failed to act – to stand up for my deal" and then you responding "But then that's malpractice – it's not ineffective assistance. He may have seen some advantage. Who knows what the hell that advantage is. I'm arguing the devils advocate because I could tell you that 1 in a thousand ineffective assistance of counsel claims wins." Do you remember making that statement?

MR. OSTERMAN: I do and you might also remember I brought you a case where I changed my tune with regard to some of that statement.

MR. HAEG: Ok.

MR. OSTERMAN: I sent you a case I believe out of New Jersey or New York or something where the I think it was one of the circuit Court of Appeals had said that –uh- that it was certainly an effect - ineffective assistance to fail to advise a client with regard to plea agreement.

MR. HAEG: Yeah and I remember that. Do you also remember saying "but you can't" or I asked you – I – I – do you remember me asking you "but you can't – you cannot have a malpractice suit unless you're found innocent or not innocent or unless your conviction is overturned" -um- and I said "Chuck Robinson...

MR. OSTERMAN: But as a general...

MR. HAEG: ...told me that".

MR. OSTERMAN: Yes.

MR. HAEG: Ok...

MR. OSTERMAN: Generally that's correct.

MR. HAEG: Ok yeah and you – do you remember saying "No Chuck's wrong, ok? He obviously was the malpractice of one attorney that put you in this bind. Cole has a malpractice problem a big malpractice problem." Do you remember saying that?

MR. OSTERMAN: Yeah but what's this got to do with anything, sir? What's this got to do with my ability to protect you?

MR. HAEG: It – it has to do whether I am intelligent in going on my own. -Um- do you ever remember me – or - or you stating to me you stating to me "You gave the evidence to the District Attorney to use against you because of Cole's conduct." You ever remember saying that to me?

MR. OSTERMAN: I may have said that to you sir. What's that got to do with my ability to withdrawal from this case or my recommendations about whether you are able to proceed pro se?

MR. HAEG: It has nothing to do with that. It has to do whether it's an intelligent decision of mine to go pro se. Did you ever make the statement...

MR. OSTERMAN: I – I don't know you're – whether your firing me is an intelligent decision or not – I'm not the judge of that.

MR. HAEG: Ok.

MR. OSTERMAN: I already told you that.

MR. HAEG: Well the court is. Did you ever remember saying "we're goanna file a complaint for malpractice against Cole. You did not realize he was...

MR. OSTERMAN: I...

MR. HAEG: ... he was going to set it up so their dang dice was always loaded. They were always goanna win." Do you ever remember saying that to me Mr. Osterman?

MR. OSTERMAN: I – I – I don't know that I said that or not, sir. Again it goes back to I don't know whether you're making an intelligent decision or not.

MR. HAEG: Ok. Do you also remember you saying "He [and I think you meant Cole] committed the malpractice act which was selling the farm." Do you remember making that statement?

MR. OSTERMAN: I do I thought that he'd given away an awful lot of information during a plea agreement.

MR. HAEG: Ok. And you remember my concerns for that plea agreement in which I'd gave a 5 hour interview, gave up a whole year of my income – not receiving one single benefit for that sabotage of my life. Do you remember my concern about that?

MR. OSTERMAN: I do.

MR. HAEG: Is that why I've been so angry is because I gave the State their entire case in return for something and they plucked it away from me. Is that why I am upset?

MR. OSTERMAN: I can't tell you why you're angry sir.

MR. HAEG: Ok. Do you agree I have a reason...

MR. OSTERMAN: Yes.

MR. HAEG: ...to be angry?

MR. OSTERMAN: (exhales) I can see why you're frustrated. I can see why you're angry. Yes sir. That still has nothing to do with the fact that – that I'm still in this case and wish to withdrawal.

MR. HAEG: Mr. Osterman do you remember stating to me " you're not happy with them and they've already screwed up your case bad enough." Do you remember saying that to me?

MR. OSTERMAN: I – I don't remember you saying no.

MR. HAEG: No you said it to me. Do you remember making that statement...

MR. OSTERMAN: Oh.

MR. HAEG: ...to me?

MR. OSTERMAN: I don't – I don't have any recollections here.

MAGISTRATE WOODMANCY: I'm goanna give you each one more minute. Go Mr. Rom and then...

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: ...you can have a minute to redirect.

MR. ROM: -Um- during these conversations with Mr. Haeg did you obtain – did you ever talk to -um- Brent Cole about the –uh- plea agreement?

MR. OSTERMAN: No sir I've never spoken to Brent Cole about the plea agreement.

MR. ROM: Did you talk to Scot...

MR. OSTERMAN: What I did do is I went back to research the case.

MR. ROM: And did you talk to Scot Leaders about the negotiations in the course of the –uh- plea agreement?

MR. OSTERMAN: I don't know whether – and I never got a report.

MR. ROM: And is fair to say that the information you go about the –uh- plea agreement and the negotiations came from Mr. Haeg?

MR. OSTERMAN: Mr. Haeg, from the information contained in the file, and from information that –uh- was provided to us through the Robinson file.

MR. ROM: Ok and –uh- are you aware that Mr. Haeg rejected the rule agreement that provided for 1 year license suspension?

MR. OSTERMAN: -Um- I got to tell you that's one of the things that's very unclear in my review of the file. It appeared to me that Mr. Haeg had not committed one way or the other when an amended information was filed and the amended information contained

information provided by Mr. Haeg –uh- as a result of rule 11 negotiations.

MR. ROM: Right and are you aware that Mr. Haeg –uh- that that information was filed because Mr. Haeg insisted on going into open sentencing against his attorneys advice?

MR. OSTERMAN: -Um- there was the issue of open sentencing but that was on a plea beyond the initial rule 11 agreement.

MR. ROM: Correct and that...

MR. OSTERMAN: The initial rule 11 agreement I had heard had been accepted and then Scot filed an amended information that alleged new material that was –uh- received out of the rule 11 negotiations.

MR. ROM: And –uh- nobody ever informed you that the reason that happened is that Mr. Haeg insisted on going into open sentencing which could have given him a 5 year license suspension – exposure?

MR. OSTERMAN: –Uh- again I – I look back I don't agree with that particular statement. My recollection of this particular file –uh- is that -um- Mr. Haeg -um- had agreed to take a - a – a plea agreement that was initially offered that upon accepting the plea agreement Mr. Leaders filed an amended information and the amended information included additional information and then suddenly the rule 11 agreement was – the (indecipherable) everything was turned off.

MR. ROM: And you weren't aware that the second amended information had significantly higher penalties statutes attributed to it?

MR. OSTERMAN: I – I do know that that was the case and that's one of the things that concerned me is that the first rule 11 agreement got - got the information that was used to be charged in the second amended information. It seemed to me that that was –uh- there were several severe problems there.

MAGISTRATE WOODMANCY: Ok...

MR. OSTERMAN: It was the fact that the attorney failed to advise the client that making all these fifth amendment statements without a written rule 11 agreement could very well be ineffective assistance of counsel...

MAGISTRATE WOODMANCY: Mr. Haeg you have a minute.

MR. HAEG: ...did – did –uh- Mr. Leaders when he filed the rule amended – or the – the amended information did he utilize all my statements to do so that were made in plea negotiations?

MR. OSTERMAN: I don't know that he used all of them. I know that there was a – quit a few of them. –Uh- whether all were there or not I don't know for sure.

MR. HAEG: If he did so is that a vio[lation] direct violation of evidence rule 410?

MR. OSTERMAN: Well it's one of the issues that we were goanna raise on appeal is that there was clear – clearly an – an issue there too, yes.

MR. HAEG: Ok if Mr. ...

MR. OSTERMAN: For statements made as part of the plea agreement.

MR. HAEG: What is it called when Mr. Leaders used my statements made in plea negotiations to file charges not agreed during those plea negotiations – what's that called?

MR. OSTERMAN: Well...

MR. HAEG: Is it called...

MR. OSTERMAN: ... –uh- from what angle?

MR. HAEG: Is it called prosecutorial misconduct?

MR. OSTERMAN: Would it be for his misconduct?

MR. HAEG: Is it prosecutorial misconduct?

MR. OSTERMAN: It could well be, yes.

MR. HAEG: Is it ineffective assistance of counsel for Brent Cole to not jump up in my behalf and defend my rights and object to that?

MR. OSTERMAN: Well I – you know again (laughs) I intended to use it as an issue on appeal. I wasn't there to bring any ethics charges against Brent Cole nor was I there to –uh- to –uh- -um- file any claims for malpractice but I felt that there was some strong issues about Mr. Cole failure to protect your rights.

MR. HAEG: Ok and...

MAGISTRATE WOODMANCY: Last question.

MR. HAEG: ...Mr. Rom has made it very clear or tried to because to me it's very unclear. Now you specifically tell the court here what the state of plea agreements were from one month before there was supposed to be completed to the time in which they would – they were broke off and who broke them off - because I told you many times and I showed you the evidence. Who broke the deal and how did they do it and when did they do it?

MR. ROM: I'm goanna object to the question. This witness...

MR. OSTERMAN: Well I – I ...

MR. ROM: I'm goanna object to the question...

MAGISTRATE WOODMANCY: Whoa – whoa – whoa Mr. Osterman – Mr. Osterman hold on there's an objection. Go ahead Mr. Rom.

MR. ROM: –Uh- this witness has no personal knowledge of that.

MAGISTRATE WOODMANCY: But...(indecipherable)

MR. HAEG: He has seen the evidence. He had no personal...

MAGISTRATE WOODMANCY: Whoa – whoa...

MR. HAEG: He has no personal knowledge of what his question was about all of the other stuff. He just had Mr. Osterman testify about all this stuff – of – that I'm the one that broke the rule agreement and Mr. Osterman got all that on. Well how does he have personal knowledge of that?

MAGISTRATE WOODMANCY: He was not a party – he's asking – he asked if in his review of the case he was aware of these things.

MR. HAEG: Ok. Can I ask if in the review of the case along did – can he tell us who – when the rule 11 agreement was made, when it was broke, and who broke it according to his research into the case?

MAGISTRATE WOODMANCY: I'll allow that question. Last – last answer Mr. Osterman and then you can go.

MR. OSTERMAN: Ok thank you Your Honor. I can only tell the court that –uh- my research seemed to indicate that the plea agreement was broken by -um- by Mr. Leaders when he filed an amended information with an open plea agreement –uh- with the party and that the – the plea agreement – I can't give the court any specific dates as I don't have that information directly in front of me.

MAGISTRATE WOODMANCY: Ok. Thank you very much Mr. Osterman. You are excused to go to your next appointment –uh- as matter of record your counsel has reserved the right to – or your - I'm sorry Mr. –uh- not your counsel but Mr. Haeg has reserved the right to – uh- call you back in other matters but –uh- for now you're done and thank you for attending sir you may hang up.

Jackie Haeg's representation testimony

MR. HAEG: Ok -um- did we hire Mark Osterman?

JACKIE HAEG: Yes.

MR. HAEG: Did he make it very clear how much money we were to pay him?

JACKIE HAEG: Yes he did.

MR. HAEG: And what was – and was – what was that sum and was it for the entire appeal of my case?

JACKIE HAEG: It was 12,000 dollars and he did say it would be for the entire case. He felt it would be for the entire case.

MR. HAEG: Ok and did he state how much each point of appeal would be?

JACKIE HAEG: Yes it was -um- it would be 3 to 5 thousand a point.

MR. HAEG: Ok. And –uh- did we – how do we pay Mr. Osterman?

JACKIE HAEG: Oh we gave him a – I believe it was a cashiers check for $12,000 dollars.

MR. HAEG: Ok and then did Mr. Osterman subsequently bill us for more money?

JACKIE HAEG: Yes he did.

MR. HAEG: Ok did – what is the total billing he had for us – excluding anything that he may have forgave?

JACKIE HAEG: I believe it's now $36,000 dollars.

MR. HAEG: Ok did he finish our case like he had stated the original $12,000 would finish our case?

JACKIE HAEG: No.

MR. HAEG: When he gave us that additional bill did he – was he the same price per point as he was when hired him?

JACKIE HAEG: No.

MR. HAEG: How much additional per point?

JACKIE HAEG: -Um- well I would say somewhere about – well twice as much...

MR. HAEG: Ok.

JACKIE HAEG: ...or more then twice.

MR. HAEG: So to paraphrase it – we hired Mr. Osterman for one price for the completed case and he billed us for twice as much...

JACKIE HAEG: Yes.

MR. HAEG: ...for not completing the case?

JACKIE HAEG: Yes.

MR. HAEG: And he didn't honor the agreement he made, correct?

JACKIE HAEG: Yes.

MR. HAEG: Ok when we first hired him what did he say - and this is something where it might be hearsay you know so you might just... What did he say about our ability or – what did he say the biggest thing was going to be that would help us in our appeal?

JACKIE HAEG: That ineffective assistance of counsel.

MR. HAEG: Ok of who – of who?

JACKIE HAEG: Of -um- Brent Cole.

MR. HAEG: Ok. Did he say anything about Chuck Robinson?

JACKIE HAEG: Well he said that yeah that Chuck could be brought in with ineffective assistance of counsel also.

MR. HAEG: Ok and was he – did Mr. Osterman seem like it was a good chance, a little chance, or what – how did he describe the conduct of my first two attorneys?

JACKIE HAEG: Pretty much as outrageous, unbelievable, you know he couldn't believe what they had done – or had not done.

MR. HAEG: Ok and did he feel that a lot of what they had done or had not done was attributable to the State prosecutor?

JACKIE HAEG: Yeah he did. He felt that Mr. Leaders had done quit a bit of things bad in your case.

MR. HAEG: And that – and was my attorneys actions in – or inactions a result of what Mr. Leaders did?

JACKIE HAEG: In breaking the rule 11 agreement yes. They – they never stood up for it.

MR. HAEG: Ok and what about the using my statements against me that I made in plea negotiations – did Mr. Leaders do that and did –uh- Mr. Osterman consider that a very significant act?

JACKIE HAEG: Yes. Mr. Leaders could do that and Mr. Osterman said that he could not believe that?

MR. HAEG: Ok did I ask Mr. Osterman if he had any compunction whatsoever for using the acts of my first two attorneys to help me?

JACKIE HAEG: Yes you did ask him that.

MR. HAEG: Ok. So how did – what did – what frame of mind did Mr. Osterman try to put me into – or what – what was his –uh- outlook on the ability of us – of him to successfully reverse my conviction?

MR. ROM: Objection.

MAGISTRATE WOODMANCY: Sustained. Your asking your wife what he was thinking.

MR. HAEG: Ok. Ok and ok -um- was Mr. Osterman optimistic?

JACKIE HAEG: Yes he was – very.

MR. HAEG: Ok and did that optimism or did it – you had stated earlier that he said he was willing to use the actions of my first two attorneys to help me – is that correct?

JACKIE HAEG: Yes (indecipherable).

MR. HAEG: Ok did that change at some point?

JACKIE HAEG: Yes it changed.

MR. HAEG: Ok and can you explain to the court how that changed?

JACKIE HAEG: Well he told – he said that he didn't want to go after two attorneys lives and livelihoods and that he was not goanna follow through on the ineffective assistance of counsel claim like he had originally told he was goanna do.

MR. HAEG: Ok -um- did he ever – did Mr. Osterman state that ineffective assistance of counsel is a – is a cumulative nature?

JACKIE HAEG: Yes he did.

MR. HAEG: -Um- did Mr. Osterman use a cumulative tactic?

JACKIE HAEG: No.

MR. HAEG: And why not?

JACKIE HAEG: I don't know.

MR. HAEG: Ok -um- do you remember him stating that he did not want to affect the lives and livelihoods?

JACKIE HAEG: That's what I just said.

MR. HAEG: Ok -um- in the Mr. Osterman's representation of me and us because we're all involved in this – would you say that Mr. Osterman had a conflict of interest?

MR. ROM: Objection – leading.

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: Sustained.

MR. HAEG: Ok. I don't know how to do this. In your opinion could Mr. Osterman represent us effectively?

MR. ROM: Objection...

MR. HAEG: Ok.

MR. ROM: ...that's for a legal conclusion – she's not – there's no foundation.

MR. HAEG: -Um-

MAGISTRATE WOODMANCY: Sustained.

MR. HAEG: Ok. Do you think Mr. – do you think our money was buying Mr. Osterman's loyalty?

JACKIE HAEG: No.

MR. HAEG: Why not?

JACKIE HAEG: Because he didn't follow through on what he said he was goanna do for that money and the...

MR. HAEG: Ok. Did he ever – was there ever a concern expressed by him of my former – or for the – the – the future of my former attorneys?

MR. ROM: Objection – leading.

MR. HAEG: -Um- -um- –uh- that sustained?

MAGISTRATE WOODMANCY: Yes.

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: Go ahead.

MR. HAEG: -Um- why don't you think Mr. Osterman should be allowed to continue as our attorney?

JACKIE HAEG: Because is not doing or did not do what he said that he would do and I don't feel he will do what he said he that he would do – I mean...

MR. HAEG: Ok and what did he say he was goanna do?

JACKIE HAEG: He was goanna file an ineffective assistance of counsel claim against Brent Cole and Chuck Robinson and he was goanna list everything that they had done and he did not do that.

JACKIE HAEG: Well like not standing up for the rule 11 agreement, Chuck not going you know ineffective assistance of counsel -um- saying that you know what Brent did and there was nothing he could do about that -um- I'm sorry I just can't think...

MR. HAEG: Ok did Mr. Osterman have any concerns about Mr. Leaders actions?

JACKIE HAEG: Yeah he felt the he – he worded it – he said that "Scot stomped on your head with boots" is what he said in one of the conversations he felt that or Mr. Leaders I'm sorry – that he did not treat you fairly – like he's supposed to.

MR. HAEG: Ok. Did he have any concerns of violations of my rights?

JACKIE HAEG: Yes he did.

MR. HAEG: Ok did he utilize any of these concerns in his draft brief that we looked at?

JACKIE HAEG: No he did not.

MR. HAEG: Would that lead you that – lead you to believe in your opinion that he was not representing us?

JACKIE HAEG: Yes.

MR. HAEG: Ok – I – I – yeah. Could – and this you might shut me down on this. Could Mr. Leaders – or could Mr. Osterman been representing my first two attorneys?

JACKIE HAEG: could have – yes.

MR. HAEG: In your opinion is that what he was doing?

JACKIE HAEG: It seemed to be, yes.

MR. HAEG: Ok. Is – in your opinion is that why we fired Mr. Osterman?

JACKIE HAEG: Yes.

MR. HAEG: Ok -um- do you think Mr. Osterman should be allowed to continue as our attorney?

JACKIE HAEG: No.

MR. HAEG: (exhale) did Mr. Osterman appear to do anything that would actually help us in our appeal?

JACKIE HAEG: No he did not.

MR. HAEG: Did what Mr. Osterman do essentially copy and this might be leading I don't know – copy what Mr. Robinson had done already?

JACKIE HAEG: It looked that, yes.

MR. HAEG: When we first hired Mr. Osterman what did he say about Mr. Robinson's appeal points?

JACKIE HAEG: He said that he did not agree with them.

MR. HAEG: Did he think they would work?

JACKIE HAEG: He did not think they would work.

MR. HAEG: Did he think there was anything better to go with?

JACKIE HAEG: Yes he did.

MR. HAEG: And were those the things that we've already talked about?

JACKIE HAEG: Yes they are. The ineffective assistance of counsel...

MR. HAEG: Ok.

MR. HAEG: Ok and did I ever dis – or did we ever discuss the actions of the troopers in my case?

JACKIE HAEG: Yes we have.

MR. HAEG: And what did Mr. Osterman think of those actions?

JACKIE HAEG: He agreed with you he – he felt that –uh- they were not right either.

MR. HAEG: Ok was any of that in the draft brief that Mr. Osterman –uh- gave us?

JACKIE HAEG: No it wasn't.

MR. HAEG: Ok -um- I hired Mark Osterman after extremely serious doubts about my former attorneys. I showed Mr. Osterman my evidence that I'd compiled. Mr. Osterman was in awe of what had happened - said it was – paraphrase it – "the biggest sellout that he'd ever seen" and he thought that when the Court of Appeals seen it my conviction would be reversed. He also said that the prosecutor "stomped on my head with boots" and at the same time my own attorneys allowed them – allowed him to commit those acts without doing anything. –Uh- Mr. Osterman also said numerous times that what they did was unbelievable, unacceptable, and that he had just never seen anything like it. And I have –uh- tapes of him stating these things over and over again. I point blank ask Mr. Osterman that – did he have any compunction against using what my former attorneys did to help me out of the nightmare that I was in and he said "no". He said he didn't like doing it but he didn't like washing or doing toilets and whatever. About a month and a half later – well let me like – let me just back up a second here. Mr. Osterman said that I couldn't bother him for about a month because he'd be compiling everything, utilizing my arguments as the basis for his appeal. He agreed that Chuck Robinson's basis's were without merit and that he would be forming an appeal that centered around the issues that I had brought

to him along with the tons of caselaw – literally tons – supporting my arguments. About a month – month and a half later I hadn't hear from him. He kept kind of shifting. I'd call wonder what's going on. He would not let me talk to the people writing the brief. Along with himself he had somebody along with himself working on it. He wouldn't let me see what they had done. He essentially shut me out for a month and a half. I finally said, "I have to see what's went on in a month and a half". And he let me go in, I looked at the brief. The brief had all of the points that Chuck Robinson had and one point of ineffective assistance of counsel that brought up a point so tiny that it was nonexistent and the way he worded it - it would have been immediately thrown out of the Court of Appeals. I pointed this out to him and he said "when you have such a – a valid point why would you want to have it cumulative – why would you want the ineffective assistance cumulative?" He told me that they lying of my own attorneys that I had showed him proof of "didn't matter" in my ineffective assistance of counsel. Yet by very definition when your attorney lies to you – you are getting ineffective assistance of counsel. Mark Osterman said, "We don't need that – that's bad." He actually told me that if we attacked my attorneys the Court of Appeals would "throw" my case out. He said if we show just how bad my representation was they would throw my case out. And I thought about that and I thought about it and I thought about it and I did get somewhat upset because I had given that man a lot of money - $12,000 dollars in a cashiers check to be exact – and he said he was goanna write a brief that I wanted and he agreed that it was the proper brief. And when I received the brief it had none of that in it and I asked him why. And he says, "I cannot..." and this isn't the exact quote but it is very close "What you're asking me to do by doing that will affect the lives and livelihoods of your former attorneys" and that's what he testified here earlier as having said. Now you're guaranteed many things by the United States Constitution – one of them in the actual amendments itself says you are guaranteed [e] assistance of counsel. And the U.S. Supreme Court has held over and over and over and over again in Strickland versus Washington, Cronic, Cuyler, and in Alaska Risher that when you are guaranteed assistance of counsel it will be **effective** assistance of counsel or it is no counsel at all and when you can prove that there in anyway there's a conflict of interest you are not getting effective assistance of counsel because your counsels loyalty is divided and you cannot ever know what your attorney would have done for you when he has - differently when he has a conflict of interest. Because you cannot look

into his mind and say he was advocating for you here and there he wasn't. They say that when you can prove a conflict of interest you do not have to prove prejudice because the likelihood of prejudice is so overwhelming that you do not have to prove it. Well whose loyalties did I have when Mr. Osterman after telling me all of the bad things my attorneys did refuse to put it into my brief and told me he couldn't do so because it would "affect the lives and livelihoods" of my attorneys? I hired someone to look out for my life and livelihood and if someone else's actions when I hired them to represent me and they did it so badly that I got placed in a horrible hole and it was their conduct but the only way for me to be leveraged out of my hole to justice and a fair trial is to affect their lives and livelihood so be it. It isn't my responsibility to accept the damage of my attorneys who committed such horrible things against me. They have to take – be responsible for what they did against me. And Mark Osterman said he was not willing to show what my attorneys did that robbed me of my right to a fair trial – he was not willing to show the court that and that is one of the most egregious things that has ever happened in the history of the United States.

MR. ROM: Did you tape record conversations with Mr. Osterman?

MR. HAEG: Yes.

MR. ROM: -Um- all of them?

MR. HAEG: Yes.

MR. ROM: From the very beginning?

MR. HAEG: I believe so.

MR. ROM: You talked about the Strickland and Risher test. Do you know what the Risher test is?

MR. HAEG: Yes.

MR. ROM: What is it?

MR. HAEG: It is the test to determine whether you have a valid ineffective assistance of counsel claim.

MR. ROM: What conflict of interest did Osterman have?

MR. HAEG: He told me, in no uncertain words, that by putting stuff in what my former attorneys did would affect their lives and livelihoods.

MR. ROM: Why is that a conflict of interest?

MR. HAEG: Because when I paid him his loyalty is to me and me alone.

MR. HAEG: Ok as far as me providing – being a guide for a whole year -um- I discussed this at length with -um- my attorneys. Mr. Cole said in a – for the plea negotiating – plea negotiation that we were working on that I would have to give up my guide license – give up guiding – not give up guide license. He said I would have to give up guiding for a whole year and so based on that word from my attorney relayed to me from the prosecutor my wife and I sent back an entire years income to the people we had taken deposits for and that hurt us bad. Because we had to continue paying for our lodge leases and all our permits and our bonding and everything. We went – I have immense overhead – I gave up all the money the whole entire gross and paid my whole overhead and slit our own throats because my own attorney said that's what the prosecutor required. I fired Mr. Cole because of his refusal – because of his lying to me that he couldn't enforce that agreement and when I hired Mr. Robinson – Mr. Robinson says "go book hunts – do – make money – try to do something" and I said "I can't – I told them I wouldn't guide" and I believe Mr. Robinson probably told me well if you're not guiding with them in the field it isn't guiding. I don't know at the time. I was listening very attentively to my attorneys at this point. The first one said cancel a whole years hunts so we do it. It takes me – usually in a guiding outfit with hunters that it's their main –uh- fun thing they do for the whole year and it takes up a big hunt – they book these things 2 and 3 and 4 years out in advance. Mr. Cole told me to send back all the deposits for an entire year. My wife and I did so. Then for the agreement that we had done that and spent so much money the State attorney broke the deal after most of the guide season was done. After when we could do anything about it.

MAGISTRATE WOODMANCY: Lets move on to Mr. Osterman.

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: You – you've made this point like 8 times Mr. Haeg...

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: I understand you feel you gave up guiding for a year. Please let's...

MR. HAEG: Ok...

MAGISTRATE WOODMANCY: ...get this moving.

MR. HAEG:...well I just – it upsets me that – that Mr. Rom is saying that I didn't give up guiding because I booked hunts. I may have booked hunts so that we could guide in 2008. But when you're booking hunts – see the booking – the hunts I cancelled in 2004 and 2005 the effort to book those hunts and get that money was done probably in 1999 so when I gave up those hunts there I gave up the effort and money that was spent to book them that was spent back in 1999. So there's – there's 2 periods of time that I take a hit when I don't actually produce the hunt. And so maybe I'm just – and I don't know maybe Robinson says you need to book hunts here so that after you're guide license suspension is over and the years have gone by you have hunters to produce revenue you know and I don't remember. I really don't. So anyway that's you know -um- I guess all is I have to say about that and I don't think that – that I ever necessarily discussed that with Osterman – that he knew all of those ramifications. I told him I know I told him that Brent Cole said to give a 5 hour interview slash –uh- confession – he said you give up guiding for a year. Most of that year went by without booking anybody and then Mr. Osterman you know I told him all this stuff happened but I probably did not get into the nuts and bolts on how it happened. Because he was you know then Robinson was there. Alls I know is we took an enormous hit – enormous for something that it was agreed upon and I never got what I bought and paid for because if anybody has any doubt that I bought and paid for dearly for that deal is so mistaken they're crazy. I mean if you people can sit here and look at me and my wife and we have 2 kids that we gave up all income for a whole year that didn't hurt us. It hurt us bad and we didn't get a thing for it. That was payment – in fact they used my confession against me and the reason why I get upset is I know the Supreme Court would just go "when a man buys a – a deal he gets the deal". It's as simple as that I bought and paid for it and it was all used against me. I had no money to go on to hire more attorneys – I'm broke now and they used all my statements that I made for the same deal. It's so wrong and that's why I'm upset is because I read these opinions from the US Supreme Court and they would turn over in their graves the people that made those opinions if they knew what happened. We – let me get this out. My attorney said the prosecutor needs me to give up all my weapons and all my defenses for this deal. He said you do this and you get this. You do this and you don't have to go to trial. You get this punishment here. So my wife and my family we gave up all of our defenses and all of our weapons. We gave the State everything they needed – we gave them all of our money so that

we could have something we could live with – 5 hours – 5 business hours before we were supposed to get this deal Prosecutor Scot Leaders changed the charges in violation of what I had bought and paid for and because I had already given him all of my defenses and all of my weapons he then sent me into the ring to do battle with the gladiators. And there's a U.S. Supreme Court case it's Cronic I believe where the Supreme Court judges quote Judge Wyzanski and he said "While a criminal trial is not a ba – a – a contest between equally armed adversaries neither is it the sacrifice of unarmed prisoners to gladiators." Now what happened to me is the State of Alaska used deception – lies to get me to give them all of their armor – or give – yeah give them all of my armor, all of my weapons so that I did not have to go do battle with the gladiators. Then after they had my weapons and all my armor they threw me into the arena with the gladiators with no weapons no armors and with my hands tied behind my back to do battle at trial. Which we were – most of us was there and that was such a gross perversion of the system that it's almost incomprehensible - virtually incomprehensible. At least according to the U.S. Supreme Court's definition of what happens when you make a deal and you rely on it to your detriment. They said giving the prosecution information is greatly to your detriment. I think a 5 hour confession put me at a significant disadvantage at trial. In fact my statements are in every information that was filed – all 3 of them. It says "in an interview with Mr. Haeg he said this-this-this and this" in all 3 of them. That violates due process, that violates the Constitution, that violates evidence rule 410, that violates the attorneys – the prosecutors duty to look out for me to have a fair trial because even though he's my adversary it is his duty according to U.S. Supreme Court to look out for my interest. And he was just hacking on them and using my own attorney's conflict of interest. I asked him "how can they use my statements against me"?

MAGISTRATE WOODMANCY: Let me...

MR. HAEG: You know ok – and ...

MAGISTRATE WOODMANCY: we're not trying this whole thing...

MR. HAEG: Ok.

MAGISTRATE WOODMANCY: How does this relate to Osterman?

MR. HAEG: Osterman did not...

MAGISTRATE WOODMANCY: Wrap this up.

MR. HAEG: ...utilize any of that for me. None of it and he said he would. He said he would when I hired him. He took my money, spent it, and then he said he wasn't goanna use it – wasn't goanna use it, and then he handed me a bill for another $30,000 dollars almost. Or well $24,000 dollars on top of what he said it would cost. I'm like you know – I'm – and I'm sorry I get so frustrated...

MAGISTRATE WOODMANCY: Once any motion has gone to the court it's goanna stay in the file.

MR. ROM: Nobody ever gets to pull a file document out.

Exhibit 25

STATE OF ALASKA ADMITTING AT REPRESENTATION HEARING THAT HAEG'S IMMUNIZED STATEMENT WAS USED AGAINST HIM

8/15/06 Remand Hearing McGrath

OSTERMAN: It appeared to me that Mr. Haeg had not committed one way or the other when an amended information was filed and the amended information contained information provided by Haeg uh- as a result of rule 11 negotiations.

ROM: Right

MR. OSTERMAN: The initial rule 11 agreement I had heard had been accepted and then Scot filed an amended information that alleged new material that was -uh- received out of the rule 11 negotiations.

MR. ROM: And -uh- nobody ever informed you that the reason that happened is that Mr. Haeg insisted on going into open sentencing which could have given him a 5 year license suspension - exposure?

EXHIBIT 26

STATE OF ALASKA 14 PAGE OPPOSITION TO HAEG REPRESENTING HIMSELF – USING HAEG'S IMMUNIZED STATEMENT

September 18, 2006 – In the District Court for the State of Alaska Fourth Judicial District at McGrath. Haeg v. State, Case No. 4MC-S04-24 CR.

MEMORANDUM OF LAW

I. Factual and Procedural History

In 2004 the Alaska Department of Fish and Game (ADF&G) managed a Predator Control Program in the McGrath area. Permits were issued for certain game management subunits to allow wolves to be taken from the air with the use of an airplane. David Haeg applied for and received such a permit. In March 2004, David Haeg and Tony Zellers, both of whom were licensed under Title 8 as Alaska Big Game Hunting Guides, took a number of wolves with Zellers shooting the wolves they encountered from which Haeg piloted.

In early March 2004, Alaska State Trooper Brett Gibbens learned that Haeg and Zellers may have been taken wolves outside of their permitted area. Over the course of the next several months Gibbens investigation showed that Haeg and Zellers had taken a number of wolves outside of the legally permitted area and provided false information to ADF&G claiming the wolves were in a legal area. Eventually, search warrants were executed and the aircraft was seized. In June 2004 both hunters were interviewed by the troopers and admitted that they knew nine wolves were shot from the airplane outside the permit area. Both men were charged with various criminal counts. Zellers case resolved by way of a plea agreement, and Haeg proceeded to jury trial where he was convicted. On September 30, 2005, he was sentenced for five counts of Unlawful Acts by a Guide: same day airborne in violation of AS 8.54.720(a)(15), two counts of Unlawful Possession of Game in violation of 5AAC 92.140(a), one count of Unsworn Falsification in violation of AS 11.56.210(a)(2), and one count of Trapping in a Closed Season in violation of 5AAC 84.270(14). He filed a timely Notice of Appeal in the Court of Appeals.

Appellant initially retained attorney Brent Cole to represent him. After a failed plea negotiation, but prior to trial, appellant fired Mr. Cole and obtained representation by attorney Arthur S. Robinson. Mr. Robinson represented appellant through trial and began working on the appeal. Appellant fired Mr. Robinson and retained the services of Mark Osterman to perfect the appeal. Once the brief was substantially completed and, appellant reviewed it, he fired Mr. Osterman. Appellant attempted to waive the assistance of counsel and to proceed pro se. The matter was remanded by the Court of Appeals for hearing which occurred in McGrath on August 15, 2006, to determine whether he and intelligently waive his right to counsel and whether he is competent to represent himself on appeal.

I. Legal Authority for Pro Se Status

A criminal defendant has a right to waive counsel and represent himself. *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944,79 L.Ed.2d 122 (1984); *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1 975); *McCracken v. State*, 518 P.2d 85, 90-9 1 (Alaska 1974); *Lampley v. State*, 33 P.3d 184, 189 (Alaska App. 2001) (trial court properly denied defendant's request to represent himself based in part, upon repeated threats to harm trial judge). In order to be granted pro se representation, a defendant must clearly and unequivocally express his desire to represent himself. *Faretta*, 42 U.S. at 835, 95 S.Ct. at 2541. This constitutional right applies at trial but not to appeals. *Martinez v. Court of Appeals of California Fourth Appellate Dist.*, 120 S.Ct. 684, 692, 528 U.S. 152 (2000) (a criminal defendant has no federal constitutional right to represent himself on appeal). As the *Faretta* court recognized, the right to self-representation is not absolute. The defendant must "voluntarily and intelligently" elect to conduct his own defense, 422 U.S., at 835, 95 S.Ct. 2525 (quoting *Johnson v. Zerbst*, 304 U.S. 458,464-465, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)), and most courts require him to so in a timely manner. He must first be "made aware of the dangers and disadvantages of self-representation." 422 U.S, at 835, 95 S.Ct. 2525. A trial judge may terminate self-representation or appoint "standby counsel" – even over the defendant's objection – if necessary. *Id.* 834 n. 46, 95 S.Ct. 2525. The Supreme Court has further held that standby counsel may participate in the trial proceedings, even without the express consent of the defendant, as long as that participation does not "seriously undermin[e]" the "appearance before the jury" that the defendant is representing himself. *McKaskle v. Wiggins*, 465 U.S. 168, 187, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984). Additionally, the trial judge is under no duty to provide instruction on courtroom procedure or to perform any legal "chores" for the defendant that counsel would normally carry out. *Id.* at 183-184, 104 S.Ct. 944. Therefore, the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer. 120 S.Ct. at 691.

Courts disfavor self-representation. Not even the *Faretta* majority attempted to argue that *pro se* representation is wise, desirable or efficient, and some waive his right to a fair trial. 120 S.Ct. 691 n.9. The Supreme Court has found, that although the right to defend oneself at trial is "fundamental," representation by counsel is the standard, not the exception. *Patterson v. Illinois*, 487 U.S. 285, 307, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988) (noting the "strong presumption against" waiver of right to counsel). The Supreme Court recently noted that "a *pro se* defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney." 120 S.Ct. at 691.

Given this strong bias against *pro se* representation, the waiver of the right to counsel is not unlike a change of plea. In making these determinations, a trial court must also advise a defendant of his right to counsel, the importance of having counsel, and damages of proceeding without counsel. *Evans v. State*, 822 P.2d 1370, 1374 (Alaska App. 1991). Not only must the trial court explain in detail the advantages of legal representation, but it must be satisfied that the defendant understands those knowing and intelligent waiver, the Court of Appeals will reverse a

conviction of a *pro se* defendant. *McIntire v. State*, 42 P.3d 558, 562-63 (Alaska App. 2002) (reversing conviction for inadequate inquiry). [1]

These advisements are critical to establishing a valid waiver. They must include an explanation of the function of defense counsel, e.g., conduct *voir dire* to ensure selection of impartial jury, cross-examine state witnesses, object to inadmissible-evidence, call and examine defense witnesses, and argue the case to the jury. And they must also include an explanation of the dangers of self-representation; it is not sufficient for the trial court to simply advise a defendant that it would be foolhardy to proceed without counsel. The purpose of this inquiry is "so that the record will establish that '[the defendant] knows what he is doing and his choice is made with eyes open."' James, 730 p.2d at 814 n.l (quoting, I ABA Standards for Criminal Justice § 3-3.6 commentary at 6.39-40 (2nd ed. 1982)), *modified on reh'g*, 739 P.2d 13 14 (Alaska App. the criminal justice system, although a factor is not an adequate substitute for these explanations. *McIntire*, 42 P.3d at 562 (pro se defendant had been previously been convicted of seven misdemeanors and a felony, had viewed the court system video many times; and was assisted by two paralegals at trial; his experience with criminal justice system did not cure judge's inadequate inquiry).

The proper standard of review of a trial court's findings regarding waiver of a constitutional right is whether the trial court's finding of waiver is supported by substantial evidence. *Walunga v. State*, 630 P d 527, 528 (Alaska 1980). Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a question of fact to be determined in light of the totality of the circumstances. *James v. State*, 730 P.2d 811, 817 (Alaska App. 1987), (Singleton, dissenting), *modified on reh'g*, 739 P.2d 1314 (Alaska App. 1987) (*citing Maynard v. Meachum*, 545 F.2d 273,277-79 (1st Cir. 1976)). The Alaska Supreme Court requires that the trial court first establish that the defendant can represent himself in a "rational and coherent manner" and then determine whether "the prisoner understands precisely what he is giving up by declining the assistance of counsel" before allowing the defendant to appear pro se. Evans, 822 P.2d at 1373 (*citing McCracken*, 5 18 P.2d at 9 1). The trial judge must explain the advantages of legal representation in "some detail." Evans, 822 P.2d at 1373 (citing McCracken, 51 8 P.2d at 92). The record must reflect a clear waiver of the right to

[1] In *Gladden v. State*, 110 P.3d 1006, 1009-11 (Alaska App. 2005). Gladden was charged with the fairly uncomplicated charge of driving on a suspended license. He watched the court system video which "explained the benefits of counsel in general terms" and the trial judge actually gave him copies of United States Supreme Court opinions, including the landmark opinion of *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) ("the obvious truth that the average defendant does not have the professional legal skill to protect himself when [ ] the prosecution is presented by experienced and learned counsel.") The court of appeals concluded that, "[tlhe record suggests that Gladden understood the value of an attorney, at least in general terms." 110 P.3d at 1010. In fact, Gladden insisted on representing himself-arguing that Alaska-licensed "attorneys" were not the same as "counsel" guaranteed to him by the Sixth Amendment. This argument itself certainly suggested that Gladden had a grasp of the significance of the right he was waiving. The case was not complex, and the prosecution's entire case consisted of a certified copy of his DMV record and the testimony of the officer who saw him driving. Yet, the court of appeals reversed, holding that the trial court's inquiry was inadequate, and too general. *Gladden*, 110 P.3d at 1010.

counsel. Evans, 822 P.2d at 1373 (citing, *O'Dell v. Anchorage*, 576 P.2d 104, 108 (Alaska 1978); *Smith v. State*, 65 1 P.2d 1 19 1, 1 194 (Alaska App. 1982)).

The court must hold a hearing to determine if a defendant is competent to represent himself and whether he waives his right to counsel. Burks v. State, 748 P.2d 1178, 1180 (Alaska App. 1988). Even if the court finds that a defendant is competent to represent one's self and makes a knowing, intelligent, and voluntary waiver of the right to be represented by counsel, the court can still deny the defendant's request to proceed pro se. If it appears that the defendant would be unable to obey the court's orders or if the court finds it would be necessary to require the defendant to be represented by counsel in order to regulate courtroom decorum, the motion should be denied.

Before a trial court allows a defendant to represent himself, it must determine whether, (1) the defendant is competent to waive his right to counsel, (2) he does in fact knowingly and intelligently waive that right, and (3) the person is minimally competent to represent himself. Ramsey v. State, 834 P.2d 81 1, 814 (Alaska App. 1992). The court must be satisfied with two things: that the defendant can represent himself in a "rational and coherent manner," McCracken, 5 18 P.2d at 9 1, and that he "can conduct his defense without being unusually 829 P.2d 1201, 1205 (Alaska App. 1992). Self-representation may be defined if the defendant clearly demonstrates an unwillingness to comply with rules and regulations. *Burks v. State*, 748 P.2d 1178, 1181 n. 1 (Alaska App. 1988).

In Gargan v. State, 805 P.2d 998, 1000 (Alaska App.), cert. denied, 111 S.Ct. 2808 (1991), the court noted that the defendant may be required to be represented by counsel. In Gargan, the court found that where a defendant was unable to obey court orders, or unable to manage his own case within the rules of evidence and the general procedure of an orderly courtroom, co-counsel status may be denied. Gargan, 805 P.2d at 1001. Gargan was charged with solicitation to commit perjury and tampering with evidence when he attempted to manufacture evidence to exculpate his son who had been charged with burglary. At the joint trial Gargan represented himself while his son was represented by the public defender. Gargan included objectionable statements and violated a protective order in his opening statement. The public defender representing his son moved to sever the trial and for a mistrial as to the son. The motions were granted and the court required Gargan to be represented by a counsel at a new trial before a new jury because of his inability to focus his arguments or obey court orders. The Court of Appeals found that the trial court did not abuse its discretion. *Id.*

Therefore, there is clear authority to permit this court to exercise it discretion and deny *pro se* status for appellant if the court determines he is unable to obey court orders or present his defense in coherent manner. *Id.*

III. Legal Argument

At hearing on August 15, 2006, it quickly became apparent that Mr. Haeg is not competent to undertake pro se status. While he may be able to knowingly and intelligently waive

his right to an attorney, he cannot control his conduct, nor can he provide a coherent strategy for his defense. He repeatedly failed to comply with clear directions from the court.

The hearing began at 11 :00 a.m. and ended at 10:00 p.m. With a number of short breaks, a short lunch break, and a one and a half hour dinner break, it is estimated that more than eight hours of testimony was taken. During this lengthy testimony it was apparent that the appellant could not stick to the issues before the magistrate. His inability to focus on a single issue without getting sidetracked into collateral matters is a clear indication he will not be able to address proper points on appeal. He could not describe what points he would brief on appeal, if any.

On a number of occasions the appellant became argumentative with the judicial officer. Throughout the hearing, when objections were sustained, he continued to argue for a different outcome. While his persistence may be appropriate in a different forum, his conduct showed that he could not accept the authority of the court, even when given a clear directive.

He does not understand legal strategy, legal argument, and basic legal principles and procedures. For example, he said during the hearing that he did not understand that he could make objections, or that he could be a witness for himself at a hearing that was brought by his own motion. He claimed he could read the entire book of court rules in a matter of days and understand it well enough to proceed without assistance of counsel. He was confused by the distinction between direct examination and cross examination, and could not distinguish import procedural differences between the two. He does not know when to proceed with a direct appeal post conviction relief. He thought the hearing on whether he was competent to represent himself was a post conviction relief proceeding. Any legal argument he furthers in the Court of Appeals is highly likely not to be presented coherently.

To complicate matters further, his lack of legal understanding combined with his efforts to learn sufficient substantive and procedural law to enable himself to proceed without assistance of counsel, has given him a distorted impression of which rules apply to a given situation. Frequently he would take a statement from a case or the rules out of context and try to apply it to a wholly inapplicable situation. For example, appellant recited a portion from Criminal Rule 35.1 (f) (1), which reads: "in considering a pro se application the court shall consider substance and disregard defects of form," but without considering the remainder of the sentence indicating the burden of proof and persuasion, he argued for the far broader principle that in any post conviction proceeding (including, in his mind, is direct appeal), form is totally unimportant and that only substance mattered. He stated that form "falls away." In another words, he is prepared to construe a part of a sentence outside of its context to enable him to represent himself in the Court of Appeals without being subject to the normal procedural requirements. This can only lead to a chaotic presentation which will be entirely disruptive to the legal process. As another example, under subsection (g) of the same rule, he understood that the "court may receive proof by affidavits, depositions, oral testimony, or other evidence." Because he was confused by the distinction between post conviction relief and an appeal, he sought affidavits from approximately twenty or more persons, including opposing counsel. At least one of the affidavits he sought contained a list of 200 questions he wanted answered. He has inappropriately filed a number of motions in the Court of Appeals for 1) evidence and discovery, and 2) to compel a witness to

testify on his behalf. He does not understand enough of the legal process to effectively present a coherent appeal.

The defendant is too emotionally involved in his case to represent himself, even at a minimal level. He admitted that he is extremely angry and he got emotional several times during the hearing. The criminal case against him has unquestionably affected his emotional state and it is clear that it is a paramount issue in his life. Whatever reasons for this may be, his emotional involvement prohibits him from sometimes acting in his own best interest. As indicated above, even when directed to do something or to not do something, he will persist because he is unable to control his emotions. But it also affects his reasoning. Because the case is so important to him, he is willing to bend the rules or not follow the rules to follow a particular course he believes is going to be more effective. The hazard posed by this disorganized course of action is that he will pull from the civil rules, rather than from the appellate rules, which he thinks it will give him an advantage or an argument that he couldn't otherwise have. He has filed motions while represented, even when told not to do so. He cites cases out of context when he feels the point he wants to establish can be found in that case, even when it is not. He does not appreciate the order in the law the rules are designed to maintain.

Unfortunately, because the defendant will rationalize or justify inappropriate conduct, he will put matters before the court that should never be there. For example, in his Motion for Reconsider of Stay of Guide License Suspension Pending Appeal he filed in the Court of Appeals, identified as Exhibit 8 in the August 15th hearing, he discussed a confidential proceeding he knew he was not to disclose. In his Motion to Proceed Pro Se, identified as Exhibit 3 in the August 15th hearing he again revealed confidential proceedings before the Alaska Bar Association, and included a partial transcript of conversations he had had with his attorney that were secretly recorded. Moreover, he included threats, said he didn't care if the Court of Appeals threw his case out, used inappropriate, vulgar language, and believed doing so was appropriate and effective.

Appellant's emotional involvement in this case impairs his judgment. In a motion he filed in the Court of Appeals titled Motion for Stay of Forfeiture, Judgment of Restitution and Licenses Suspension Pending Appeal, he attached an appraisal of the airplane forfeited by the judgment of conviction. The appraisal indicates the forfeited airplane has a value of $11, 290. However, he testified at the August 15th hearing that the appraisal was "ridiculously low" and that he knew it was not the "true value." He testified that there was some missing documentation which caused the appraisal to be substantially distorted. Nonetheless, he filed the document with the Court of Appeals knowing it to be extremely inaccurate and misleading. While this may be one significant example, the length of the hearing was at least in part attributed to cross of examination of the defendant and attempts to get him to be forthcoming in his testimony. The court must be able to rely on veracity and trustworthiness of a litigant standing before it.

Throughout the appellant was unable to focus his arguments on the issues properly before the court. He was unable to coherently present his case, he refused to follow the directions of the court, and he demonstrated his inability to understand the mechanics of the law necessary to coherently further his case.

IV. Conclusion

Based on the forgoing, it is respectfully submitted that the appellants should not be allowed to represent himself.

Dated September 18th, 2006 at Anchorage, Alaska.
DAVID W. MARQUEZ
ATTORNEY GENERAL

By: "s/"
Roger B. Rom
Assistant Attorney General
Alaska Bar No. 901 1128

EXHIBIT 27

BIASNESS OF MAGISTRATE WOODMANCY

WOODMANCY: Mr. Haeg...

HAEG: Well...

WOODMANCY: ...you are so far out in the ozone. [8/15/06 representation hearing]

EXHIBIT 28

DR. RUSSELL'S PHYCOLOGICAL REPORT

STATE OF ALASKA
DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF BEHAVIORAL HEALTH
ALASKA PSYCHIATRIC INSTITUTE
ALASKA RECOVERY

FILED
In District Court
State of Alaska
at McGrath

August 24, 2006

Date 8-31-06
"s/"
Magistrate/Clerk

Honorable David Woodmancy
District Magistrate
District Court for the State of Alaska
PO Box 147
Aniak, AK 99557

RE: Haeg, David
DOB: 01/19/66
API #: 11111
CT REF #: 4MC-04-024 CR

Dear Magistrate Woodmancy:

Pursuant to your Order for Examination for Competency to Continue Legal Proceedings and capability of conducting a legal defense without counsel, the following report is prepared. Mr. Haeg was evaluated as an outpatient in the psychological testing area at API. The warnings concerning limited confidentiality, and the fact that copies of my report would be distributed by your chambers was explained to Mr. Haeg. The defendant consented to participate in the examination.

IDENTIFYING DATA: Mr. Haeg is a 40-year-old Caucasian male who lives near Soldotna. He has worked for more than 20 years as a hunting guide. He is married, has children and completed high school.
PERTINENT HISTORY: Mr. Haeg has been charged with 11 counts of violating state game regulation, and is in the process of appealing the court's earlier decision regarding these charges.

CURRENT PSYCHIATRIC CONDITION: Mr. Haeg does not have a mental disease or defect, has not been prescribed medications to treat a mental health condition, and is not receiving mental health therapy at this time.

ISSUES RELATED TO COMPETENCY TO STAND TRIAL: Mr. Haeg was interviewed extensively regarding his knowledge of the charges against him, his perception of the seriousness of those charges, his understanding of possible legal alternatives available to him, and his understanding of the process involved with this court case. He was able to exhibit a very clear understanding of not only the charges against him, but of the various legal alternatives that he could select from. He is also able to present a logical argument for self representation, and is cognizant of the challenges that he may face in doing so. He did state that he has begun to look for legal consultation, and presented arguments in regards to pitfalls of utilizing a lawyer who actively practices in Alaska at this time. His mental status examination does not suggest any deficits in memory, comprehension or reasoning skills. His level of intellectual functioning falls in at least the average range, and may be somewhat higher than average based on his understanding of vocabulary, and ability to reason and comprehend abstract concepts.

It is, therefore, my professional opinion that Mr. Haeg may be found Competent to Continue Legal Proceedings at this time. He also demonstrates the mental capability to conduct his own defense, and is clearly aware of the pros and cons of making such a choice.
If I may answer additional questions or be of further service, please contact me at 269-7100.

Respectfully,

"s/"

Tamara Russell, Psy.D., MHC IV
Licensed Psychologist (AK#538)
Forensic Evaluator
Alaska Psychiatric Institute

TR/pal/MEMOLTR/23119F
D: 8/24/06
T: 8/25/06

EXHIBIT 29

FITZGERALD'S 4/13/06 ABA TESTIMONY HAEG HAD IMMUNITY

Cole: Do you recall talking to me about you - our understanding of our client going in – clients going in and giving statements to the officers in this case?

Fitzgerald: Well I can tell you my clear understanding from having talked to Mr. Leaders and I will represent here as an officer of the Court and Mr. Leaders indicated that -uh- my client Mr. Zellers was goanna be given immunity that there was nothing about that interview which I characterize as a "king for a day" – there was nothing about that interview that could be used against Mr. Zellers.

Shaw: Excuse me. What did you mean a "king for a day"?

Fitzgerald: -Um- it's – it's something that – that I frankly – you don't see -um- as frequently in State Prosecutions but in Federal Prosecutions it's – it's what I describe as -um- the immunity that – that usually is accompanied a letter -um- where you bring your client in and -um- the -uh- protections that are afforded -uh- your client are essentially use immunity protections. The – because the State and the Feds interpret immunity differently I've always interpreted that if you bought that same kind of offer and protection in -um- the States side that it would be transactional immunity. -Uh- that they wouldn't be able to use it for any purpose whatsoever. There – the Feds and the State have a little different view with regard to what immunity means. I hope I answered your question. I - it – it's had to do with immunity.

Cole: In your discussions with Mr. Leaders did you learn that he needed Mr. Zellers testimony because he didn't have evidence of some of the counts because he couldn't use Mr. Haeg's statement?

Fitzgerald: I know that – that – that was discussed. I know that – that was discussed between you and Mr. Leaders; it was discussed between Mr. Leaders and myself, and -um- -uh- it was clear to me that by virtue of the immunity provided that – that Mr. Leaders believed maybe early on that he might have – he wasn't goanna have because of the immunity agreement.

Haeg: If Brent Cole or when – I have it wrote down as when Brent Cole told me nothing would have happened as far as withholding or not upholding – upholding the rule 11 agreement or not upholding it nothing would have happened if he would've asked the Judge to rule to have the Rule 11 Agreement upheld? I guess – and then that's a question then you - I have – is this true? I guess I apologize for not having a clear question.

Shaw: Yeah asking him if Mr. Cole's advice is correct?

Haeg: Yep. Yes.

Shaw: So apparently Mr. Cole --um... his next question is – if Mr. Cole had apprised Mr. Haeg that making a motion to influence the plea agreement wouldn't have gotten anywhere. Ok can you think about that before I ask the witness (...)?

Haeg: Yep.

Fitzgerald: I – I want to have to ask one clarification. That – that it wouldn't be enforced or that there wouldn't be any consequence?

Haeg: I don't care about the consequences.

Shaw: That it would be enforced – it would be enforced.

Fitzgerald: Ok so the question is whether – if Mr. Cole informed Mr. Haeg that there would be no consequence for asking the Court to enforce the terms of the Rule 11.

Shaw: It wouldn't happen – it wouldn't get them there – get a result (...)

Fitzgerald: Then I think it – it harkens back to what I've been saying all along about enforceability. If it's goanna be a futile exercise I'm not sure you advance the ball for your client by going through that futile exercise.

Haeg: Would you agree that if you don't try to advance it there when do you actually try to advance it?

Fitzgerald: Mr. Haeg can I strike you a deal?

Haeg: Sure.

Fitzgerald: And that is I – I will respect what you have to say and ask if likewise you accord me the same courtesy.

Haeg: If you made a Rule 11 Agreement, verbally set in stone, written, your client and his wife had given just about everything they could afford to give, would you have tried to enforce that Rule 11 Agreement, for your client?

Fitzgerald: I believe that you would be obligated to zealously advocate for that Rule 11.

Haeg: And what is – what is zealously advo – can you explain zealously advocating for the Rule 11 Agreement – can you explain to me what that – what you would be doing after?

Fitzgerald: Well it would depend on – it would depend on - I'm assuming that there were representations made by Mr. Leaders that he didn't fulfill. As a result of that it was a – a concern with regard to the terms of the Rule 11 not being complied with. Is that – is that right?

Haeg: That's correct.

Fitzgerald: -Um-

Shaw: Actually Mr. Fitzgerald the testimony is the Prosecutor refuses to (...) I mean that's the question.

Fitzgerald: All right.

Shaw: And I'm just forming up another scenario when you say that didn't happen at all because we have testimony today.

Fitzgerald: Ok.

Shaw: The deal was no longer on the table in the form that Mr. Haeg believes it was in.

Cole: And to the extent that he several times mentioned that it was in writing. There's nothing in writing.

Shaw: There's no testimony that it was in writing. So there was – there was a hypothetical that we have before there's an agreement not in writing that they expect for the change of plea in reducing sentencing (...) -Um-

Fitzgerald: The – the first step would be to go to the Prosecutor to try encourage them that the terms of the deal were - were set and they should be honored. I think that – that would probably be my first step. The second step has to do with enforceability. That is if you don't get relief from the Prosecutor where are you goanna look for the enforcement of oral terms and I can tell you that you could go to the Judge, you could file a motion with the Judge, but in my view that would be totally unsuccessful because the Judge would look at you and say "well the terms were oral I'm not goanna be an arbiter of what the terms were, how they were communicated, who might have misunderstood, the fact of the matter is you folks have a disagreement with regard to what the terms are" and ultimately what it comes down to is the – in my view the Court unless it was

very - very clear and which would typically mean that it would be in writing would be any possession – position to enforce that by requiring a Prosecutor to abide by his terms. And even then Mr. Haeg there – courts are very reluctant to impose upon Prosecutors - appreciating that Prosecutors have the not only the ability but obligation to bring the charges and represent the State to intercede and dictate what – what terms might have been struck between counsel. So I think that the answer to your question the issue about enforceability would be very important and you would have to access and calculate the risks of going forward and attempting to get the terms enforced and what consequence that might have if they weren't enforced.

Haeg: Ok so what you're telling me is you've given the State everything, your client has given up both his wife and him a whole years income, flown in people from around the whole countryside, and you're telling me you wouldn't even try because it aint goanna do any good? Why do you have a lawyer?

Cole: Can I object for just a second because this has – I understand what he's trying to say but Mr. Haeg has a fundamental misunderstanding of the criminal justice system.

Shaw: (...)

Fitzgerald: I think you've asked me a number of questions Mr. Haeg and -um- I – I've described to you what I believe the appropriate steps would be and the appropriate assessment of risks would be with regard to whatever – whatever steps you took.

Haeg: Ok. Can you explain the risks involved in trying to enforce the agreement?

Fitzgerald: The risk Mr. Haeg or that if you're not successful before the – if – if you attempt and indeed do for instance file a motion with the Court and the Court rules as I think it would with regard to any kind of oral terms that it does not have the jurisdiction or ability to intercede and define those terms then what you've done is you've really drawn a line in the sand with regard to the Prosecutor and that what you've done is you've made an enemy out of frankly the last person you want to make an enemy of. Whether we like it or not Mr. Haeg us in the defense bar realize quickly that you are not infrequently in a position where you don't have the leverage and so what relationships you can develop and what ability you can develop with regard to obtaining good term for your client you want to keep in tact because when the rubber meets the road and you're a criminal defendant it's typically not a pretty picture.

Haeg: I'm sorry. Are you telling me Mr. Fitzgerald that advocating for your client makes an enemy for you – enemy of the prose – advocating for your client makes an enemy out of the Prosecutor? Is that what I just heard you just say?

Fitzgerald: No you didn't.

Haeg: I – I thought that's what I heard.

Fitzgerald: I – I don't know how to answer that sir – I – that's what not what I intended to say.

Metzger: There's no question.

Haeg: Ok – in your opinion if you advocate for your client – excuse me – are you making an enemy out of the Prosecutor?

Fitzgerald: It depends on the circumstances.

Haeg: (exhales) I told you the circumstances. I'll repeat them again. Your client gave a 5 hour interview to the State, gave the State maps, gave up a whole years income not for just the client but also the clients wife most peoples arithmetic that's two years income, then for the Rule 11 Agreement you fly people in from around the country from Illinois, from a remote lodge Silver Salmon Creek, take kids out of school, people away from work, drive up here to comply with the Rule 11 Agreement and then the Prosecutor breaks it by filing harsher charges because I believe he -uh- changed his mind. Wasn't even a mistake just changed his mind – didn't make a mistake. And your attorney can't ask for the Rule 11 Agreement to be honored because that would oh make an enemy out of the Prosecutor. Is that what you're telling me?

Fitzgerald: I think sir I described my answer to the best of my ability. I've described the – what I believe to be the appropriate steps.

Haeg: Ok.

Fitzgerald: I don't know that I can make it any clearer.

Haeg: Ok. Have you ever heard of a term called detrimental reliance?

Fitzgerald: Yes.

Haeg: Can you describe it to me?

Fitzgerald: The term typically is used in the civil context in which somebody makes a representation, you take certain action based on that representation, and then for lack of a better description they pull the rug out from underneath you. Under certain circumstances you – you can -uh- obtain relief from the Court for that kind of detrimental reliance.

Haeg: Does that ever apply to criminal cases?

Fitzgerald: I think it's very – I think it's very infrequent that – that – that concept would be one that would be find favor in – in the criminal justice system.

Haeg: How come I've been able to find hundreds of cases of it then?

Haeg: So would – in my – in my little deal here you wouldn't have stood up and asked the Judge to -uh- conduct an evidentiary hearing and I guess I'm probably goanna make a statement that there is some written record or if you pull it all together stuff for of the Rule 11 Agreement.

Shaw: Just ask the question that you have for the witness. And the question Mr. Fitzgerald I think is if you would have gone to the rule 11 hearing and the accusations would you have enforced the plea agreement?

Cole: I thought he asked would you have stood up in front of the Judge at the arraignment...

Haeg: That happened.

Shaw: That's what I meant.

Cole: Oh I thought that you were saying a separate – that it's a separate hearing that comes on.

Shaw: Well I take it in this case that there was only the one.

Cole: There was only one but to get the relief he's asking I thought you would have to file a motion to get a hearing?

Shaw: But this – but that wasn't Mr. Haeg's question that's your perception – Mr. Haeg's question was would you have stood up at this single arraignment change of plea hearing and ask to enforce the plea agreement?

Fitzgerald: These – these are not easy decisions to make sir. They – they have enormous consequences and you have to – you have to deliberate and think about what the consequences are goanna be before you take action.

....

Haeg: Ok. -Um- -uh- Mr. Fitzgerald in your opinion when a Prosecutor breaks a Rule 11 Agreement does he become the enemy of the client and his client – and that clients attorney?

Fitzgerald: I don't think at that stage no - if the Prosecutors the one that's breaking the agreement.

Haeg: Why not?

Fitzgerald: Well there's nothing for the Prosecutor to be upset about if the Prosecutors the one that breaching the agreement.

Haeg: What I asked is if the Prosecutor breaks the agreement that he made with the client and his attorney – so the client and the attorney are one unit – there like the white – (...) cowboys and the Prosecutor is like the Indians and the Indians break the rule 11 agreement does that – that doesn't make them enemies of the cowboys. Is that what you're saying?

Fitzgerald: Yeah that's what I'm saying.

Haeg: And can you elaborate on that for me please?

Fitzgerald: As I said the Prosecutor – if the Prosecutor is the one that's -uh- breaching the agreement they've got – shouldn't have any hardship with regard to -uh- their prospective towards the client and the defense counsel.

Haeg: Don't you think that there might be a little bit a (laughs) at least irritation?

Cole: Objection argumentative.

Haeg: Have you upheld or overruled or what?

Shaw: (...) Mr. Fitzgerald to answer that question.

Fitzgerald: I – I think if the Prosecutor is the one breaching the agreement then there's little likelihood that they would be upset about that breach and hold it against the client or the defense attorney.

Haeg: But wouldn't the client and defense attorney hold it against the Prosecutor?

Fitzgerald: Oh I – yeah – I – I – I – I think that's -uh- breach of the bond and yeah that's – that's a – in – in my measure – I my view that's a very serious matter.

Haeg: So why do you say to me then if – since they're now enemies – we'll just use the word enemies cause you brought it up – why do you then say if the client and his attorney wanted to enforce the Rule 11 Agreement they couldn't because they couldn't make an enemy of the Prosecutor? But the Prosecutor – you guys see where I'm going with this? It's – to me it's pretty apparent.

Fitzgerald: Mr. Haeg what I said is that the issue – the real issue is one of enforceability and if the attempt at getting a Court to intervene on your behalf and enforce the Rule 11 – if that's goanna be a futile exercise then you probably damaged your clients interests or certainly not served them by making the attempt. So –

Haeg: So what you're saying – what you're say - in your opinion what you're saying is – is you can make an agreement and pay oh in my case maybe $700,000.00 dollars for it and just blow it off and let the Prosecutor do whatever he wants?

Fitzgerald: No I'm not advocating that sir. I'm – I've said that it – it was something that needed to be carefully deliberated and considered and the consequences of the same had to be considered carefully.

Exhibit 30

USE OF HAEG'S IMMUNIZED STATEMENT BY THE STATE OF ALASKA TO OPPOSE MOTIONS TO SUPPLEMENT THE RECORD AND TO ALLOW HIM TO REPRESENT HIMSELF DURING REMAND 9/8/06

In June 2004 both hunters were interviewed by the troopers and admitted that they knew nine wolves were shot from the airplane while outside the permit area.

Exhibit 31

September 10, 2008: In the Court of Appeals of the State of Alaska, Haeg v. State, Court of Appeals No. A-9455-10015, Trial Court No. 4MC-04-24CR, Memorandum Opinion & Judgment No. 5386, dated 9/10/08:

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges. COATS, Chief Judge.

"David S. Haeg was convicted of five counts of unlawful acts by a guide: hunting wolves same day airborne;[2] two counts of unlawful possession of game;[3] one count of unsworn falsification;[4] and one count of trapping wolverine in a closed season.[5] Haeg appeals these convictions in Case No. A-9455. While this appeal was pending, Haeg asked the district court to suppress the evidence used during his trial that the State had seized from him during its criminal investigation and to have the property returned to him. The district court denied the motion, and Haeg appeals this decision in Case No. A-10015.

In Case No. A-9455, Haeg primarily argues that the State used perjured testimony to obtain search warrants and that he should not have been charged as a guide for hunting wolves same day airborne — first, because he was not guiding at the time, and second, because he was not hunting at the time. He also argues that the prosecutor violated Alaska Evidence Rule 410 by using statements that Haeg made during the parties' failed plea negotiations. And he asserts that his attorneys provided ineffective assistance of counsel.

In addition, Haeg claims that the district court committed various errors during the course of the proceedings. In particular, he contends that the district court (1) failed to inquire into the failed plea negotiations, (2) failed to rule on a motion protesting the State's use of Haeg's

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2 AS 8.54.720(a)(15) & 5 AAC 92.085 (8).
3 25 AAC 92.140(a).
4 AS 11.56.210(3 (a)(2).
5 5 AAC 84.270(14).

statement made during plea negotiations as the basis for the charges, (3) made prejudicial rulings concerning Haeg's defense that he was not "hunting," (4) failed to instruct the jury that Haeg's co-defendant, Tony Zellers, was required by his plea agreement to testify against Haeg, (5) unfairly required Haeg to abide by a term of the failed plea agreement, (6) failed to force his first attorney to appear at Haeg's sentencing proceeding, and (7) when imposing sentence, erroneously identified the location where the majority of the wolves were taken. In a separate claim, he contends that the district court erred by revoking his guide license instead of suspending it.

In Case No. A-10015, Haeg asserts that the district court erred when it denied his post-conviction motion to suppress the evidence that the State had seized from him during its criminal investigation and to return the property to him. He also contends that AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195 (criminal seizure and forfeiture statutes) are unconstitutional because these statutes do not require the government to inform defendants in a criminal case that they have the right to contest the seizure of their property.

For the reasons explained here, we affirm Haeg's convictions. But we conclude that the district court meant to suspend rather than to revoke his guide license.

Therefore we direct the district court to modify Haeg's judgment to reflect that Haeg's guide license was suspended for five years.

Facts and proceedings

Haeg was a licensed master big game guide operating in game management unit 19. In early March 2004, he and Zellers received permits allowing them to participate in a predator control program near McGrath.

The predator control program applied to wolves in game management unit 19D-East, which was located inside unit 19D. Within unit 19D-East, participants in the program were allowed to kill wolves by shooting them from an airborne aircraft or by landing the aircraft, exiting it, and immediately shooting them.[6] The purpose of the program was to increase the numbers of moose in unit 19D-East by decreasing the number of wolves preying on them. In March 2004, unit 19D-East was the only unit where this type of predator control was permitted.

To help the Department of Fish and Game monitor the progress of the predator control program, the participants were required to separately identify and seal the hides of all wolves taken under the program and to report the locations where the wolves were killed. Alaska State Trooper Brett Gibbens, among others, was notified whenever wolves were taken under the program. One of his duties was to verify the locations where the wolves were reportedly killed.

Soon after Haeg and Zellers received their permit, they reported that on March 6, 2004, they had taken three gray wolves in the area of Lone Mountain near the Big River. When

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[6] See 5 AAC 92.039(5 (h)(1), (3).

Gibbens was notified of this report, he suspected that the information was inaccurate. The coordinates that Haeg and Zellers gave placed the kill site just within unit 19D-East. But Gibbens knew that the wolves in the pack then frequenting that area were predominately black, with only two that might be considered gray.

On March 11, 2004, Gibbens inspected the reported kill site. He found wolf tracks but no kill site near the reported location. In addition to this discrepancy, Gibbens recalled that on the day of the reported kills, when he was off-duty, he had seen Haeg's distinctive airplane. The airplane was a mile or two outside of unit 19D-East and was flying away from that unit. To Gibbens, it appeared that the pilot was following a fresh wolf track.

On March 21, Gibbens met and spoke to Haeg and Zellers when they returned to McGrath to seal the three wolf hides. While Haeg refueled his airplane, Gibbens and Haeg talked about the airplane's skis and its oversized tail wheel. Gibbens noticed that the airplane's skis and its oversized tail wheel would leave a distinctive track when it landed in snow. Gibbens and Zellers discussed the weapons and the shotgun ammunition that Zellers was using to shoot the wolves. This ammunition was a relatively this meeting, Haeg said that he knew the boundaries of the area where he was allowed to take wolves under the predator control program.

On March 26, while flying his airplane, Gibbens spotted wolf tracks from a large pack of wolves on the Swift River. He also saw where another airplane had landed to examine the track and determine the wolves' direction of travel. Because his airplane was low on fuel, Gibbens continued home. The next day, he returned to investigate. From the air, he confirmed that the area was not a trap site or kill site. He then followed the wolf tracks up the Swift River and found where wolves had killed a moose on an island in the river. The island was covered with heavy brush and had numerous wolf trails. Gibbens saw that someone had set snares and leg traps on the island.

Gibbens followed the wolf tracks further upriver. About a half mile away from the moose kill, he saw where a wolf had been killed. It looked like the wolf had been shot from the air, and there was a set of airplane tracks that had taxied over the wolf kill site. He continued to follow the wolf tracks up the Swift River and found three more places where wolves had been shot from the air. He saw evidence that the wolf carcasses had been picked up and placed in an airplane, and he saw a staging area nearby where the airplane had landed several times.

These kill sites were all about forty to fifty-five miles from the nearest boundary of unit 19D-East. There was no evidence near these sites of snaring or trapping, nor of any ground transportation like a snow machine. Rather, the evidence indicated that an airplane had landed near the kill sites and that someone had gotten out of the airplane, approached the wolf carcasses, and hauled them back to the airplane. The airplane tracks at the kill sites and at the staging area appeared to be the same. Gibbens recognized that they were similar to Haeg's airplane's distinctive ski and tail wheel arrangement.

With the help of other troopers, Gibbens more thoroughly investigated the kill sites. The troopers found shotgun pellets that were consistent with the type of buckshot Haeg and Zellers

were using. They also found a spent .223 cartridge stamped with ".223 Rem-Wolf." At the staging area, they found where a carcass had been placed in the snow.

After finding this evidence, Gibbens applied for and obtained a search warrant for Haeg's airplane and for his lodge at Trophy Lake. The lodge was listed as Haeg's base of operations for the predator control program and was not far away. The lodge was located in unit 19C.

At the lodge, the troopers found wolf carcasses, evidence that the wolves had been recently skinned, and rifle magazines loaded with ammunition stamped with ".223 Rem-Wolf." Gibbens also saw airplane ski tracks leading up to the front of the lodge that matched the tracks from the kill sites and the staging area. Troopers seized six carcasses from the lodge. Gibbens later performed a necropsy on each carcass. The necropsies indicated that all six wolves had been shot from the air with a shotgun.

Other evidence found during the search indicated that the leg traps set around the moose kill on the Swift River island belonged to Haeg. On April 2, Gibbens found that six of those leg traps were still set and catching game even though leg trap season for wolves and wolverines had ended. He also saw that two wolverines were caught in nearby snares. The season for taking wolverines with traps or snares had ended March 31.

Based on the evidence found during the search of the lodge, additional search warrants were issued, including one for Haeg's residence in Soldotna. While searching Haeg's residence, troopers seized a 12 gauge shotgun and a .223 caliber rifle along with magazines, spent casings, and ammunition. The .223 ammunition seized was stamped with ".223 Rem-Wolf." The troopers also seized Haeg's airplane.

Evidence seized at the residence indicated that the snares set around the moose kill on the Swift River belonged to Haeg. Gibbens later went back to the Swift River moose kill site after the snare season for wolf ended and found that the snares were still active and catching game. The remains of two wolves were in these snares.

Later, executing one of the search warrants obtained after searching Haeg's residence, troopers seized nine wolf hides from a business in Anchorage. These hides had been dropped off by Zellers. Eight of the nine hides clearly showed that the wolves had been shot with a shotgun. Of these eight hides, many had damage indicating that the wolves had been shot from the air. But despite this evidence, only three of the hides had been sealed under the predator control program. According to the sealing certificates — and despite evidence to the contrary — Haeg and Zellers claimed that the remaining six hides had not been shot from an airplane. Rather, when sealing these six hides, Haeg and Zellers reported that they had killed the wolves in unit 16B by shooting them from the ground and transporting them with snowmobiles.

After completing this investigation, Gibbens concluded that the nine wolves had been shot from an airplane, that none had been taken in unit 19D-East, that the sealing certificates had been falsified, and that Haeg and Zellers had unlawfully possessed the hides. He also concluded

that the relevant leg traps and the snares belonged to Haeg and that they were still actively catching game after the relevant leg trap and the snare seasons had closed.

Sometime after Gibbens completed his investigation, the State entered separate plea negotiations with Haeg and Zellers. The negotiations with Haeg broke down, but the State reached a plea agreement with Zellers. Among other things, Zellers was required to enter a plea for two consolidated counts of violating AS 8.54.720(a)(8)(A), unlawful acts by a guide. He was also required to testify against Haeg.

In April 2005, Haeg moved to dismiss the information. Among other things, he argued that the State could not charge him for hunting wolves same day airborne because his predator control permit allowed him to do so, even if only in unit 19D-East.

In a written decision, District Court Judge Margaret L. Murphy rejected Haeg's arguments and denied the motion.

A jury trial began July 26, 2005, with Judge Murphy presiding. Among others, Gibbens, Zellers, and Haeg testified. The gist of Gibbens's testimony is set out in the preceding paragraphs. This testimony was corroborated not only by Zellers, but by Haeg himself.

Haeg testified that he was a licensed guide. He conceded that he and Zellers knew (or, in one instance, should have known) that they were taking the wolves outside of unit 19D-East, that they had intentionally falsified the sealing certificates for all nine wolves, and that they had possessed the wolves and hides illegally. He also admitted that he was responsible for the leg traps that were still catching game after the leg trap season had closed.

But in his defense against the hunting charges, Haeg testified that he was not unlawfully "hunting" the wolves, but was only violating his predator control permit.

Haeg denied responsibility for snaring wolves out of season and explained that the snares had been turned over to another trapper who was supposed to close them out when the season ended.

The jury found Haeg guilty of all five counts of unlawful acts by a guide: hunting wolves same day airborne; two counts of unlawful possession of game; one count of unsworn falsification; and of one count of trapping wolverines in a closed season. The jury found Haeg not guilty of one count of snaring wolves in a closed season[7] and of failure to salvage game.[8]

At sentencing, Judge Murphy ordered Haeg to forfeit the nine wolf hides, a wolverine hide, the airplane, and the guns and ammunition used to take the wolves.

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[7] 5 AAC 84.270 (13).
[8] 5 AAC 92.220(a)(1).

She also revoked Haeg's guiding license for five years. This appeal followed.

While this appeal was pending, Haeg filed a motion requesting this court to order the State to return to him the property that had been seized during the criminal investigation. We remanded the case for the limited purpose of allowing the district court to resolve Haeg's motion. Relying on Criminal Rule 37, Haeg asked the district court to suppress the evidence seized during the investigation and to return the property to him. Magistrate David Woodmancy denied Haeg's motion. Haeg appeals this decision.

Another of Haeg's motions asks this court to modify part of his sentence. Haeg asserts that Judge Murphy erred when she revoked his guide license instead of suspending it.

Discussion

Haeg's appeal in No. A-9455

Haeg's claim that the State used perjured testimony

Haeg contends that Trooper Gibbens intentionally made false statements in his search warrant affidavit. In particular, Haeg claims that Gibbens lied when he said in his affidavit that he found evidence in unit 19C that Haeg had taken wolves. But Haeg did not challenge the search warrant affidavit prior to trial. Because of this, his claim is forfeited.[9] And, under *Moreau v. State*,[10] he is barred from bringing this claim on appeal, even as a matter of plain error.[11]

In *Moreau*, the Alaska Supreme Court acknowledged that it was "clear that a false affidavit in support of a search warrant can, in appropriate circumstances, nullify the warrant."[12] But the court went on to rule that "[w]hile we do not state that search and seizure issues are incapable of plain error analysis, we believe that the exclusionary rule which requires the suppression of illegally obtained evidence is usually not appropriately raised for the first time on appeal."[13] The court explained that the exclusionary rule "is a prophylactic device to curb improper police conduct and to protect the integrity of the judicial process. Thus, justice does not generally require that it be applied on appeal where it is not urged at trial[.]"[14]In light of *Moreau*, Haeg cannot pursue this claim.

Why we conclude that Haeg could be convicted of unlawful acts by a guide: hunting wolves same day airborne

9 See Alaska R. Crim. P. 12(b) and 8 (e).
10 588 P.2d 275 (Alaska 1978).
11 Id. at 279-80.
12 Id. at 279.
13 Id. at 280 (footnote omitted).
14 Id.

In a related argument, Haeg contends that it was Gibbens's perjured affidavit that allowed the State to charge Haeg with unlawful acts as a guide. In Haeg's view, had Gibbens's affidavit stated that the wolves were killed in unit 19D, instead of unit 19C, then the State could only charge him with violating his predator control permit.

But Haeg misrepresents what his permit allowed. The record shows that Haeg was permitted to take wolves same day airborne only in unit 19D-East. He had no authority to take the wolves same day airborne in any other part of unit 19D. Gibbens's affidavit states that the four kill sites he found were well outside of unit 19D-East, the only area where Haeg and Zellers were permitted to take wolves same day airborne. In addition, Haeg acknowledged at his trial that he and Zellers killed all nine wolves outside of the permitted area. In short, the information in the affidavit did not result in Haeg being wrongly charged.

Haeg further contends that even if he did kill wolves beyond the authority granted by his predator control permit, he was not engaged in the "hunting" of wolves — and, thus, he did not violate any statute or regulation that prohibits same-day airborne hunting.

This argument is mistaken. Under the definition codified in AS 16.05.940(21), the term "hunting" is not confined to the killing of animals for food or sport. Rather, "hunting" is defined as "[any] taking of game under AS 16.05 – AS 16.40 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. And because Haeg's acts of chasing and killing wolves were not authorized under the terms of his predator control permit, these acts constituted unlawful hunting. Under Alaska law (specifically, AS 16.05.920(a)), *all* taking of game is unlawful unless it is permitted by AS 16.05 – AS 16.40, AS 41.14, or a regulation adopted under those chapters of the Alaska Statutes.[15]

For these reasons, Haeg could lawfully be convicted of violating AS 08.54.720(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.

We understand that Haeg was not guiding when he and Zellers were taking the wolves. But this does not matter. Alaska Statute 08.54.720(a)(15) does not make it a crime to knowingly violate a statute or regulation prohibiting same day airborne *while guiding*. Rather, that statute

[15] See State v. Eluska, 724 P.2d 514, 515 (Alaska 1986); Jones v. State, 936 P.2d 1263, 1266 (Alaska App. 1997).

makes it a crime for any *person licensed to guide* to knowingly violate a statute or regulation prohibiting same-day airborne hunting.

Haeg suggests that he was convicted of the hunting offenses because Gibbens lied when he testified that some wolves were killed in unit 19C. But Gibbens retracted this testimony during cross examination, clarifying that the wolves were killed in unit 19D but not in unit 19D-East. As already noted, Haeg admitted that none of the wolves was killed in unit 19D-East.

Haeg also asserts that Gibbens lied by testifying at sentencing that he did not know why Haeg had not guided for an entire year. Haeg argues that this alleged testimony was perjury because Gibbens — according to Haeg — was aware that part of the failed plea agreement required Haeg to give up guiding for a year. But because Haeg did not litigate the terms of the failed plea agreement in the district court, there are no factual findings supporting Haeg's claim. Furthermore, Haeg had the opportunity to refute any testimony Gibbens gave during the sentencing proceedings, and it was up to Judge Murphy to determine whether Gibbens was credible. *Haeg's claim that the prosecutor violated Evidence Rule 410* Haeg claims that the State violated Evidence Rule 410 by using a statement he made during failed plea negotiations to charge him with crimes more serious than he had initially faced. But Haeg did not litigate this issue in the district court. Because he did not preserve this claim of error below, Haeg now has to show plain error.[16] As we have explained in the past, "[o]ne of the components of plain error is proof that the asserted error manifestly prejudiced the defendant."[17]

In this case, the State filed an initial information and then amended it twice. Each version of the information was supported by a probable cause statement that set out Gibbens's investigation and a summation of the statements made by Haeg and Zellers. Thus, even had Haeg's statements been removed from the charging document, the remaining evidence from Gibbens and Zellers would still support the charges against Haeg.[18] And even though the State initially charged Haeg with less serious charges, the State had the discretion to file more serious charges.[19] In other words, even if the State had not used his statement's to support the

[16] See Wettanen v. Cowper, 749 P.2d 362, 364 (Alaska 1988) (issues and arguments not raised below are considered waived on appeal absent plain error); see also John v. State, 35 P.3d 53, 63 (Alaska App. 2001) (where record reflected no lower court ruling on appellant's Evidence Rule 410 claim, appellate court declined to address it).

[17] Baker v. State, 22 P.3d 493, 501 (Alaska App. 2001); see also Crutchfield v. State, 627 P.2d 196, 198 (Alaska 1980) ("[A]n alleged error is reviewable as plain error only if it raises a substantial and important question and is obviously prejudicial.").

[18] Cf. State v. McDonald, 872 P.2d 627, 638 (Alaska App. 1994) (If inadmissible evidence is presented to a grand jury, "the indictment will be vitiated only 'if the remaining evidence was insufficient to support [the] indictment or the improper evidence was likely to have had an overriding influence on the grand jury's decision.'" (quoting Boggess v. State, 783 P.2d 1173, 1176 (Alaska App.1989) (alteration in McDonald)).

information, Haeg would still have faced charges that he committed unlawful acts by a guide, hunting same day airborne. Because Haeg has not shown that the error he asserts manifestly prejudiced him, he has not shown that plain error occurred.

Haeg also suggests that the State used his interview to convict him. But Haeg did not raise this issue at trial, nor does the record support this conclusion. The record shows that the State did not offer Haeg's pre-trial statement during its case-in-chief or during its rebuttal case. In addition, Zellers testified for the State and his testimony, along with Gibbens's, was sufficient to support Haeg's convictions. Finally, in his own testimony, Haeg admitted that he had committed all but two of the charged offenses (and he was acquitted of those two). As we explained earlier in this decision, Haeg testified that he was a licensed guide, that he had taken the wolves same day airborne, that he knew that he was acting outside the predator control program area, that he and Zellers had falsified the sealing certificates, that they had unlawfully possessed game, and that his leg traps were still catching game after the season had closed. Haeg has not shown that
plain error occurred.

Haeg's claim that his attorneys were ineffective

Haeg claims that his attorneys provided ineffective assistance of counsel. We have consistently held that we will not consider claims of ineffective assistance for the first time on appeal because, in most instances, the appellate record is inadequate to allow us to meaningfully assess the competence of the attorney's efforts.[20] Haeg's case is typical — that is, the appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts. Haeg's claim of ineffective assistance must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1.

Haeg's claim that the district court erred by failing to inquire about plea negotiations

Haeg argues that Judge Murphy should have asked the parties about the failed plea negotiations. If Haeg believed that he had an enforceable plea agreement with the State, he was entitled to ask the district court to enforce it.[21] But we are aware of no requirement that a trial court in a criminal case, without a motion or request from the parties, must ask why plea negotiations failed. We conclude that Haeg has not shown that any error occurred.

Haeg's claim that the district court failed to rule on an outstanding motion

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[19] See State v. District Court, 53 P.3d 629, 633 (Alaska App. 2002) (The State "[has] the discretion to decide whether to bring charges against a person who has broken the law and, if so, to decide what those charges will be.").

[20] See Tazruk v. State, 67 P.3d 687, 688 (Alaska App. 2003); Hutchings v. State, 53 P.3d 1132, 1135 (Alaska App. 2002); Sharp v. State, 837 P.2d 718, 722 (Alaska App. 1992); Barry v. State, 675 P.2d 1292, 1295-96 (Alaska App. 1984).
[21] See State v. Jones, 751 P.2d 1379, 1381 (Alaska App. 1988).

Haeg claims that Judge Murphy failed to rule on his motion "protesting the State's use" of the statement Haeg claims he gave during plea negotiations. But Haeg mischaracterizes the motion that was filed seeking dismissal of the charges. Although he moved to dismiss the charges on various grounds, he did not assert that the State had violated Evidence Rule 410. He did not mention this issue until he replied to the State's opposition to his motion to dismiss the information, where he told the court that "[t]here is another piece of information that needs to be addressed." Judge Murphy was not required to rule on Haeg's new contention. A trial court can properly disregard an issue first raised in a reply to an opposition.[22] If Haeg wanted a ruling on this issue, he was obligated to file a new motion asking for one. Because he did not ask for a ruling, he has waived this claim.[23]

Haeg's claim that the district court prejudiced his defense

Haeg contends that Judge Murphy made inconsistent rulings about who — the court or the jury — would determine whether Haeg was "hunting" when he took the wolves. But Haeg has not shown that Judge Murphy's rulings prejudiced his defense. The first ruling that Haeg refers to came when he moved to dismiss the information. There, he argued that the hunting same day airborne charges were improper because he was acting under the authority of the predator control program. In his view, even though he had taken the wolves outside the area where the predator control program was authorized, the State could only charge him for violating the conditions of the permit. Judge Murphy rejected this argument, noting that the State had charged Haeg for taking wolves outside of the permit area. She explained that Haeg might defend against these charges on the grounds that he was acting in accordance with his permit, but that this was a factual issue that would be decided by the fact finder at trial.

The second ruling that Haeg refers to occurred when Judge Murphy addressed Haeg's pre-trial argument that his permit precluded a conviction for any hunting violations. Judge Murphy found that this was a legal question that she, not the jury, had to decide.

Haeg asserts that Judge Murphy's rulings prejudiced his defense because they prevented him from arguing that he was not hunting. But Judge Murphy allowed Haeg to make this very argument.

At trial, the parties had a lengthy discussion concerning Haeg's desire to tell the jury that he was not "hunting" same day airborne when he took the wolves. Haeg's defense was that his conduct was not "hunting" because he was acting under a permit that allowed predator control.

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[22] See Demmert v. Kootznoowoo, Inc., 960 P.2d 606, 611 (Alaska 1998) ("The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments... ."); Alaska State Employees Ass'n v. Alaska Pub.Employees Ass'n, 813 P.2d 669, 671 n.6 (Alaska 1991) ("As a matter of fairness, the trial court could not consider an argument raised for the first time in a reply brief.").

[23] See Stavenjord v. State, 66 P.3d 762, 767 (Alaska App. 2003); Marino v. State, 934 P.2d 1321, 1327 (Alaska App. 1997).

He asserted that the statute defining "predator control" excluded "hunting" and, therefore, "he couldn't have been knowingly violating a hunting law."

Judge Murphy ultimately told Haeg that he could argue to the jury that if the jury found that he was acting in accordance with the permit, then he was not hunting. Consequently, Haeg argued at length during his closing that he was not guilty of hunting same day airborne because his predator control permit allowed him to kill wolves same day airborne. Despite this argument, the jury found Haeg guilty of the hunting charges. Haeg's defense was not prejudiced by Judge Murphy's rulings.

Haeg's claim that the district court failed to give a required jury instruction

Haeg argues that Judge Murphy was required to sua sponte give a jury instruction that Zeller's plea agreement required him to testify against Haeg. But under Criminal Rule 30(b), there are no required jury instructions. Rather, the rule provides that a trial court "shall instruct the jury on all matters of law which it considers necessary for the jury's information in giving their verdict." The rule that required instructing the jury that it should view the testimony of an accomplice with distrust was rescinded in 1975.23[24] Because Haeg did not request this or a similar instruction, he has not preserved the issue for appeal.[25]

Haeg's claim that the district court held him to a term of the failed PA

Haeg claims that Judge Murphy unfairly held him to a term of the failed plea agreement. Haeg asserts that this occurred during an exchange between his attorney and the judge during a post-trial status hearing.

The purpose of this status hearing was to establish a date for sentencing and to determine whether a defense witness would be available. The prosecutor indicated that he intended to call witnesses at sentencing in an effort to prove that Haeg had committed uncharged misconduct — in particular, the prosecutor wanted to show that in 2003 Haeg had been involved in unlawfully taking a moose same day airborne.

When Judge Murphy asked why the State had not charged the moose incident along with the current case, the prosecutor explained that initially, during plea negotiations, the parties had discussed litigating the issue at sentencing. Haeg's attorney then said he did not "know how ... [a discussion of a moose case] could be part of any negotiations to the un-negotiated case." Judge Murphy responded, "Well, it was at one point." Haeg argues that in this exchange, Judge Murphy was forcing Haeg to comply with a term of the failed plea agreement. We disagree.

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[24] See Heaps v. State, 30 P.3d 109, 115 (Alaska App. 2001).

[25] See Alaska R. Crim. P. 30(a) (objections to instructions must be raised before the jury retires to deliberate).

At sentencing, the State is allowed to put on evidence of a defendant's uncharged offenses even when the defendant objects.[26] A sentencing court may consider this evidence if it is sufficiently verified and the defendant is provided the opportunity to rebut it.[27] Here, the record reflects that the State, irrespective of the failed plea agreement, was attempting to show that Haeg had committed an uncharged offense. The State was entitled to do so. We conclude that Judge Murphy did not force Haeg to abide by a term of the failed plea agreement. We note that she later ruled that the State had not proven that Haeg had committed the uncharged offense and she did not consider it when imposing sentence.

Haeg's claim that the district court erred by not ordering a defense witness to appear at sentencing

Haeg claims that Judge Murphy committed error by not ordering his first attorney to testify at Haeg's sentencing proceedings. Although Haeg subpoenaed this attorney, the attorney did not appear. The record shows that at sentencing Haeg did not ask Judge Murphy to enforce the subpoena or seek any other relief. Consequently, this claim of error is waived.

Haeg's claim that the district court erred when it found that most of the wolves were taken in unit 19C

Haeg asserts that Judge Murphy erred when she found that "a majority, if not all of the wolves taken were in [unit]19C." It is true that the evidence did not show that most of the wolves were killed in unit 19C. But taking Judge Murphy's sentencing remarks in context, we conclude that she found that Haeg was taking wolves unlawfully in an effort to benefit his own guiding operations. This finding is supported by the record.

At trial, Haeg testified that he and Zellers knew that they were killing the wolves outside of the permit area. And the evidence at trial showed that they spent little time looking for wolves in unit 19D-East, the permit area around McGrath. Instead, the first wolves were taken about thirty-five miles from Haeg's hunting lodge, which was located in unit 19C. Haeg took at least one animal just ten miles from his hunting grounds. Zellers testified that he and Haeg wanted the game board to include unit 19C in the predator control program.

In addition, Haeg testified that he guided moose hunts in units 19C and 19B. He admitted that they had killed one of the wolves in unit 19B. And although Haeg testified that he did not guide moose hunts on the Swift River where the rest of the wolves were taken, he conceded that some of the moose taken during his guided hunts come from that area. He testified that he could schedule eight or nine moose hunts in a season and that he charged a significant amount of money per person per hunt. He also testified that he and Zellers killed the wolves because they were frustrated that the wolves were killing so many moose.

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[26] See Pascoe v. State, 628 P.2d 547, 549-50 (Alaska 1980) (State allowed at sentencing, over defendant's objection, to put on evidence of defendant's uncharged offenses).
[27] See id.

Based on this record, we conclude that Haeg has not shown that Judge Murphy committed clear error when she found that Haeg was illegally killing wolves for his own commercial benefit.

Why we find that Judge Murphy intended to suspend, not revoke, Haeg's guide license

While this appeal was pending, Haeg filed a motion requesting that we modify the portion of his sentence revoking his guide license. At that time, we indicated that even if Haeg was entitled to any relief, we would not grant it until we decided the appeal. (We also told Haeg that based on his claim that this portion of the sentence was illegal, he could seek immediate relief from the district court. He apparently did not do so.) Although Haeg did not include this issue in his claims of error, we deem the motion a request to amend his points on appeal and resolve it. For the reasons explained here, we conclude that Judge Murphy intended to suspend Haeg's guide license, not to revoke it.

Judge Murphy ordered the guiding license "revoked for five years." The written judgments reflect the same language. The revocation was part of Haeg's sentence for violating the law and was not a condition of probation.

Under AS 12.55.015(c), Judge Murphy could "invoke any authority conferred by law to suspend or revoke a license." The authority to suspend or revoke a guiding license is provided in AS 08.54.720(f)(3). In Haeg's case, this statute required Judge Murphy to order the game board to suspend Haeg's guide license for a "specified period of not less than three years, or to permanently revoke [it]." But Judge Murphy combined the two alternatives and ordered the license revoked for five years. Under the authorizing statute, Judge Murphy could either order the license suspended for five years or else revoke it permanently. But the statute did not allow her to revoke it for five years.

Although Judge Murphy had the authority to revoke the license, the circumstances indicate that she meant to suspend it. When Judge Murphy imposed sentence, she was using pre-printed judgments that required her to fill in blank spaces. The judgments have a section where various types of licenses can be "revoked" followed by a blank space for the court to insert the length of the revocation. Judge Murphy wrote "for 5 years" in the blank space. But the option to suspend a license was not offered. Because Judge Murphy wrote "5 years" rather than "permanently," we conclude that she meant to suspend the license for a specified period of time rather than to revoke it permanently. We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.

Haeg's appeal in Case No. A-10015

While his original appeal was pending, Haeg filed a motion in the district court asking for the return of his property that had been seized by the State. Because his case was on appeal, the district court ruled that it lacked jurisdiction to address Haeg's motions. Haeg then asked this court to order his property released. We remanded the case back to the district court "for the limited purpose of allowing Haeg to file a motion for the return of his property[.]"

Once the case was remanded, Haeg — relying on Alaska Criminal Rule 37 — asked the district court to suppress the evidence that had been seized during the criminal investigation and to return the property to him. Haeg argued that the State had violated his fundamental rights by not giving him notice that he had the right to contest the seizure of his property. He also argued that AS 16.05.190 and AS 16.05.195 were unconstitutional on their face and as applied to him because they did not require the State to provide such notice. Magistrate David Woodmancy ordered some property returned, but otherwise denied Haeg's request. Haeg initially petitioned for review of this decision, but we concluded that he had the right to appeal.

Why we uphold the district court's decision not to suppress evidence or return to Haeg property Judge Murphy had ordered forfeited

Haeg contends that Magistrate Woodmancy erred when he refused to suppress the evidence and to return to him the property the State seized during the criminal investigation of this case. The forfeited property consisted of the airplane and the firearms that Haeg and Zellers used when taking the wolves, the wolf hides, and a wolverine hide.

Haeg contends that he was entitled to have the property suppressed as evidence and returned to him because the State, when it seized the property during the criminal investigation, did not expressly inform him that he had the right to challenge the seizure. He also asserts that the statutes that authorize search and seizure in criminal cases — AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195 — are unconstitutional because they do not require the State to provide owners of seized property with notice that they have the right to challenge the seizure. He claims that the federal and state due process clauses require this notice.

To support his claim under the federal due process clause, Haeg relies primarily on the Ninth Circuit's decision in *Perkins v. City of West Covina.*[28] In *City of West Covina*, police lawfully searched a home where a murder suspect was renting a room.[29] Pursuant to a search warrant, police officers seized property from the home.[30] The police provided the landlord, Perkins, with written notice of the search, an inventory of the property seized, and information necessary for him to contact the police investigators.[31] But the written notice did not explain the procedures for retrieving his property.[32] Although police later told Perkins that he needed to file an appropriate motion in court, Perkins ran into difficulty when he attempted to retrieve his property.[33] Ultimately, he filed a civil suit in federal court, alleging a violation of his constitutional rights in that the notice did not mention he had the right to seek the return of his property.[34]

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[28] 113 F.3d 1004 (9th Cir. 1997), rev'd, 525 U.S. 234, 119 S. Ct. 678, 142 L. Ed. 2d 636 (1999).
[29] Id. at 1006.
[30] Id.
[31] Id. at 1007.
[32] Id.
[33] Id.
[34] Id. at 1007, 1012-13.

The Ninth Circuit ruled that in these circumstances, due process required the government to provide written notice explaining to property owners how to retrieve the property.[35] The Ninth Circuit held that, among other things, "the notice must inform the ... [property owner] of the procedure for contesting the seizure or retention of the property taken, along with any additional information required for initiating that procedure in the appropriate court."[36] The notice "also must explain the need for a written motion or request to the court stating why the property should be returned."[37] Relying on the Ninth Circuit's decision, Haeg contends that the federal due process clause required a similar notice when the state troopers seized his property. But in *City of West Covina v. Perkins*,[38] the United States Supreme Court reversed the Ninth Circuit's decision and rejected the notice requirement imposed by the Ninth Circuit.[39]

The Supreme Court ruled that when police lawfully seize property for a criminal investigation, the federal due process clause does not require the police to provide the owner with notice of state-law remedies.[40] The Court explained that "state-law remedies ... are established by published, generally available state statutes and case law."[41] Once a property owner has been notified that his property has been seized, "he can turn to these public sources to learn about the remedial procedures available to him."[42] According to the Court, "no ... rationale justifies requiring individualized notice of state-law remedies."[43] The "entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny."[44]

In other words, federal due process is satisfied if the police give property owners notice that their property has been seized and if state law provides a post-seizure procedure to challenge the seizure and seek the return of the property. In Haeg's case, he received notice that his property was seized, and Alaska Criminal Rule 37 provides for a post-seizure procedure allowing property owners to seek return of their property.[45] In light of the Supreme Court's decision in *City of West Covina*, we conclude that Haeg's due process rights under the federal constitution were not violated.

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[35] Id. at 1012-13.
[36] Id. at 1013.
[37] Id.
[38] 525 U.S. 234, 119 S. Ct. 678, 142 L. Ed. 2d 636 (1999).
[39] Id.
[40] Id. at 240, 119 S. Ct. at 681.
[41] Id. at 241, 119 S. Ct. at 681.
[42] Id. at 241, 119 S. Ct. at 681-82.
[43] Id. at 241, 119 S. Ct. at 681.
[44] Id. at 241, 119 S. Ct. at 682 (quoting Atkins v. Parker, 472 U.S. 115, 131, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985)).
[45] Alaska R. Crim. P. 37(c) ("[Any] ... person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property[.]").

To support his claim under Alaska's due process clause, Haeg relies primarily on the decisions in *F/V American Eagle v. State*[46] and *State v. F/V Baranof*.[47] He points out that under these decisions, property owners have "an immediate and unqualified right to contest the [S]tate's justification" when the State seizes their property.[48] But nothing in either of these decisions imposes a notice requirement similar to that discussed by the Ninth Circuit in *City of West Covina*. Rather, in both cases, the State provided the property owners notice that their property had been seized.[49] This notice and the subsequent opportunity to challenge the seizures under Criminal Rule 37 satisfied due process.[50] Here, Haeg had notice of the seizure, which in turn provided him with the opportunity to challenge the seizure of his property.

Conceivably, there might be circumstances where the Alaska due process clause would require the government to take affirmative measures to notify a property owner of the right and the procedure to challenge the seizure of his or her property. But nothing in Haeg's case supports a finding that his due process rights were violated. Haeg was present when the troopers searched his residence in Soldotna and seized an airplane of his, a shotgun, and a rifle. Consequently, he knew that his property had been seized as part of a criminal investigation. In addition, less than two weeks after his property was seized, he retained an attorney. Thus, he had access to legal advice regarding the seizure. Finally, Haeg — albeit some months after the seizure — asked the district court to bond out his airplane. Under these circumstances, the fact that the State did not specifically inform Haeg that he had the right to challenge the seizure did not infringe his state due process rights.

Based on the record in Haeg's case, we conclude that neither the federal nor the state constitutions required the State, after giving Haeg notice that his property had been seized, to separately inform him that he had a right to contest the seizure of his property. Because neither Haeg's federal nor state due process rights were violated, Magistrate Woodmancy did not err when he denied Haeg's post-conviction motion to suppress evidence seized during the criminal investigation. For similar reasons, we reject Haeg's attack on the constitutionality of Alaska's seizure and forfeiture statutes, AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195. Furthermore, we note that Haeg's motion to suppress was waived because he failed to file it prior to trial.[51]

We also conclude that Haeg provided Magistrate Woodmancy no grounds for overturning Judge Murphy's decision to forfeit property related to Haeg's hunting violations. Haeg argued at sentencing against forfeiture of the airplane. At sentencing, Haeg's attorney did

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46 620 P.2d 657 (Alaska 1980).
47 677 P.2d 1245 (Alaska 1984).
48 F/V American Eagle, 620 P.2d at 667.
49 See F/V Baranof, 677 P.2d at 1255-56 (in rem forfeiture action holding that due process was provided when owners were notified that property was seized and were given an opportunity to contest the State's reasons for seizing property); F/V American Eagle, 620 P.2d at 666-68 (in rem forfeiture action).
50 F/V Baranof, 677 P.2d at 1255-56; F/V American Eagle, 620 P.2d at 667.

51 See Alaska R. Crim. P. 37(c); Alaska R. Crim. P. 12(b) and 50 (e).

not contest the fact that the airplane was the one that Haeg and Zellers used when unlawfully taking the wolves, nor did he claim that Haeg was not the airplane's owner. Rather, he argued that the airplane should not be forfeited because Haeg used the plane "not only for guiding, but ... also ... for part of his economic livelihood of flight seeing, and if ... [the court forfeits] his plane ... he won't even be able to do that ... . [M]aybe over the next few years ... he's going to have ... to beef up more work for his flight seeing business, ... [and with the airplane] at least he'd have the means to do it." The attorney emphasized that "if you take his plane ... he'd be out of the guiding business, he'd be out of the flight seeing business, he'll just be out of business. Period. After twenty-one years of an occupation, just it's gone." Haeg did not object to the forfeiture of the shotgun, the rifle, or the animal hides. The record supports these forfeitures. At trial, Zellers testified that they had specifically purchased the shotgun to use for the predator control program and that they used it to unlawfully take the wolves. Zellers also testified that the rifle was used to unlawfully take one wolf. And finally, Haeg testified that he and Zellers had taken the animal hides unlawfully. Because the record supports Judge Murphy's forfeiture of the property relating to Haeg's hunting violations and Haeg did not show why the decision to forfeit this property should be overturned, we affirm Magistrate Woodmancy's decision to not return the forfeited property to Haeg.

Haeg also claims that Magistrate Woodmancy erred when he resolved Haeg's motion to suppress evidence and return of property without an evidentiary hearing. But Haeg has not shown that Magistrate Woodmancy abused his discretion. The basis of Haeg's post-conviction motion was his assertion that the State, when it seized Haeg's property, was required to tell him that he had a right to challenge the seizure. This was a question of law that Magistrate Woodmancy could resolve without an evidentiary hearing. And as we have already explained, the State was not required to notify Haeg that he had a right to challenge the seizure of his property.

Other potential claims

Haeg's briefs and other pleadings are sometimes difficult to understand, and he may have intended to raise other claims besides the ones we have discussed here. To the extent that Haeg may be attempting to raise other claims in his briefs or in any of his other pleadings, we conclude that these claims are inadequately briefed.[52]

Conclusion

Haeg's convictions are AFFIRMED. The district court shall amend the judgments to reflect that Haeg's guide license was suspended for a period of five years."

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[52] See Petersen v. Mutual Life Ins. Co. of New York, 803 P.2d 406, 410 (Alaska 1990) (issues that are only cursorily briefed are deemed abandoned); see also A.H. v. W.P., 896 P.2d 240, 243-44 (Alaska 1995) (waiving for inadequate briefing majority of fifty-six arguments raised by pro se appellant).

Exhibit 32

JUDICIAL COMPLAINT DISMISSAL

Sienna

Alaska Commission on Judicial Conduct

1029 W. 3rd Ave., Suite 550, Anchorage, Alaska 99501-1944
(907) 272-1033 In Alaska 800-478-1033 Fax (907) 272-9309

Marla N. Greenstein
Executive Director
E-Mail: mgreenstein@acjc.state.ak.us

CONFIDENTIAL

January 12, 2007

Mr. David S. Haeg
P.O. Box 123
Soldotna, AK 99669

Re: Complaint File No. 2006-006- Judge M. Murphy

Dear Mr. Haeg:

I have reviewed your complaint that Judge Murphy improperly accepted rides with the State Trooper during your trial. Your complaint has been fully investigated. Staff spoke with many of the people whose names you provided including Trooper Gibbens and received a detailed response from the judge. While the small community and lack of public transportation led to more contact with the community members than usual, there were no improper contacts or communication with witnesses in your case. The next meeting is scheduled for **January 22, 2007**, in Anchorage where the Commission will act on your complaint at that meeting. Your complaint may be dismissed or other action may be taken at that meeting.

Marla stated on tape both Gibbens & Murphy testified that Gibbens never gave Murphy a ride until after Haegs sentencing. - The truth is Gibbens gave Murphy, on average, 3 rides per day through Haegs trial.

Sincerely,

Marla N. Greenstein
Executive Director

3504

Alaska Commission on Judicial Conduct

1029 W. 3rd Ave., Suite 550, Anchorage, Alaska 99501-1944
(907) 272-1033 In Alaska 800-478-1033 Fax (907) 272-9309

Marla N. Greenstein
Executive Director
E-Mail: mgreenstein@acjc.state.ak.us

CONFIDENTIAL

January 25, 2007

Mr. David S. Haeg
P.O. Box 123
Soldotna, AK 99669

Re: Complaint File No. 2006-006- Judge M. Murphy

Dear Mr. Haeg:

Thank you for taking the time to address the Commission at its September 8th, 2006 meeting. The Alaska Commission on Judicial Conduct dismissed Complaint No. 2006-011 at its meeting on January 22, 2007, in Anchorage for lack of probable cause. Any interaction between the judge and law enforcement was minor and due to the circumstances of the logistics in this rural court location.

Sincerely,

Marla N. Greenstein
Executive Director

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GRADER'S GUIDE

***** QUESTION NO. 5 *****

SUBJECT: CONSTITUTIONAL LAW

I. Procedural Due Process – 35%

Hunter may have a procedural due process claim. Alaska seized his ATV without holding a pre-deprivation hearing first. Hunter had a post-deprivation hearing, but a court could conclude that a post-deprivation hearing was not sufficient.

Article I, Section 7 of the Alaska's Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law." The Alaska Supreme Court has consistently held that the government must provide a predeprivation hearing unless there is some emergency requiring an immediate seizure. *Hoffman v. State, Dept. of Commerce and Economic Development*, 834 P.2d 1218, 1219 (Alaska 1992); *Waiste v. State*, 10 P.3d 1141, 1145 (Alaska 2000). The supreme court will uphold a post-deprivation hearing if all or most cases in a class involve an exigency justifying an immediate seizure. *Waiste*, 10 P.3d at 1145-46.

The Alaska Supreme Court uses the balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine whether the state's interest justifies a blanket exception to the requirement for a pre-deprivation hearing. The *Mathews v. Eldridge* test requires the court to balance three factors: (1) the private interest at risk, (2) the degree to which an adversarial hearing, as opposed to an *ex parte* hearing, will reduce the risk of erroneous deprivation, and (3) the state's interest, including that in avoiding any additional burden imposed by a pre-deprivation hearing. *Waiste*, 10 P.3d at 1148.

A. Hunter's Private Interest

Hunter's private interest is his property interest in owning and possessing his ATV. There is no evidence that Hunter needs or uses the ATV for anything other than a recreational activity. The court gives more weight to property that is necessary to generate a person's income. *Waiste*, 10 P.3d at 1151. Some examinees may discuss subsistence hunting which is arguably deserving of the same heightened solicitude, but the facts do not raise the issue. Both Hunter and Cousin live in Anchorage.

B. The State's Interest

Given that the state has outlawed the possession of ATV's by people under 21, the state has a strong interest in preventing the removal, concealment, or destruction of the ATV's. In *Waiste*, the state seized a fishing boat for fishing in closed waters. The court concluded that the state had a significant interest in

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seizing fishing boats without holding pre-deprivation hearings because the class of commercial fishing violators posed a risk of removing, concealing, or

selling their boats to avoid forfeiting them. *Waist,* 10 P.3d at 1149. The public pronouncements of the various ATV owner's groups indicates that there is a significant risk that young ATV owners will conceal, remove, or sell their ATV's before they turn them over to the state.

In *Waiste*, the court rejected the argument that a pre-deprivation hearing would impose a burden on the state because the forfeiture statutes at issue required an immediate post-deprivation hearing. *Id.* at 1150. The court concluded that the additional burden in requiring the adversarial hearing prior to the seizure was not significant. *Id.*

C. The Risk of an Erroneous Deprivation

The lack of a pre-deprivation hearing increases the risk of an erroneous deprivation. The facts demonstrate this, for the officer seized Cousin's ATV by mistake. A pre-deprivation hearing would ameliorate the risk of a similar mistakes.

D. Balancing the Factors

The facts tend to favor weighing the balance in favor of the state's postdeprivation hearing. In *Waiste*, the court concluded that the risk that fishing violators would hide or sell their boats justified *ex parte* hearings to seize the boats. *Id.* at 1152. ATV's are easier to transport, conceal, and sell, than fishing boats and several ATV owners groups have indicated that their younger members will not give up their ATV's.

An argument could be made that the facts favor Hunter, for the fishers in *Waiste* were involved in criminal conduct. The facts indicate that most people under 21 do not commit violent crime and that most people under 21 who possess four-wheel ATV's do not use them to commit crimes. This argument is not particularly strong because it is really aimed at the reasonableness of the statute rather than the level of process required.

II. Takings Clause – 15%

Hunter may have a claim under the takings clause depending on whether the court views the seizure of the ATV as an exercise of police power or not. Article I, Section 18 of the Alaska Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation." The protections of the takings clause extend to personal property as well as real property. *Waiste*, 10 P.3d at 1154. Alaska's takings clause offers broader protection than the federal clause. *Id.* Alaska's clause also ensures compensation for temporary takings as well as permanent takings. *Id.*

The Alaska Supreme Court recognizes two instance of *per se* taking: (1) when there has been a physical invasion of the property and (2) where a regulation denies a person all economically feasible use of the property. *R & Y, Inc. v. Municipality of Anchorage*, 34 P.3d 289, 293 (Alaska 2001). But not all acquisitions of private property by the state are takings. *Waiste*, 10 P.3d at 1154. The confiscation of private property through an exercise of the government's police power is not a taking requiring just compensation. *Id.*

In *Waiste*, the government seized the plaintiff's fishing boat because it

Exhibit 33

LEADER'S AND GIBBENS TESTIMONY WAS THE JUSTIFICATION FOR THEIR CASE WAS THAT HAEG TOOK WOLVES WHERE HE GUIDES

Leaders: Mr. Haeg's intent through the taking of the wolves was an intent to eliminate wolves from his guiding area, an attempt to eliminate wolves that directly competed with the – or directly preyed upon the game populations that he hunted in order to better enhance his prospects as a guide and those of his clients. [TR. 1382]

Trooper Gibbens: Many of the kill sites are in close proximity to Trophy Lake Lodge, and areas where David Haeg and Tony Zellers regularly conduct guided hunts. The guided hunts are for prey species such as moose and caribou. Based on my experience, there is a clear economic incentive for Haeg and Zellers to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for them to harvest with clients.

Exhibit 34

ABA BAR EXAM QUESTIONS

Alaska Bar Association Exam

www.alaskabar.org/library/5ConLawJuly08.pdf

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ESSAY QUESTION NO. 5

Answer this question in booklet No. 5

Alaska experienced an increase in violent crime involving the use of all-terrain vehicles (ATV's). Most of those crimes were committed by people under the age of 21. The vast majority of the ATV's used in the crimes were three-wheel ATV's. Alaska responded to the increase in violent crime by enacting a statute that provided that "No person under 21 years of age may possess any all-terrain vehicle." The statute's only penalty for a violation is the forfeiture of any ATV found in the possession of a person under 21.

Although there was an increase in violent crime committed by people under 21, the number of people committing the crimes composed a very small percentage of the total number of people under 21. Moreover, the percentage of people under 21 possessing four-wheel ATV's who used those ATV's to commit crimes was also very small. Several ATV groups have publicly denounced the statute and stated that their younger members will never give up their ATV's.

Hunter and Cousin lived in Anchorage and decided to go moose hunting. Hunter was just under 21, while Cousin was just over 21. They both brought their four-wheel ATV's with them. While hunting, a law enforcement officer saw Hunter and Cousin with their ATV's. The officer legally stopped them and checked Hunter and Cousin's age. The officer seized Hunter's ATV because Hunter was under 21 years of age. The officer made a mistake calculating Cousin's age and seized his ATV also. The officer told Hunter and Cousin that they could contest the seizure at a hearing in two weeks.

At the hearing, Hunter and Cousin appeared with a lawyer and presented evidence. Cousin demonstrated that the officer had made a mistake, and the hearing officer gave him his ATV back. The hearing officer would not give Hunter his ATV back because he was under 21 years of age.

Alaska sold Hunter's ATV along with the other ATV's that it had seized from people under 21. The sale of the ATV's raised a lot of revenue for Alaska.

Discuss any challenges that Hunter could make to the seizure of his ATV under the Alaska Constitution.

suspected him of illegally fishing in closed waters. The supreme court held that the plaintiff was not entitled to compensation for the temporary seizure of his fishing boat because the seizure of property suspected of having been used to break the law falls squarely within the government's police power. *Id.* at 1155.

The seizure of the ATV in the question has aspects of both a taking and an exercise of police power. On one hand, it looks like an exercise of police power because Alaska has made it illegal for people under 21 to possess ATV's. The officer confiscated the ATV and the hearing officer upheld the seizure because Hunter was under 21. On the other hand, Hunter did not engage in any criminal conduct, for there was no penalty associated with his possession of the ATV other than its forfeiture. Similarly, there is no evidence that he used the ATV to engage in any criminal activity. This distinguishes his situation from the plaintiff in *Waiste*. By the same token, the fact that Alaska raised a lot of revenue by confiscating and selling ATV's suggests that the taking was for the benefit of the public.

III. Equal Protection – 40%

Hunter may have a claim based on equal protection. Article I, Section 1 of the Alaska Constitution provides that "all persons are… entitled to equal rights, opportunities, and protection under the law."

Equal protection analysis begins with the question of whether two similarly situated groups are being treated disparately. *Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 270 (Alaska 2003). Hunter has a good argument that he is part of a group that is being treated disparately because the law distinguishes between people under 21 years of age and those 21 and over.

The Alaska Supreme Court uses a sliding scale to evaluate equal protection claims. *Premera Blue Cross v. State, Dept. of Commerce, Community & Economic*

Development, Div. of Ins., 171 P.3d 1110, 1121 (Alaska 2007). The sliding scale is based on the court's evaluation of three variables. *Id.* 1

A. The First Variable - The Interest Impaired by Alaska's Statute

First, the court must determine what weight it should give the interest impaired by the challenged statute. *Id.* The nature of the impaired interest is the most important variable because the state will have a greater or lesser burden to justify the statute depending on the weight given to the interest. *Id.*

The interest impaired by Alaska's statute is the right of people under 21 to possess ATV's. The Alaska Supreme Court has not yet had an opportunity to ascribe a weight to this interest. Hunter could argue that the right is fundamental or that it should be treated like gender and illegitimacy which receive intermediate scrutiny. But the court of appeals' decision in *Gibson v. State*, 930 P.2d 1300, 1302 (Alaska. App. 1997), suggests that the interest is at the low end of the scale, for the court concluded the state's "legitimate" interest in protecting the health and welfare of its citizens merited the infringement of individual rights. *Id.* (claim that prohibition against possessing firearms while intoxicated violated the state constitution's guarantee of the personal right to

bear arms).

B. The Second Variable - The Purpose of the Statute

Second, the court must determine the purposes served by the challenged statute. *Id.* Depending on the importance of the impaired interest, the state may have to show that its objectives were legitimate, compelling, or somewhere in between. *Id.*

The purpose of the statute is to reduce violent crime committed by people under 21. In *Treacy v. Municipality of Anchorage*, 91 P.3d 252, 266 (Alaska 2004), the court held that Anchorage had a compelling interest in curbing juvenile crime. It follows, therefore, that Alaska has a similar compelling interest in curbing violent crime committed by adults under 21 years of age.

C. The Third Variable - The Particular Means Chosen

Third, the court must evaluate the particular means employed to further the purposes of the statute. *Id.* At the low end of the scale, the court only requires a fair and substantial relationship between the means and the ends. *Premera*, 81 P.3d at 1111. The intermediate level of scrutiny applied to claims involving gender and illegitimacy requires a substantial relationship to the accomplishment of the statute's purpose. *Id.* At the high end of the scale, the purpose must be accomplished by the least restrictive alternative. *Id.*

1 Even though the supreme court calls its test a sliding scale, it has only identified three stops on the scale:
relaxed scrutiny, intermediate scrutiny, and strict scrutiny. *Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 270
(Alaska 2003).

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The statute bears some relationship to its purpose. In theory, prohibiting young people from possessing ATV's will reduce violent crime because it will reduce their access to the means of committing the crime. On the other hand, the fit between the statute and its purpose is not very close. Most people under 21 do not commit violent crimes. Most of the crimes were committed with three-wheel ATV's, but the statute bans the possession of four-wheel ATV's as well. Yet very few people under 21 use their four-wheel ATV's to commit crimes. Alaska could have tailored the statute more narrowly by prohibiting people under 21 from possessing three-wheel ATV's. How closely the court scrutinizes the statute will determine the likely outcome of Hunter's challenge. The statute will likely survive the lower level of scrutiny because it has some rational relationship to its purpose. On the other hand, if the court applies strict scrutiny, the statute might fail because it is not tailored very narrowly and there are less restrictive alternatives. Application of intermediate scrutiny could yield either result depending on the emphasis that the court placed on closeness of the fit between the statute and its purpose.

IV. Substantive Due process – 10%

A statute violates substantive due process when it has no reasonable relationship to a legitimate government purpose. *Premera*, 171 P.3d at 1124. If a statute survives scrutiny under Alaska's equal protection clause, then it

passes muster under substantive due process because equal protection scrutiny is stricter. *Id.* at 1124-25. Alaska's statute will probably pass muster because there is a reasonable relationship between the goal of limiting violence committed by young people with ATV's and prohibiting those young people from possessing the ATV's.

(Haeg never received any hearing, either pre or postseizure, after the seizure of his property – and the troopers, in their own report, documented that Haeg asked "When I can I get my plane back because I have clients coming in tomorrow and have to set up bear camp." The troopers responded "Never." Brent Cole, Haeg's first attorney, testified under oath at Bar Fee Arbitration that the law did not allow a hearing. Haeg's property, including airplane, was forfeited and afterward the state argued they had authority to do so under the same forfeiture statutes as Waiste v. State – as they failed to ever place a forfeiture notice in any charging document – as required. After Haeg's property was forfeited the state prosecutor, Scot Leaders, stated in a certified document that Haeg had no right to a postseizure hearing.)

Exhibit 35

SUCCESSFUL INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS SINCE WIGGINS

Supreme Court

Wiggins v. Smith, 539 U.S. 510 (U.S. Supreme Court 2003) Counsel ineffective for failing to adequately prepare and present mitigation [evidence].

Erroneous Advice

Nunes v. Mueller, 350 F.3d 1045 (9th Cir. 2003) Counsel was ineffective for giving the defendant incorrect information and advice concerning the state's plea offer, which resulted in the defendant rejecting the offer.

United States v. Mooney, 497 F3d 397 (4th Cir. 2007) Counsel ineffective for advising defendant to plead guilty based on the erroneous assumption that no justification defense existed. Counsel's erroneous legal advice resulted from a failure to conduct the necessary legal investigation. Counsel in criminal cases are charged with the responsibility of conducting "appropriate investigations, both factual and legal, to determine if matters of defense can be developed."

Julian v. Bartley, 495 F.3d 487 (7th Cir. 2007) Counsel ineffective in plea negotiations for incorrectly advising the defendant. Prejudice established because the information was "precisely the type of information that is likely to impact a plea decision." New trial granted.

Maples v. Stegall, 427 F.3d 1020 (6th Cir. 2005) Counsel ineffective based on counsel's incorrect advice. The defendant was prejudiced because he would not have pled guilty absent this incorrect advice.

Moore v. Bryant, 348 f.3d 238 (7th Cir. 2003) Counsel was ineffective for giving erroneous advice.

McBroom v. Warren, 542 F.Supp.2d 730 (Mich. 2008) Counsel ineffective in incorrectly advising the defendant of the law.

U.S. v. Marcos-Quiroga, 478 F.Supp. 2d 1114 (Iowa 2007) Counsel ineffective for erroneously advising the defendant.

State v. Patel, 626 S.E.2d 121 (GA 2006) Counsel was ineffective for making affirmative misrepresentations to the defendant. [C]ounsel here made an affirmative misrepresentation in response to the defendants specific inquiries.

Revell v. State, 989 So. 2d 751 (Fla. 2008) "Counsel's failure to accurately advise his client when considering the offer of a plea negotiation amounts to ineffective assistance."

David v. Murrell, 619 S.E.2d 662 (GA 2005) Counsel was ineffective. Counsel's conduct was deficient because counsel affirmatively misinformed the defendant that he would be eligible for parole and sentence review when neither was true. Prejudice found.

Hernandez v. Commissioner of Correction, 846 A.2d 889 (Conn. 2004) Counsel ineffective for erroneously advising the defendant. Counsel's conduct was deficient and the defendant was prejudiced because he likely would not have entered the plea absent counsel's misadvice because defendant had a plausible self-defense argument and the court had already excluded the testimony of the only state's witness that could testify about the defendant's motive to commit murder.

Failing to Suppress Statement

Moore v. Czerniak, 534 F.3d 1128 (9th Cir. 2008) Counsel ineffective for failing to object to the admissibility of the petitioner's confession. [H]ad his counsel filed the motion is sufficient to undermine confidence in the outcome as "the state's case would have been far weaker."

People v. Hernandez, 840 N.E.2d 1254 (Ill. 2005) Counsel ineffective for failing to move to suppress the defendant's videotaped statement to an assistant prosecutor. Prejudice found because the statement would have been excluded and the state's case was largely based just on this statement.

United States v. Little, 851 A.2d 1280 (D.C. 2004) Counsel ineffective for failing to timely move to suppress the defendant's statement. If counsel had adequately investigated, counsel would have also been aware that the issue had merit. There was also a reasonable probability of a different outcome at trial if the statement had been suppressed.

United States v. Hilliard, 392 F.3d 981 (8th Cir. 2004) Counsel ineffective for failing to timely file a post-trial motion. Counsel's conduct was deficient and was "a class dereliction" of duty. Prejudice was found because the district court found that the motion would have been granted because "a miscarriage of justice was likely done here."

State v. Robertson, 924 So. 2d 1201 (La. 2006) Counsel ineffective for failing to object to admission in evidence of the defendant's letter to the prosecution. Counsel's conduct was deficient because counsel was unaware of the state law making this information clearly inadmissible. Prejudice found.

People v. Hoerer, 872 N.E.2d 572 (Ill. 2007) Counsel ineffective for stipulating to the admission of the defendants testimony he entered into plea negotiations with the state. Prejudice established because, under state law, admission of this evidence is "considered so devastating and prejudicial

to a defendant that it constitutes reversible error absent a contemporaneous objection from trial counsel and even in the fact of overwhelming evidence of guilt."

United States v. Ramsey, 323 F. Supp.2d 27 (D.D.C. 2004) Counsel was ineffective for a number of reasons, but primarily for failing to move for a mistrial after the court suppressed an inculpatory statement after it was already heard by the jury. This error was considered in conjunction with counsel's ignorance of the law and failure to understand the implications of an entrapment defense. Counsel's conduct was deficient and the proffered strategy reasons for failing to seek a mistrial were "so nonsensical that the court is left to conclude that [counsel] simply abandoned what he decided at some point during the trial was an unwinnable case, and had been unwilling to invest the time and effort that would be required by a second trial." Prejudice found, regardless of the likely outcome of a new trial, because counsel's deficient conduct deprived the defendant of a mistrial and, thus, "the opportunity for a second trial."

Failing to Suppress Evidence

Joshua v. Dewitt, 341 F.3d 430 (6th Cir. 2003) Trial and appellate counsel were ineffective for failing to move to suppress evidence. Without this evidence, there was a substantial probability that the defendant would not have been convicted.

Jones v. Wilder-Tomlinson, 577 F. Supp. 2d 1064 (Iowa 2008) Counsel ineffective in failing to timely file a motion to suppress evidence. Prejudice established because "the evidence would have been suppressed had timely motion to suppress been filed."

Owens v. United States, 387 F.3d 607 (7th Cir. 2004) Counsel was ineffective for failing to adequately move to suppress evidence seized pursuant to a search of the defendant's house. The evidence was seized pursuant to a warrant based on a barebones affidavit, signed by a detective, that stated that an informant had bought some crack form the defendant at the house three months earlier. There was no indication of the quantity of crack or the reliability of the informant. "The prejudice essential to a violation of the Sixth Amendment right to the effective assistance of counsel is not being convicted though one is innocent, although that is the worst kind; it is being convicted when one would have been acquitted, or at least would have had a good shot at acquittal, had one been competently represented."

State v. Horton, 146 P.3d 1227 (Wash. 2006) Counsel ineffective for failing to move to suppress evidence from a pat-down search. Prejudice found.

State v. Meckelson, 135 P.3d 991 (Wash. 2006) Counsel ineffective for failing to move to suppress evidence on basis that the officer's traffic stop was pretextual. Prejudice found because there was a reasonable probability the motion to suppress would have been granted.

Collier v. State, 598 S.E.2d 373 (GA 2004) Counsel ineffective for failing to move to suppress blood and urine samples taken from the defendant. Prejudice found because the admission of the blood and urine results showing methamphetamine and amphetamine unquestionably harmed the defense.

State v. Johnson, 837 A.2d 1131 (N.J. 2003) Counsel ineffective for failing to move to suppress a handgun seized from the defendant.

Richards v. Quarterman, 578 F. Supp. 2d 849, 855 (5th Cir.2009) Counsel was ineffective for a number of reasons. Counsel's conduct was deficient in failing to present evidence and preventing the state from presenting evidence. Counsels alleged strategy for this failure was "gibberish" and "an after-the-fact justification for her failure to perform properly as an attorney." "The cumulative effect of [counsel's] deficiencies in the representation...amounted to ineffective assistance of counsel that permeated [the] entire trial."

Rayshad v. State, 670 S.E.2d 849 (GA 2008) Counsel ineffective for failing to object to inadmissible, prejudicial evidence.

People v. Tykhonov, 838 N.YS.2d (N.Y. 2007) Counsel ineffective for numerous reasons. Counsel failed to file a motion to suppress. Counsel also "was not prepared in both the law and the facts and he was unable to employ basic principles of criminal law and procedure."

Failure to Enforce Plea Agreement

Baldridge v. Weber, 746 N.W.2d 12 (S.D. 2008) Counsel ineffective for failing to object to the state's failure to comply with the plea agreement. Prejudice was presumed because the defendant "had a substantial right to the fulfillment of the terms of his plea agreement."

Custodio v. State, 644 S.E.2d 36 (S.C. 2007) Counsel ineffective for failing to have the defendants plea agreement enforced based on detrimental reliance. Prejudice established because the defendant was entitled to enforcement of the deal. "[T]he State may withdraw a plea bargain offer before a defendant pleads guilty, provided the defendant has not detrimentally relied on the offer." Here, the defendant had detrimentally relied on the offer.

Taylor v. State, 919 So. 2d 669 (Fla. 2006) Counsel ineffective for failing to ensure enforcement of the plea agreement.

Failure to Give Adequate Advice

Thompson v. United States, 504 F.3d 1203 (11th Cir. 2007) Counsel ineffective for failing to adequately advise the defendant of the right to appeal. Counsel had duty to consult with the defendant because the defendant "expressed and interest in an appeal by asking his attorney about that right." Counsel's advice was deficient because the defendant was given no information from which he could have intelligently and knowingly either asserted or waived his right to appeal. Prejudice established because there is a reasonable probability the defendant would have appealed if he had been adequately advised.

United States v. Hernandez, 450 F. Supp. 2d 950 (Iowa 2006) Counsel ineffective for failing to adequately advise the defendant, which resulted in the defendant declining to plead guilty and testifying during the trial. Prejudice established because the defendant, if counsel had performed adequately, would have received a lesser sentence.

United States v. White, 371 F. Supp. 2d 378 (N.Y. 2005) (2nd Cir. 2007) Counsel was ineffective for failing to adequately advise the defendant, which resulted in the defendant rejecting a plea agreement. If defendant had been adequately advised he most likely would have accepted the plea offer.

People v. Owens, 894 N.E.2d 187 (Ill. 2008) Counsel ineffective for failing to consult with the defendant concerning a motion to reconsider sentence. "[T]he attorney's failure to consult with the defendant during a critical stage of the proceedings" was deficient and the defendants ability to preserve his sentencing arguments for appeal was prejudiced.

State v. Hunter, 143 P3d 168 (N.M. 2006) Counsel ineffective for failing to adequately advise the defendant.

State v. Lamb, 804 N.E.2d 1027 (Ohio 2004) Counsel ineffective for failing to object to the trial court's failure to inform the defendant. Counsel's conduct was deficient and prejudicial in failing to object to the trial courts error.

Failure to Enforce Subpoena

United States v. Edmond, 63 M.J. 343 (C.A.A.F. 2006) Counsel ineffective for failing to secure the testimony of a subpoenaed defense witness.

Failure to Request Jury Instructions

J.J. v. State, 858 N.E.2d 244 (Ind. 2006) Counsel ineffective for failing to inform jury that the defendants alleged accomplice had been granted use immunity. Prejudice found because the witness' testimony was of great consequence.

State v. Kougl, 97 P.3d 1095 (Mont. 2004) Counsel ineffective for failing to request jury instructions on accomplice testimony. In addition, although counsel informed the jury to view accomplice testimony with suspicion, "hearing this from counsel...is not the same as hearing it from the court."

Failure to Protest Prosecutorial Misconduct

Martin v. Grosshans, 424 F.3d 588 (7th Cir. 2005) Counsel ineffective for failing to object to improper testimony and argument. "[E]ven if these errors, in isolation, were not sufficiently prejudicial, their cumulative effect prejudiced...[the] defense."

People v. Phipps, 889 N.E.2d 1154 (Ill 2008) Counsel ineffective for failing to object to substitution of charged offenses.

Failure to Assert Double Jeopardy

West v. Director of Dept. of Corrections, 639 S.E.2d 190 (Va. 2007) Counsel ineffective for failing to assert a double jeopardy objection.

Gerisch v. Meadows, 604 S.E.2d 462 (GA 2004) Counsel was ineffective for failing to recognize and adequately advise the defendant concerning a valid double jeopardy claim.

Matton v. State, 872 So. 2d 308 (Fla. 2004) Counsel was ineffective in probation revocation plea case for failing to advise the defendant that he was entitled to credit for his previously accrued "gain time" in prison.

State v. Henderson, 93 P3d 1231 (MT 2004) Counsel ineffective for failing to adequately consult with client, investigate, or conduct any research.

Failure to Appeal or Modify Sentence

Matthews v. State, 868 A.2d 895 (MD 2005) Counsel ineffective and prejudice presumed for failing to file motion for modification of sentence when requested to do so by defendant.

Cumulative Error

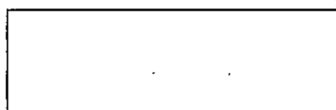
Goodman v. Bertrand, 467 F.3d 1022 (7th Cir. 2006) Counsel ineffective for numerous reasons. "Cumulative effect of the errors required reversal. Rather than evaluating each error in isolation...the pattern of counsel's deficiencies must be considered in their totality."

Aldrich v. State, S.W.3d WL 5057647 (TX 2008) Counsel ineffective for numerous reasons. First, counsel misinterpreted Kyles v. Whitley, 514 U.S. 419 (1995) to relieve him of any duty to investigate, misunderstood basic discovery procedures, and misunderstood what legally constitutes exculpatory evidence. Second, counsel failed to convey the state's 20-year plea bargain offer to the defendant because he believed "it would be unethical and would constitute malpractice to even discuss the proposed plea bargain" with the defendant. Third, counsel "neither performed a reasonable investigation nor made a reasonable decision that a particular investigation was unnecessary." Prejudice found as "[d]efense counsel's errors pervaded and prejudiced the entire defense," including during pretrial and plea negotiations.

Nance v. Ozmint, 626 S.E.2d 878 (S.C.) 549 U.S. 943 (2006) [Trial counsel's failure to investigate, plan, and present a defense constituted "a classic example of a complete breakdown in the adversarial process". [C]ounsel abandoned his role as defense counsel and if fact helped bolster the case against his client...We again recognize that this type of "consistently inept form of lawyer conduct [is not] acceptable in this state, nor will we employ a prejudice analysis, for [defense] counsel's ineffectiveness [is] so pervasive as to render a particularized prejudice inquiry unnecessary."

Exhibit 36

ANCHORAGE DAILY NEWS CRAIG MEDRED ARTICLE



It's a complicated, ugly case against guide David Haeg

CRAIG MEDRED
OUTDOORS

(05/17/08 23:53:56)

When pilot and big-game guide David Haeg strayed outside the boundaries of a wolf control area near McGrath in 2004 to slaughter some wolves, there is little doubt he thought he was doing the right thing. Everyone involved with the wolf-killing program for which the state had permitted Haeg understood the objective was killing wolves to increase the survival chances for moose.

And even if Haeg and gunner Tony Zellers were technically outside the control area, they were still operating within the boundaries of state Game Management Unit 19D, and the state calls these things "Game Management Units" for a reason.

What were Haeg and Zellers doing anyway but helping to manage the game in Unit 19D?

Unfortunately the state didn't see it that way. Under fire from animal activists upset about the aerial gunning of wolves, the state saw in Haeg a chance to demonstrate that you can't just let wolf-control run wild, to spin an old phrase from former Gov. Wally Hickel.

Still, in fairness to the Alaska state troopers and the state attorneys involved, it is near certain they too thought they were doing the right thing when they busted Haeg.

Everyone agreed Haeg broke the law. He shot nine wolves 20 to 30 miles outside the control area. He deserved to be punished for that.

Where the issue turned ugly was in deciding what punishment fit the crime. This is the reason the case is still making its way through the Alaska court system.

The state wanted make an example of David Haeg. It was supposed to be pretty simple:

They'd bust him. They'd make a big show of it by playing the press like a trophy king salmon, something at which law enforcement officials in this state are good.

Wolves shot 20 to 30 miles outside the control area became wolves shot up to 80 miles outside the control area. Haeg was portrayed as a rogue, out-of-control aerial wolf hunter to make it appear the state was keeping a close watch on these hunts, which is the biggest fraud in all this.

Haeg was supposed to take the publicity hit, hire a fixer to negotiate a plea deal and then just wait for everything to fade away.

That's the way these cases usually go down.

Haeg, for his part, played his role properly at the start. He hired a lawyer who specializes in plea-bargaining wildlife cases. A plea bargain was struck.

And then everything fell apart. Why isn't exactly clear.

State assistant attorney general Andrew Peterson said it was because Haeg didn't want to let the state take his airplane, a pricey Piper Super Cub specially outfitted for short-field landings.

"He didn't want to give it up," Peterson said.

But it isn't quite that simple.

The state had seized Haeg's airplane early in the investigation. State officials never bothered to tell him he had the right to protest that seizure and go before a judge to try to get the plane back while his case was adjudicated. When he finally found out, he got mad.

By then, he'd also lost a hunting season with its tens of thousand of dollars in business. He was watching his life drain away along with his money.

"All they had to do," he told the three, gray-haired judges of the appeals court in mid-May, "was write a little note on the search warrant: 'Mr. Haeg, you have the right to appeal it.' "

Instead, Haeg said, when he asked troopers how and when he might get his plane back, "the trooper told me I was never going to get my plane back."

Somewhere in there, the now 42-year-old Haeg decided the government -- our government -- was trying to railroad him, and he started fighting back. He hired two attorneys. When one seemed more interested in negotiating deals than battling for his case and the other couldn't do much to stop him from getting convicted, he got even madder.

He became his own lawyer, a one-man legal aid society cranking out the briefs and appeals. Four years after the wolf shooting, he is a man obsessed with his case.

But then, we all might be if you consider what happened to Haeg after the plea agreement went bust.

The state used what Haeg said in a five-hour, plea-agreement interview to put together a bunch of new charges. They didn't just go after him for violating the terms of the aerial wolf-control permit. They went after him for the crime of aerial hunting.

(Haeg makes an interesting argument that someone engaged in state-permitted wolf control isn't "hunting" because the state, in permitting the aerial gunning, specifically says it isn't hunting.)

The prosecutors saw it differently. To them, it looked like hunting, and they tried to tie it to the game management unit in which Haeg guides to make it appear he was doing wolf control to further his hunting business.

A trooper testified that Haeg killed the wolves in the game management unit where he has his hunting camps, but eventually recanted that testimony on cross-examination at Haeg's trail.

As Haeg pointed out to the appeals court, however, not even the judge appeared to hear. In taking away Haeg's guide license, and thus his business, for five years, the judge specifically cited the egregious act of Haeg illegally killing wolves in the area where he guides -- something which just didn't happen.

Haeg gets especially upset about this. He tosses the word "perjury" around a lot.

I don't know what to think about David Haeg. He and some of his friends have e-mailed me repeatedly over the years to plead his case. He's always sounded a bit paranoid.

He started a Web site to publicly air the case: alaskastateofcorruption.com. It appears a little paranoid too -- rambling and disjointed. Haeg is not a particularly eloquent man.

He is a big-game guide. He looked different in suit and tie before the appeals court judges in a sterile Anchorage courtroom, but he was clearly still a guy who would have been a lot more comfortable in the woods.

After his presentation, all by himself, without the aid of any of the attorneys he's come to detest, a lone man behind a wooden table bucking the system in what he believes to be a fight for what is right, Haeg broke down in tears.

I knew then even less than when I entered the court room. Some 50 or so people in attendance, though, had a distinct and communal opinion. After the judges walked out of the chambers, they stood up to applaud Haeg long and loud.

Poor state attorney Peterson had to sort of slink out of the chambers.

A colleague at the top of the stairway leading to the door, shook his hand -- a deserved thank you for arguing what has come to be a complicated and ugly case.

I was left knowing that I didn't like a lot of what I saw. I felt a little sorry for Haeg. I remember thinking mainly about the over-used phrase of an old friend: Just because you're paranoid doesn't mean they aren't out to get you.

What Haeg was apparently trying to do in March of 2004 was help the state out with its dirty little business of manipulating wolf numbers. He got a little carried away, yes, but for that he deserves to lose his business for five years and his airplane?

If that's the case, what should be the punishment for those commercial fishermen who on any given day over the course of the Alaska summer stray outside the boundaries of carefully drawn fishing districts to snatch public resources worth tens of thousands of dollars?

Haeg wasn't making any money off shooting those wolves.

He was just a poor fool trying to help the state with its stated goal of reducing wolf numbers in the McGrath area. So far, it appears to have cost him about four years of his life.

Outdoors editor Craig Medred is an opinion columnist. Find him online at adn.com/contact/cmedred or call 257-4588.

Exhibit 33

AFFIDAVITS FROM WITNESSES

1 **AFFIDAVIT OF JACKIE HAEG**

2 I, Jackie Haeg, under penalty of perjury, state as follows:

3 1. I make these statements regarding Mr. Haeg's criminal prosecution, conviction,
4 sentencing, and appeal based upon facts known to me to be true.

5 2. The State of Alaska (SOA) seized David Haeg's property, which we both used as
6 the primary means to provide a livelihood, without a pre or postseizure hearing. The SOA used
7 search and seizure warrants/affidavits that falsified all evidence locations to where David Haeg
8 guided.

9 3. Brent Cole told David Haeg and I during the first meeting with him that the SOA
10 falsifying all evidence locations to our guiding area and placing these false evidence locations all
11 affidavits/search warrants "didn't matter" and nothing could be done about it.

12 4. Brent Cole stated it was not a legal defense that David Haeg was told and induced
13 by the SOA to take wolves outside the Wolf Control Program area but mark them as being taken
14 inside.

15 5. Brent Cole stated that this was a very political case and to stop it before it
16 snowballed out of control.

17 6. Brent Cole stated that he handled more Fish & Game cases then anyone.

18 7. Brent Cole stated, "I feel one of the main jobs of an attorney is to keep the client
19 from the stress in dealing directly with the Prosecutor".

20 8. At our first meeting with Brent Cole, and before receiving any evidence or
21 discovery, Brent Cole told David Haeg to make a plea agreement (PA) with the SOA.

22 9. Brent Cole stated there was no right to a postseizure hearing to protest being
23 deprived of our airplane and property and no right to bond it out.

1 10. Brent Cole told David Haeg that the SOA had given him immunity and that he had
2 to give the SOA a statement. David gave a 5-hour statement to the SOA that implicated Tony
3 Zellers and, at the SOA's request, marked the locations of all wolves killed by Tony Zellers and
4 David Haeg on a map provided by the SOA. This map was then used as the main exhibit against
5 David Haeg at trial.

6 11. I listened to the tapes where the SOA used the map, upon which David Haeg
7 marked the kill locations, during their interview of Zellers. The SOA specifically told Zellers that
8 David Haeg had marked the kill sites on the map; kill sites which implicated Zellers.

9 12. Brent Cole stated that he made a PA that only required David Haeg to give up one
10 year of guiding. In the summer of 2004 Brent Cole stated that David Haeg should cancel the fall
11 2004 and spring 2005 hunting seasons because the SOA promised to David Haeg credit for this
12 year if he did so before being sentenced.

13 13. Before the PA hearing, and over Brent Cole's objection, David Haeg submitted
14 evidence to the court that the SOA had told and induced him to take wolves outside the Wolf
15 Control Program area but claim they had been taken inside the area.

16 14. Brent Cole stated we should fly in numerous witnesses for the PA hearing to be
17 held on November 9, 2004.

18 15. When we arrived at Brent Cole's office for a "pre-sentencing strategy meeting" on
19 November 8, 2004, Brent Cole told us (David Haeg, Tom Stepnosky, Kayla Haeg, Cassie Haeg,
20 Drew Hilterbrand & Jake Jedlicki) he "just received very bad news from Scot Leaders" and
21 showed us a fax he had received 2 hours before changing the charges to much harsher ones. In
22 fact, I have seen a letter written by Brent Cole proving he had known since November 4, 2004
23 that the SOA was going to change the charges.

1 16. Even though we had already given up the year guiding and flown in all the
2 witnesses Brent Cole stated there was nothing he could do, other then calling prosecutor Leaders
3 boss, when the SOA, on November 8, 2004, broke the PA by changing the charges already filed
4 in agreement with the PA to charges that required David Haeg to lose his guide license for a
5 minimum of 3 years.
6 17. Brent Cole never objected to the SOA, in every charging information filed against
7 David Haeg, specifically citing David Haeg's immunized statement as probable cause for all the
8 charges filed against David Haeg.
9 18. David Haeg and I gave up our Constitutional Right to work our business for a
10 whole year and the expense of flying in witnesses in reliance on the Rule 11 Agreement.
11 19. At David Haeg and Tony Zeller's telephonic arraignment that happened on
12 November 9, 2004 instead of completing the Rule 11 Agreement in McGrath, Brent Cole didn't
13 object to the new harsher charges filed by the SOA in violation of the PA or the SOA's use of
14 David Haeg's immunized statement.
15 20. David Haeg and I spent approximately $6000.00 just to get the witnesses ready for
16 the PA hearing the SOA broke – not including the year of guiding we have given up.
17 21. I never saw or heard of Brent Cole doing anything to advocate for David Haeg.
18 Brent Cole only urged David Haeg to give the SOA whatever the SOA wanted.
19 22. Chuck Robinson stated there was nothing he could do to fix what Cole had done
20 during his representation of David Haeg - that this was "all water under the bridge." Chuck
21 Robinson stated he could not believe that Brent Cole had David Haeg give the SOA a statement.
22 23. Chuck Robinson stated that the SOA was going to use David Haeg's statement at
23 trial and that since they would just use the incriminating parts of the statement David Haeg had

1 to testify at trial to bring in the non- incriminating parts of the statement.

2 24. Chuck Robinson stated that the "subject matter" defense was so strong that David
3 Haeg should not present any evidence at trial – and that for this tactic to work David must never
4 bring to the court's attention all he had done for the PA – as this would admit to the court David
5 submitted to it's jurisdiction.

6 25. After he was convicted David Haeg demanded Chuck Robinson subpoena Brent
7 Cole to testify in person at David Haeg' sentencing.

8 26. I typed up 56 questions that David Haeg demanded Chuck Robinson ask Brent
9 Cole while he was on the witness stand. These questions were about Cole's representation of
10 David Haeg – about all Brent Cole told David Haeg to do for PA and for the SOA and that Brent
11 Cole told David Haeg nothing could be done to enforce the PA except to call prosecutor Leaders
12 boss.

13 27. I paid for Brent Cole's subpoena, witness fees, airplane ticket to McGrath, hotel in
14 McGrath, and then Brent Cole never showed up to testify as David Haeg absolutely demanded.

15 28. Chuck Robinson stated there was nothing that could be done about Brent Cole not
16 showing up to testify.

17 29. I typed up questions that David Haeg demanded Chuck Robinson ask of the other
18 witnesses who were present when Brent Cole said to do so much for a PA and who were present
19 when Brent Cole later said nothing could be done to enforce it. Chuck Robinson failed to ask
20 these witnesses these questions – even though he had been given these typed up questions.

21 30. David Haeg never received credit for the year of guiding we had given up because
22 Brent Cole promised that the SOA would give us credit for it.

23 31. I never believed David that our own attorneys had sold us out until Brent Cole

1 cross-examined all of us while we were under oath during fee arbitration. During Brent Cole's
2 cross-examination he tried to get us to agree to things that Brent Cole and we knew were not true
3 – that he had told all of us he could file a motion to enforce the PA; that David had agreed to
4 give up our airplane; and that he had told us long before we arrived to go to McGrath that the PA
5 was going to be broken.

6 32. After reviewing David Haeg's file Mark Osterman stated the "sellout" of David
7 Haeg by his first two attorneys was the worst he had ever seen; that a motion protesting the use
8 of David Haeg's statement should have been filed; that if Brent Cole and Chuck Robinson would
9 have filed a motion to suppress because of the false evidence location it would have been granted
10 and the evidence suppressed; that the PA should have been enforced; that Chuck Robinson
11 should have used the ineffectiveness Brent Cole; that Chuck Robinson's "subject matter" tactic
12 was no good; that, to help David Haeg, he would use the ineffectiveness of Brent Cole and
13 Chuck Robinson; that he would sue Brent Cole and Chuck Robinson for malpractice; and that
14 proving Ineffective Assistance of Counsel was the same as proving malpractice.

15 33. Before we hired him Mark Osterman stated that he charged $3000 - $5000 per
16 point of appeal but would just charge $12,000 total upfront for the appeal to completion.

17 34. After we had hired Mark Osterman, paid him the entire $12,000 upfront, and just
18 before David Haeg's appeal brief was due, Mark Osterman stated he would not put in the brief
19 the items he had agreed were the "sellout" of David Haeg because he would do nothing that
20 would affect the livelihoods of Cole and Robinson.

21 35. Long after we hired Mark Osterman he claimed he charged $8000 per point of appeal
22 and that we already owed him an additional $24,000 over the $12,000 we had already paid him –
23 even though he had yet to finish David Haeg's appeal.

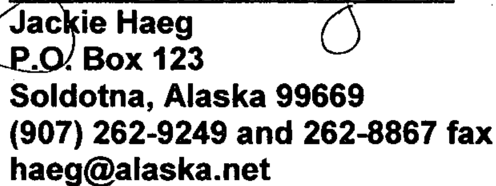
36. At David Haeg's representation hearing Mark Osterman testified that he charged $8000 per point of appeal and that he had never given David Haeg a total price of $12,000 for the appeal to completion. Only after David Haeg testified he had tape-recorded every conversation with Mark Osterman did Mark Osterman admit his testimony was false.

37. I was the one who, long after David Haeg had been convicted and sentenced, found that the evidence that David Haeg had put in the court record over Brent Cole's objections, that the SOA had told and induced David Haeg to take wolves outside the Wolf Control Program area but claim they had been taken inside the area, had been removed out of the official record while proof it had been submitted remained in the official record.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I certify under penalty of perjury I have personal knowledge of the facts above and that the foregoing is true and correct. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

Executed on 11-20-09 **in Browns Lake, Alaska.**



Jackie Haeg
P.O. Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Law Office
DALE DOLIFKA
44501 Sterling Highway, Suite 202
P. O. BOX 498
SOLDOTNA, ALASKA 99669
(907-262-2910) FAX (907-262-7588

June 17, 2009

TO WHOM IT MAY CONCERN:

I have practiced law in the State of Alaska for thirty-four years. The emphasis of my legal practice is business/ corporate law, real estate transactions, estate planning and probate matters.

For several years, along with Charles Obendorff, a local certified public accountant, I have assisted David Haeg with his business endeavors.

Some time after David Haeg was prosecuted by the State of Alaska for the matter before you, Charles Obendorff and myself were contacted by David Haeg and his wife to review his business options given the status of the criminal case against him. By that time, David Haeg's airplane had been seized by the State of Alaska and his business prospects were very bleak to say the least.

Although I am not a criminal attorney, I became extremely perplexed as to the method of execution used by the State of Alaska to seize David Haeg's airplane. Following a thorough review of the seizure laws and procedures, it became ever more evident that David Haeg had been denied his constitutional due process rights regarding the seizure of his airplane. At any rate, without his airplane, which was the "life-blood" of David Haeg's business operation, there was little Charles Obendorff or myself could do to help David Haeg redeem his perilous business condition.

Reviewing and studying the seizure process of David Haeg's airplane "whetted my appetite" as to his entire case. While the seizure of David Haeg's airplane certainly "smells" of impropriety, the processing of his alleged "plea agreement" with the State of Alaska "stinks to high heaven".

One does not have to have a legal background to understand the following facts regarding David Haeg's Plea

Agreement:

1) Without question - David Haeg and the State of Alaska entered into a Plea Agreement regarding David Haeg's criminal case;

2) Without question - after entering into the Plea Agreement with David Haeg, the State of Alaska obtained critical information from David Haeg which was given by David Haeg in his reliance upon the provisions of the Plea Agreement (substantive information that David Haeg would not have otherwise provided to the State of Alaska but for his reliance upon the terms and conditions of the Plea Agreement);

3) Without question - after the State of Alaska obtained the critical information from David Haeg, the State of Alaska reneged on the Plea Agreement and **INCREDULOUSLY** the State of Alaska significantly increased the severity of the charges that had been originally filed against **David Haeg** - much to his detrimental reliance!; and

4) Without question - when the State of Alaska used the statements of David Haeg against him which it obtained from him upon his detrimental reliance upon the terms and conditions of his Plea Agreement, it clearly violated his constitutional rights against self-incrimination.

In my humble opinion, a Plea Agreement between a simple peasant and the almighty government should be one of the most sacred and hallowed agreements in America - it is one of the few "checks and balances" that the peasants can rely upon when the strong arm of the government comes calling with all of it's powers and unlimited resources. Well, David Haeg's Plea Agreement was anything but sacred and hallowed and as a result he has paid an enormous price.

David Haeg has never claimed that he did not commit a crime and that he should not be punished for said crime. David Haeg's concern and mine as well has been the **outrageous** process with which David Haeg has been prosecuted by the State of Alaska.

Sincerely,

Dale Dolifka

DD: rmd

Attorney General Eric Holder
United States Department of Justice
950 Pennsylvania Ave, N.W.
Washington, DC 20530-0001

June 25, 2009

Re: State of Alaska v. David Haeg, 4MC-04-024 CR

My name is Tony Zellers. I am a former U.S. Air Force pilot and was Dave Haeg's codefendant. This letter is my accounting of some of the gross wrong doings/violations that I observed happen to Dave and myself. I am requesting that a formal investigation be started into the misconduct by counsel and the prosecutor's office in connection with this case.

The following is just a partial list of gross rule and constitutional violations that I have personally witnessed in this case.

1. False information/moving of evidence on search warrant affidavit. Trooper Gibbens stated in his affidavit the kill sites were in Game Management Unit (GMU) 19C, the GMU in which David had a hunting lodge and a license to guide. They were not, the kills were in GMU 19D where the State was conducting the Wolf Control Program. Both Trooper Gibbens and Prosecutor Leaders were told this during David's and my separate and taped plea statements. They also had exact GPS coordinates of the kill sites in GMU19D, taken by Trooper Gibbens prior to the search warrants.
2. This false information was used throughout to justify a "Guiding" crime instead of a Wolf Control Program violation.
3. Prosecutor Leaders/State of Alaska reneged on plea deal with David after he relied on it to set up witnesses with transportation and hotel accommodations. David flew me in from Illinois to testify at his Change of Plea hearing. I arrived the night before only to find out the State pulled the deal and we were now going to be arraigned together instead, a shock to me to say the least. David also gave up one year of guiding for this plea deal, which he did not get credit for at his sentencing, I did though at my Change of Plea hearing.
4. Prosecutor Leaders used David's and my plea statements to justify charges. Prosecutor Leaders also filed harsher charges based on the false information and our plea statements. Neither David's lawyer (Brent Cole) nor mine (Kevin Fitzgerald) objected to use of our statements. This resulted in me getting a harsher plea deal than I was currently working on, roughly 8 times more on the jail sentence.
5. At my change of plea, my lawyer, Kevin Fitzgerald told the judge that David and I cooperated with the state by giving a statement and that the state could do anything they wanted to do with our statements, which they did even though it violate Alaska Rule 410. Later, in order to cover for Brent Cole at a Bar Association Hearing, Kevin stated just the opposite under oath.
6. At David's trial Trooper Gibbens testified the wolves were killed in GMU 19C and Prosecutor Leaders accepted this testimony. Under cross examination, Trooper Gibbens recanted and said they were in 19D instead. **Perjury!** David's new lawyer,

Chuck Robinson, just glossed over this and did not object or ask for a mistrial. Later the judge, in her sentencing statement relied on the perjured testimony to impose a harsher sentence, no objections from Robinson.

7. Brent Cole did not answer a subpoena, paid for by David, to appear to testify about the pulled plea deal at David's sentencing. I know that David wanted him there and Robinson told Cole he didn't need to come. **Cover Up!**

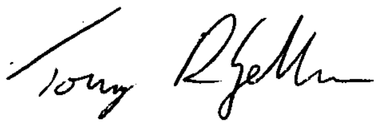
Lawyers covering for lawyers mistakes and not advocating for their client. It became extremely obvious that all these lawyers were more interested in preserving their relationship with the prosecutor than advocating for David. The cover-up is very easy to see if you look into it.

Alaska is a small community. It has become easy for lawyers and prosecutors to ignore the rules; nobody holds their feet to the fire. This has eroded the system such that these lawyers are no longer advocating for their client as they should be. It has been easy for the courts to over look the violations because no "Lawyer" objected to the violations. Well why would they if they were part of it or covering for their fellow lawyers.

These are just a few of the violations if have witnessed. I am willing to talk or meet with whoever you deem necessary to clean this up. I am also will to go to Washington DC to talk to DOJ, Senators, National Press or whoever will listen to expose this gross violation of civil rights and the basic right to Due Process.

I hope the Department takes the appropriate steps to restore the public's trust in the Alaska Justice System and the lawyers participating in it. I believe if the Department is willing to step in here and take appropriate action against those that have violated the law, rules, and David's civil rights, the Alaska Justice system will right itself and get back on track.

I hereby swear under penalty of perjury the foregoing is true to the best of my knowledge & ability.



Tony R. Zellers
9420 Swan Circle
Eagle River, AK 99577
907-696-2319
E-Mail trzellers@aol.com

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG)

Appellant,)

vs.)

STATE OF ALASKA,) Case No.: A-09455

Appellee.)

_______________________________)

Trial Court Case #4MC-S04-024 Cr.

AFFIDAVIT OF TONY ZELLERS

I, Tony Zellers, being first duly sworn upon oath, depose and state as follows:

1. I make these statements and answer these questions regarding Mr. Haeg's criminal investigation, Rule 11 Proceedings, Trial Court Case #4MC-S04-024 Cr., and subsequent sentencing based upon facts known to me to be true.

2. I was a co-defendant with Mr. Haeg. I have worked for Mr. Haeg as a guide since 1999. Mr. Haeg hired Brent Cole as his attorney and I hired Kevin Fitzgerald as my attorney in April 2004. During April, I was guiding for Mr. Haeg when he informed me that he was going to meet

with the prosecutor, Mr. Leaders, and give him a map with the kill locations along with an interview on all the events that happened concerning the wolves and trapping. At that time neither of us were charged with anything. The State had served its search warrants and Mr. Haeg had his airplane confiscated. I strongly expressed my concern to Mr. Haeg about giving all this information to the State. Mr. Haeg informed that his lawyer, Brent Cole, advised him this was the wise thing to do. I was still guiding at the time and had not even met with my lawyer, but had talked to him on a satellite phone. Mr. Haeg's mental state at the time was extreme anxiety about what was going to happen. On April 28, 2004 I met with my lawyer, Kevin Fitzgerald, for the first time. I also expressed concern about Mr. Haeg meeting with the State. Kevin Fitzgerald advised me that I would also have to meet with the State or else I would be viewed as uncooperative. Kevin Fitzgerald said if I didn't cooperate like Mr. Haeg had I would not get a favorable plea deal. From Mr. Haeg's plea deal I would then get roughly the same deal. My impression at the time and throughout the whole process was that these interviews could be used against us. This was the main reason I was concerned about telling the State all that had happened.

Based on the evidence the State had at the time, they may have been able to prove that we killed 4 wolves outside the permit area and not the other 5 wolves they had confiscated. Kevin Fitzgerald & I also discussed our tactic, which was to have Brent Cole and Mr. Haeg do the brunt of the work since it was apparent that the State was after David Haeg more than me. This tactic also arrived from the fact that Mr. Fitzgerald did not have the time to fully devote to the case due to other cases ongoing. I was fully aware of that fact when I hired Mr. Fitzgerald. His basic role was to follow the case and look out for my interests in a plea agreement. I also disclosed the fact that there were errors on the search warrant affidavit. These errors were the location of the kill in regards to the Game Management Unit. I stated that the locations were in 19D and not in 19C as was on the Search Warrant Affidavit. It was decided at the time that we would not take any action since the majority of the work was to be done by Mr. Cole.

3. I gave my interview to the State on June 23, 2004. Present at the interview was Mr. Leaders, Trooper Gibbens, Trooper Doerr, and Mr. Fitzgerald. During the interview I went through everything that Mr. Haeg and I had done concerning the wolf issue. I pointed out to

Trooper Gibbens that his information on the affidavit for search warrants was incorrect and in fact the kills were located in 19D and not 19C, which he stated in the affidavit. I also corrected him on the map that he presented me depicting the area boundaries of the wolf control program. The map he had showed straight lines for the northern boundaries, which were incorrect. Prosecutor Leaders interrupted us at that point and just wanted to know if the southern boundaries were correct, which they were. I also answered questions relating to a September 2003 moose hunt from Trooper Doerr. I assumed the moose hunting issue was a dead issue since it was obvious to me that it was a case of a disgruntled hunter from another guiding camp complaining that we shot the only moose he had seen.

4. It was my impression that a deal would be reached soon after my interview. After the interview I did not receive anything from the State until Kevin Fitzgerald sent Mr. Leaders a letter stating what I would be willing to plead to on August 31, 2004. That was rejected by the State. In that offer, it was proposed that the licenses suspension would be imposed to the time of the offense. It was my understanding that Mr. Leaders did not want that since Mr. Haeg and I had been guiding in the April-

May timeframe and he instead wanted all suspensions to start July 1, 2004. This was arrived at because Mr. Leaders was told we would give up the fall guiding season, which Mr. Haeg did and cancelled all the hunts that were booked that fall. I did not guide that fall. The next offer was from Prosecutor Leaders and was dated October 1, 2004 to which time a counter offer was made by Kevin Fitzgerald and myself. This whole process for me was slowed down because Mr. Leaders was working primarily with Mr. Cole and Mr. Haeg to reach an agreement. From that agreement, I would get my agreement.

5. About the end of October, I took a vacation to Illinois to visit with family. This vacation was to last until the beginning of December. While in Illinois, I received a call from Mr. Haeg, early November, that he had a firm date set with the State for concluding his plea agreement and that I would be needed to testify November 9, 2004 in McGrath. My understanding was that he was going to go open sentencing on everything but the suspension of his guide license which would be 1 - 3 years depending on the outcome of our moose hunt testimony. Mr. Haeg requested that I fly back to Alaska to be there in person rather than testify telephonically. I would also be arraigned on charges at that time. I agreed to this and Mr. Haeg

provided me with an airline ticket. My understanding at the time was that I would be arraigned on charges that were in the initial plea offer from the State. I conferred with my lawyer and agreed to fly back to testify. I arrived in Anchorage the evening of November 8, 2004 and was scheduled to fly to McGrath the next morning. Mr. Haeg informed me that night that we no longer needed to go to McGrath to testify and instead everything would be done from Mr. Cole's office. During the arraignment on November 9, 2004, Mr. Haeg and I were arraigned on different and harsher charges than I had expected and in fact required a suspension period of at least 3 years. Immediately after the arraignment while in Mr. Cole's office, Mr. Haeg was extremely upset at what had just happened with regard to the Rule 11 agreement and the filing of harsher charges. This was also the first time I was realized that the State had backed out of the Rule 11 agreement. Neither Brent Cole nor Kevin Fitzgerald objected that our interviews were used as the only direct evidence to file most of the new charges. I left the office to discuss the events briefly with my attorney since he had another meeting to attend. I flew back to Illinois to complete my vacation.

6. Upon my return in early December, I was informed Mr. Haeg

had fired Mr. Cole and his new attorney was Mr. Robinson. I discussed this matter with my attorney and we also discussed the possibility of resolving my side of the case. I informed Mr. Haeg of this also. In early January, I reviewed a plea offer from Mr. Leaders. In it had the requirement that I testify against Mr. Haeg. I expressed concern about this to my attorney and was informed that Mr. Leaders would not even entertain a plea without this requirement. Kevin Fitzgerald then sent Mr. Leaders a counter offer. During this time I kept Mr. Haeg informed on what was going on and what I was being offered and my counter offer. I was doing this because it was apparent to me that Mr. Fitzgerald and Mr. Robinson were not conferring on the matter. I reached final terms with the State on January 11, 2005 and was scheduled for a Change of Plea on January 13, 2005. Again I kept Mr. Haeg apprised of this matter and if he or Mr. Robinson would have asked me to delay my Change of Plea I would have, to accommodate him. The terms of my Rule 11 agreement were; 2 counts Same Day Airborne - AS 8.54.720(a)(8)(A), 1 count Unlawful Possession - 5AAC 92.140(a), 1 count Unsworn falsification - AS 11.56.210(a)(2). My cumulative sentence was 240 days in jail with 228 suspended - 12 to serve, $4000 fine with

$3000 suspended - $1000 to pay, 5 years of informal probation subject to the following terms - 1. Commit no hunting, trapping or Big Game Guiding offenses, 2. Forfeit any interest in all items seized during investigation, 3. Pay restitution in the amount of $4500, joint and several with Dave Haeg for 9 wolves killed, 4. Alaska hunting, trapping and guiding privileges suspended for 3 years with 2 years of this suspension suspended and the suspension retroactively effective from July 1, 2004, 5. I testify fully and truthfully in any proceeding against co-defendant, Mr. Haeg, 6. I agree to waive any claim of inadmissibility of plea discussions under Alaska Rule of Criminal Procedure 410 regarding any statements given to law enforcement about this case.

7. In July 2005, I was called to testify at Mr. Haeg's trial in McGrath. During the trial, I observed on numerous occasions Judge Murphy with Trooper Gibbens outside of the courthouse. Trooper Gibbens seemed to be shuttling Judge Murphy anywhere she needed to go in McGrath. Upon reflection, this is improper conduct as Trooper Gibbens was a key witness for the State against Mr. Haeg.

8. On September 29, 2005 I flew to McGrath to testify for Mr. Haeg at his sentencing. Mr. Leaders wanted to bring up the moose hunt investigation and I went to testify on

behalf of Mr. Haeg. Mr. Haeg provided me with a set of questions I would be asked by Mr. Robinson. These questions also included questions about the November 2004 arraignment and Rule 11 agreement between Mr. Haeg and Mr. Leaders. Mr. Robinson did not ask me any of the questions concerning the Rule 11 agreement. It was also my understanding that Mr. Haeg's previous attorney, Mr. Cole, would be present in McGrath to testify about the agreement. Mr. Cole did not come to McGrath and did not testify at all.

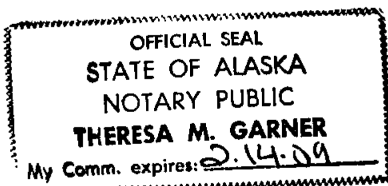
AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, TONY ZELLERS swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.

Tony Zellers

SUBSCRIBED AND SWORN to before me this 3 day of June, 2006.

Theresa M. Garner



Notary Public in and for Alaska.

My Commission Expires: 2.14.09

JUNE 10 2009

To Whom it May Concern,

I THOMAS J. STEPNOSKY am 60 years old and presently reside in Pennsylvania. I have been involved and participated in all proceedings with David Haeg concerning this case. From the begining in April 2004, while I was still residing in Alaska I attended meetings with attorney BRENT COLE, prosecutor SCOTT LEADERS and attorney CHUCK ROBINSON. After moving to Pennsylvania in April 2005 I have flown back to Alaska to attend meetings with attorney's CHUCK ROBINSON and MARK AOSTERMANN, the trial, sentencing and BAR ASSOCIATION hearings. Below I will list what I have personally heard, seen or have knowledge of.

1.) David was permitted and working for the STATE OF ALASKA under the "WOLF CONTROL PROGRAM" when the infractions occured. He should have been charged under the programs rules, not the guide statutes of the state, for he was neither guiding a client or operating in a GMU (GAME MANAGEMENT UNIT) for which he was licensed.

2.) David was not given a hearing for the return of property confiscated by the State. Property which he needed to provide for his family and himself, thus denying him of one of his basic rights, that to provide for his family!

3.) David gave up the fall hunting season as part of his good faith towards a plea agreement in the fall of 2004.

4.) Prosecutor SCOTT LEADERS changed charges after David's reliance on the plea agreement.

5.) attorney COLE said he could only call the prosecutor's boss to complain to the changing of the charges and I quote "I can't do anything to piss off the prosecutor because I have to work with him in the future."

6.) Prosecutor LEADERS used false information on his warrants and continued to use the false information even through trial. False information involved where the wolfs were killed. Both prosecutor LEADERS and trooper Gibbons were told that this information was wrong and TROOPER GIBBONS later admitted that it was.

7.) Attorney COLE never filed any motions to enforce the plea agreement or suppress the false evidence.

8.) Use of the false information at trial by TROOPER BRETT GIBBONS and prosecutor SCOTT LEADERS
Use of Plea agreement statements at trial.

9.) a sentencing hearing that lasted from 11AM one day to 2AM the next day, that included what I call a "mini TRIAL" on a moose issue for which David was never charged. The

00376

issue was brought forth by prosecutors to try and enhance the punishment of David. Even after sentencing Prosecutor LEADERS and TROOPER GIBBONS asked the court to apply punishment above and beyond what was allowed by law.

10.) Magistrate MURPHY and Trooper GIBBONS spending time together both in her office and in his troopers vehicle traveling back and forth to the store during breaks in the sentencing hearing.

11.) Attorney's BRENT COLE failure to honor supena at sentencing hearing.

12.) attorney CHUCH ROBINSON's failure to enforce the supena of BRENT COLE before the court at sentencing, for which David had paid for a plane ticket and for whom he had a list of questions for him that would have helped David's case.

13.) Both attorney's BRENT COLE and KEVIN FITZEGERALD lied under oath at the BAR ASSOCIATION hearings.

14.) Failure of the SUPERIOR, APPEALS and SUPREME COURTS OF ALASKA TO correct the blatant wrongs in this case.

15.) This case has the ripe smell of conspiracy to me!!!

In closing may I say that as a veteran and citizen of this country that I am both dismayed and disgusted with the judicial systym of the STATE OF ALASKA. I implore you to correct these wrongs! I swear under penalty of law that all of the information I have given is true.

SINCERELY,
THOMAS J. STEPNOSKY
Thomas J Stepnosky

THOMAS J. STEPNOSKY
PO BOX 205
THOMPSON PA
18465

570-727-3130

Drew Hilterbrand
P.O. Box 1038
Soldotna, AK 99669
(907) 252-4090

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, DREW HILTERBRAND, being first duly sworn upon oath, depose and state the following:

I make this statement based upon facts known to me to be true.

For weeks before the date of 11/9/04 Mr. Haeg was told, through his attorney Brent Cole, a firm deal with the Assistant Attorney General Scot Leaders to plead no contest to charges requiring his guide license be suspended for 1 to 5 years. The State agreed to recommend the actual suspension be between 1 and 3 years dependent upon a discussion of an uncharged and closed investigation of a 2003 moose hunt. The rest would be with "open sentencing" by Magistrate Murphy with no mandatory forfeiture of Mr. Haeg's airplane.

Mr. Haeg relied on this deal to give the State a complete interview and map in regard to the violations he was being accused of along with a 2003 uncharged and closed moose investigation. With this information the State was able to more than double the charges they could file. Mr. Haeg relied on this deal to give up all of his fall 2004 brown bear and moose hunts and all of his spring 2005 brown bear hunts. I know this because I work for him and <u>I did not work for Mr. Haeg</u> in June, July, August, September, October, November, & December of 2004 or January, February, March, April, May, June & July of 2005. Mr. Haeg also relied upon this same deal by paying all expenses for me and every other person supposed to travel with him to McGrath on 11/9/04 for his defense.

On 11/9/04 I traveled to Anchorage, Alaska with David Haeg, Jackie Haeg, Tom Stepnosky, Cassie Haeg, Kayla Haeg, and Jake Jedlicki to attend "David Haeg's sentencing strategy" meeting to be held at attorney Brent Cole's office that afternoon. At 8: 00 a.m. the next morning we were scheduled to fly from Anchorage to McGrath to attend Mr. Haeg's change of plea/sentencing that was supposed to happen at 10:00 a.m. I was attending this change of plea/sentencing to testify because I was involved in the 2003 moose hunt, which was required to be discussed and which would determine whether Mr. Haeg would loose his guide license for 1 to 3 years.

On the afternoon of 11/8/04, at Brent Cole's office located in Anchorage Alaska, Mr. Cole told me, David Haeg, Jackie Haeg, Tom Stepnosky, and Jake Jedlicki that he had "just received very bad news from Scot Leaders", prosecutor and Assistant Attorney General for the State of Alaska. Mr. Cole then showed all of us the fax received by his office (Marston & Cole) dated 11/8/04 at 12:59 p.m. or just 2 hours before we had arrived. This fax had amended the information and changed the charges Mr. Haeg was going to plead to the next morning in McGrath too much harsher ones that could require Mr. Haeg to forfeit his guide license for life. Mr. Cole made it very clear that he had <u>just</u> received this information and he acted very surprised and flabbergasted.

Later that evening Mr. Cole told Mr. Haeg that Assistant Attorney General Scot Leaders would require Mr. Haeg to first forfeit his plane to the State and then he would change the charges back to the ones he had just broken he had agreed to in the first place.

On 11/9/04 I attended the telephonic arraignment that happened with Magistrate Murphy, Mr. Haeg & Mr. Cole (also present were Jake Jedlicki, Tom Stepnosky, Tony Zellers & Kevin Fitzgerald, Tony's attorney) instead of the change of plea/sentencing hearing we were suppose to attend in person in McGrath that morning as scheduled.

During this telephonic arraignment Mr. Cole didn't even once try to object to Assistant Attorney General Scot Leaders changing the charges only 5 business hours before we were supposed to conclude the deal with Magistrate Murphy in McGrath.

Immediately after this arraignment Mr. Cole appeared very upset and said, "This wasn't the deal agreed to".

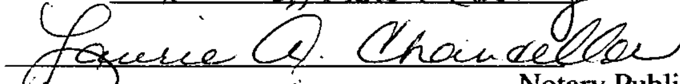
Later that same day Mr. Haeg asked Mr. Cole if there was absolutely anything he could do to force Assistant Attorney General Scot Leaders and the State to honor the deal. Mr. Cole told Mr. Haeg, in front of me and everyone present, "I can't do anything because I still have to be able to work with them in the future." Mr. Cole then said the only thing he could do was to "go over Mr. Leaders head and contact his boss to see if there was anything she could do to enforce the deal."

Mr. Haeg ultimately was forced to trial in McGrath at enormous expense and, because the State used all the evidence Mr. Haeg and Mr. Zellers had provided, was convicted of some of the charges. Before sentencing Assistant Attorney General Scot Leaders was able to successfully claim to Magistrate Murphy that it was Mr. Haeg who broke the deal on 11/9/04 by not pleading guilty to the new charges he had changed just hours before. Because of this successful claim Mr. Leaders was able to bring in the uncharged and closed 2003 moose investigation at Mr. Haeg's sentencing. I know this to be true because I testified at this "moose trial" at sentencing on 9/30/05 where this uncharged and closed 2003 moose investigation took up 8 hours of testimony from 11:00 a.m. when sentencing started to 7:00 p.m. when this "moose trial" ended and actual sentencing started. I do not think it legal that Mr. Leaders was able to make a successful claim on record that Mr. Haeg was the one who broke the deal on 11/9/04 when from everyone involved it was obvious Mr. Leaders had been the one who had broken the deal. It was wrong that this "trial", which I feel was illegal, pushed Mr. Haeg's actual sentencing to almost 2:00 a.m. in the morning, at which time Mr. Haeg was so stressed and wore out he could not provide a coherent sentencing statement.

FURTHER AFFIANT SAYETH NAUGHT.

Drew Hilterbrand

SUBSCRIBED AND SWORN to before me this 17th day of January 2006 in Texarkana, Bowie County Texas.



Notary Public in and for State of Texas, Bowie County

My Commission Expires: 3/28/2009

August 19, 2006

To Whom It May Concern:

My name is Wendell L. Jones of Cordova, Alaska. I came to Alaska in 1958 while in the United States Coast Guard. I have worked as an A & P Mechanic for Ellis Airlines, Ken Eichner of Temsco Helicopters, a commercial pilot for Simpson Air, Bill Clapp of Coast Air and the State of Alaska as a State Trooper and Fish and Wildlife Protection Officer. I am 69 years old at this time.

I am writing in regards to David Haeg's mental capacity. Dan France (retired Fish and Wildlife Sergeant) introduced me to David when he was a young man wanting a special airplane built. David and I are friends to this day.

I can attest to the fact that he is quite sane, which is amazing considering what the failure of our judicial system has put him and his family through. I have witnessed a terrible injustice take place over and over in his prosecution, falsification of a search warrant, perjury regarding that search warrant, failure of the State Prosecutor to honor a Rule 11 Agreement (which is mandatory by law), inappropriate actions by Assistant Attorney General's Office and the Alaska Bar Association regarding action of council. This goes on and on. His rights are being violated by extreme measures to surpress the inevitable exposure of these crimes.

David is very intelligent and recognizes these wrongs and cannot believe this is happening in a State he loves by a Public Safety and Judicial system he has had tremendous faith in.

To stand in his shoes would be to feel the weight of the grievous wrongs being done to him.

I have been with David before a panel of the Alaska Bar Association regarding his attorney, at sentencing, meeting with one of his attorney's and have witnessed these wrongs.

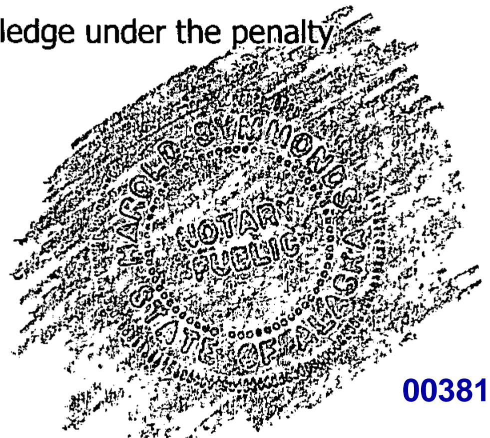
I would urge all who read this to take a very serious look at the Constitutional violations taking place in the name of justice. I, for one am very concerned.

Sincerely,

Wendell L. Jones
PO Box 942
Cordova, AK 99574
907-424-7607

I attest this statement to be true to the best of my knowledge under the penalty of perjury.

Notary Public State of Alaska
Judicial District 3
Harold Symmonds
My Commission Expires Aug 10, 2010
This Date Aug 19, 2006
In Cordova, Alaska



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA THIRD DISTRICT
2010 AUG 18 PM 2:16
CLERK TRIAL COURTS
BY: DEPUTY CLERK

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

Case No. 3HO-10-00064 CI

MOTION TO QUASH SUBPOENAS
OR ALTERNATIVELY TO ALLOW TELEPHONIC TESTIMONY

Alaska District Court Judge Margaret L. Murphy and Magistrate David Woodmancy, through counsel, move to quash the subpoenas requiring their appearance as witnesses at a hearing to be held in Anchorage on August 25, 2010. *See* Ex. A, Ex. B. Applicant David Haeg has not made the heightened showing of necessity that is required to support the compulsion of judicial testimony. Alternatively, given the witnesses' judicial duties, their distance from Anchorage, the cost and logistical difficulties of travel, and the brevity of their likely testimony, Judge Murphy and Magistrate Woodmancy ask that they be allowed to testify by telephone.

BACKGROUND

This action for post-conviction relief was ultimately assigned to Judge Murphy, who presided over Haeg's trial and sentencing in 2005. Haeg moved to recuse Judge Murphy for cause. Judge Murphy denied the motion in a written decision dated April

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

23, 2010, and the issue was referred to this court for further review. An evidentiary hearing has been set for August 25. Haeg has caused witness subpoenas to be served upon both Judge Murphy and Magistrate Woodmancy, requiring their attendance at the hearing. Both are active judicial officers employed by the State of Alaska. Judge Murphy sits in Homer, which is 225 miles from Anchorage by road; Magistrate Woodmancy sits in Aniak, which is 220 miles from Anchorage by air. These are facts of which this court can take judicial notice.[1]

This court has limited Haeg's inquiry of Judge Murphy to her contacts with a prosecution witness, Trooper Gibbens, during Haeg's 2005 trial in McGrath.[2] The area of Haeg's intended inquiry of Magistrate Woodmancy apparently focuses on a brief exchange between the magistrate and Trooper Gibbens on August 15, 2006, when Haeg alleges that he overheard Magistrate Woodmancy ask the trooper for a ride, "and Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time."[3]

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[1] *See Mullins v. Oats,* 179 P.3d 930, 936 n. 10 (Alaska 2008) (court takes judicial notice that Master Bachelder is member of Alaska Bar); *Varilek v. City of Houston,* 104 P.3d 849, 852 (Alaska 2004) (court takes judicial notice that City of Houston is within Mat-Su Borough); *McGee v. State,* 614 P.2d 800, 808 (Alaska 1980) (court takes judicial notice that Mile 206 of Richardson Highway is within Fourth Judicial District).

[2] *See* "Order Narrowing Scope of Review of Judge Murphy's Order Denying Motion to Disqualify Judge Murphy for Cause," July 28, 2010.

[3] *See* Affidavit of David Haeg, July 25, 2010, at ¶ 20 (filed in support of "7-25-10 Motion to Supplement the Case to Disqualify Judge Murphy for Cause," July 25, 2010).

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

The Alaska Judicial Conduct Commission has already investigated a complaint filed by Haeg against Judge Murphy based on his allegations of improper contacts between her and Trooper Gibbens. The Commission dismissed his complaint for lack of probable cause, finding that "[a]ny interaction between the judge and law enforcement was minor and due to the circumstances of the logistics in this rural court location."[4] The issue was addressed in a subsequently-issued Formal Opinion, Opinion No. 025, which concluded that judges' rides with law enforcement while in remote locations that lack public transportation do not violate the Code of Judicial Conduct where there are no *ex parte* contacts regarding pending criminal matters.

DISCUSSION

A. Under the Circumstances, Judicial Testimony Should Not Be Compelled

Judges "should be called as witnesses with caution." *Hatcher v. McBride,* 650 S.E.2d 104, 113 (W.Va. 2006). "[I]t is imperative when [a judge] is called to testify as to action taken in [her] judicial capacity, to carefully scrutinize the grounds set forth for requiring [her] testimony." *Ciarlone v. City of Reading,* 263 F.R.D. 198, 202 (E.D. Penn. 2009), quoting *United States v. Roebuck,* 271 F.Supp.2d 712, 721 (D.V.I. 2003) and *Standard Packaging Corp. v. Curwood, Inc.*, 365 F.Supp. 134, 135 (N.D.Ill. 1973).

This caution is particularly appropriate in the context of a proceeding for post-conviction relief, like this one. Calling the assigned judge as a witness magnifies the

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska 99501-2001
(907) 258-8750
FAX: (907) 258-8751

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[4] *See* Letter, Marla Greenstein to David Haeg, January 25, 2007, attached as exhibit to (among other pleadings) "3-9-10 Motion to Disqualify Judge Murphy for Cause," March 10, 2010.

possibility that she will later have to recuse herself regardless of whether her testimony was actually necessary to the applicant's case.

> Obviously, all postconviction judges who also presided at the defendant's trial will have witnessed the trial proceedings. It would frustrate the objectives of encouraging the trial judge to sit for the postconviction action if movants were allowed, as a matter of course, to force a trial judge's recusal from postconviction actions simply by calling the judge as a witness.

State v. Sims, 725 N.W.2d 175, 189 (Neb. 2006); *see* Alaska Evidence Rule 605 ("The judge presiding at the trial may not testify in that trial as a witness"); Code of Judicial Conduct, Canon 3(E)(1)(c)(iv) (judge should disqualify herself if she knows that she "is likely to be a material witness in the proceeding").

Most courts therefore recognize "a 'heightened scrutiny' involved in the question of whether a judge can be compelled to be a witness" and "require some threshold showing of necessity for the testimony." *Sims,* 725 N.W.2d at 189 (citing many cases). "Necessity is generally shown when the information sought by the proposed testimony both is relevant on a crucial point and is unobtainable from other sources." *Id.* The "threshold showing of necessity" is generally stated as a three-part test:

> [A] defendant in a postconviction action can compel the postconviction judge, who was also the judge at trial, to testify only if (1) the judge possesses factual knowledge, (2) that knowledge is highly pertinent to the fact finder's task, and (3) the judge is the only possible source of testimony on the relevant factual information.

Id.; see also United States v. Roth, 332 F.Supp.2d 565, 567 (S.D.N.Y. 2004); *United States v. Frankenthal,* 582 F.2d 1102, 1108 (7th Cir. 1978).

INGALDSON,
MAASSEN &
FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

In *Sims,* thus, the court upheld the PCR judge's refusal to either testify or recuse himself when the information sought from him was either irrelevant or available from other sources. *Sims,* 725 N.W.2d at 189-90. In *Ciarlone,* the federal court applied the same three-part test to quash a subpoena requiring the trial judge to testify about in-court statements, where other witnesses had been present as well and could testify about the same matters. 263 F.R.D. at 205. In *Roth,* similarly, the court quashed the subpoena of a trial judge where the judge's knowledge of the facts surrounding a plea agreement was available from other sources. 332 F.Supp.2d at 569-70.

Here, Haeg anticipates that he will ask Judge Murphy about her contacts with Trooper Gibbens during the 2005 trial. The issue is irrelevant to his motion for recusal for cause, because the Judicial Conduct Commission has already determined that incidental contacts for purposes of transportation do not violate the Code of Judicial Conduct. The number of rides that Judge Murphy shared with Trooper Gibbens is not "highly pertinent" to her presumed ability to preside objectively and fairly over his PCR action. Furthermore, even if the information were "highly pertinent," Haeg can cover the same topic with Trooper Gibbens, and apparently with other friends and family members as well. Neither the second element nor the third element of the three-part test ("highly pertinent" knowledge of which the judge is "the only possible source of testimony") is met with regard to Judge Murphy.

Nor are these elements met with regard to Magistrate Woodmancy. Assuming that he had a brief exchange with Trooper Gibbens in 2005 about the possibility of

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

sharing a ride, this information is not "highly pertinent" to the pending motion to recuse Judge Murphy. And again, Haeg claims to have witnessed the exchange himself, and he claims that others did too; Magistrate Woodmancy is not "the only possible source of testimony" on this highly collateral subject.

Haeg fails to meet the heightened "threshold showing of necessity" required to compel judicial testimony. The two subpoenas of judicial officers should be quashed.

B. If Judicial Testimony Is Compelled, It Should Be Telephonic

Alternatively, Judge Murphy and Magistrate Woodmancy ask that they be allowed to testify telephonically pursuant to Civil Rule 99.[5] They have good cause to appear telephonically, as they both live and work over 200 miles away, the travel time and transportation costs to Anchorage are significant, they both have judicial duties to attend to, and their involvement in the hearing is likely to be brief.

Rule 99 also requires "the absence of substantial prejudice to opposing parties." The Supreme Court has analyzed telephonic testimony as an issue of procedural due process in license revocation hearings, and it has concluded that live testimony may be required where the credibility of the licensee or of a witness is at issue. *Alvarez v. State,* 2010 WL 3190726 (Alaska Supreme Court, August 13, 2010), at *5 (witness); *Whitesides v. State, Dep't of Public Safety,* 20 P.3d 1130, 1136-37 (Alaska 2001) (licensee). But the due process analysis depends in part on the significance of the proceeding, and even then the cost to the government is a factor to be weighed. *Id.*

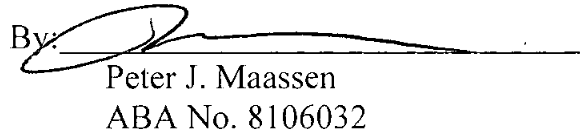
INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

Telephonic testimony is generally allowed at preliminary hearings. *See* Criminal Rule 5.1(e) (witness may participate telephonically if he or she "would be required to travel more than 50 miles to court" or "lives in a place from which people customarily travel by air to the court").

Because next week's hearing is preliminary, because the two judicial officers reside and work at a great distance from this courthouse and have competing judicial duties that are important to the business of the State, and because their testimony is likely to be brief, Judge Murphy and Magistrate Woodmancy respectfully request that, if their testimony is compelled, they be allowed to testify by telephone.

DATED: Aug. 18, 2010

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy and
Magistrate Woodmancy



By: ______________________
Peter J. Maassen
ABA No. 8106032

INGALDSON,
MAASSEN &
FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

[5] Applications for post-conviction relief are subject to the Civil Rules. *See* Criminal Rule 35.1(g).

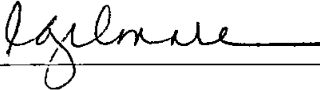
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 18 day of August, 2010, a copy of the foregoing was sent to the following via:

- [X] U.S. mail and e-mail
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
10 Box 123
Soldotna, AK 99664

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501



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INGALDSON,
MAASSEN &
FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

2116

RECEIVED
Ingaldson, Maassen & Fitzgerald, PC

AUG 13 2010

File No: 2116-C Cal: ______
Approved for File: ______

Keep in file 11/28/10 [illegible]

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

David Haeg
Plaintiff(s),

vs.

State of Alaska
Defendant(s).

CASE NO. 3HO-10-00064CI

SUBPOENA TO APPEAR

To: Judge Margaret Murphy
Address: 3670 Lake St, Building A

You are commanded to appear in court to testify as a witness in the above case at:

Date and Time: August 25, 2010 @ 9:30 AM
Courtroom: 604 at Nesbett Courthouse, 825 W. 4th Ave., Anchorage, Alaska

7-28-10
Date

Carol McAllen
Carol McAlllsh, Clerk of Court

Subpoena issued at request of
David Haeg
Attorney for No Attorney
Address PO Box 123 Soldotna AK 99669
Telephone 907-262-9249
If you have any questions, contact the person named above.

This subpoena may not be used to order a witness to produce documents, nor may it be used to require a witness to appear for deposition.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, ______________________, in ______________, Alaska.
I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

____
Date and Time of Service

____
Signature

Service Fees:
Service $ 25
Mileage $ 221
TOTAL $ 246

____
Print or Type Name

____
Title

If served by other than a peace officer, this return must be notarized.
Subscribed and sworn to or affirmed before me at on ______________________, 20____.

(SEAL)

____
Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires ______________

CIV-111 ANCH (7/06)(st.3)
SUBPOENA TO APPEAR

Civil Rule 45
Dist. Ct. Civ. R. 11(f)

7010 1060 0000 8961 6593

Exhibit A
Page 1 of 1 Pages

Keep in file 7/28/2010

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

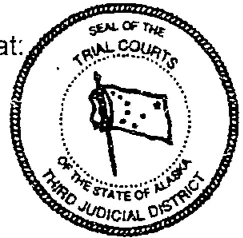
David Haeg
Plaintiff(s),
vs.
State of Alaska
Defendant(s).

CASE NO. 3HO-10-00064CI

SUBPOENA TO APPEAR

To: Magistrate David Woodmancy
Address: PO Box 147 Aniak AK 99557

You are commanded to appear in court to testify as a witness in the above case at:



Date and Time: August 25, 2010 @ 9:30 AM
Courtroom: 604 at Nesbett Courthouse, 825 W. 4th Ave., Anchorage, Alaska

7-28-10
Date

Carol McAllen, Clerk of Court

Subpoena issued at request of
David Haeg
Attorney for No Attorney
Address PO Box 123 Soldotna AK 99669
Telephone 907-262-9249
If you have any questions, contact the person named above.

This subpoena may not be used to order a witness to produce documents, nor may it be used to require a witness to appear for deposition.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, ______________________________, in ______________, Alaska.
I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $ 25
Pen Air Plane Ticket Mileage $ 254
TOTAL $ 279

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.
Subscribed and sworn to or affirmed before me at on ______________________, 20____

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires ______________

CIV-111 ANCH (7/06)(st.3) 7010 1060 0000 8961 6586
SUBPOENA TO APPEAR

Civil Rule 45
Dist. Ct. Civ. R. 11(f)

Exhibit B
Page 1 of 1 Pages

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

FILED STATE OF ALASKA THIRD DISTRICT
2010 AUG 18 PM 2:17
CLERK TRIAL COURTS
BY: DEPUTY CLERK

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

Case No. 3HO-10-00064 CI

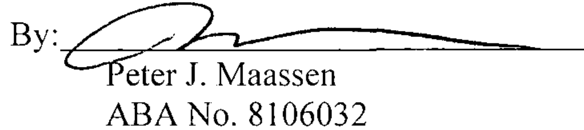
MOTION FOR EXPEDITED CONSIDERATION

Judge Margaret L. Murphy and Magistrate David Woodmancy move for expedited consideration of their Motion to Quash Subpoenas or Alternatively to Allow Telephonic Testimony, filed this same date. The underlying motion addresses subpoenas to appear at a hearing scheduled in Anchorage for August 25, 2010. The judicial officers' appearance would require advance travel arrangements, adjustments to their schedules, and, in the case of Magistrate Woodmancy, a likely overnight stay in Anchorage. Magistrate Woodmancy has a jury trial scheduled to begin August 23, 2010 and needs to know whether jurors should be summoned. Judge Murphy and Magistrate Woodmancy therefore ask that any opposition to this motion be required by 9:00 a.m. this Friday, August 20, and that a decision be made no later than noon on Friday, August 20.

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

DATED: Aug. 18, 2010

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy and
Magistrate Woodmancy



By: Peter J. Maassen
ABA No. 8106032

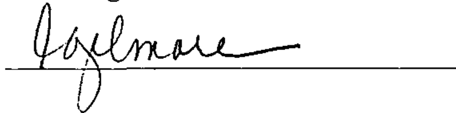
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 18 day of August, 2010, a copy of the foregoing was sent to the following via:

- [x] U.S. mail and email
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
10 Box 123
Soldotna, AK 99664

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501



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INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

FILED
STATE OF ALASKA
THIRD DISTRICT
2010 AUG 18 PM 2:16
CLERK TRIAL COURTS
BY: ________
DEPUTY CLERK

FILED
STATE OF ALASKA
THIRD DISTRICT
2010 AUG 16 PM 4:06
CLERK TRIAL COURTS
BY: ________
DEPUTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID HAEG

Plaintiff,

vs.

STATE OF ALASKA,

Defendants.

Document Returned
☐ Due to incorrect or no case #
☐ Per Civil Rule 5
☒ Other
Correct # is Wrong Court
Date Corrected ________ Your Name

Case No. 3HO-10-00064 CI

LIMITED ENTRY OF APPEARANCE

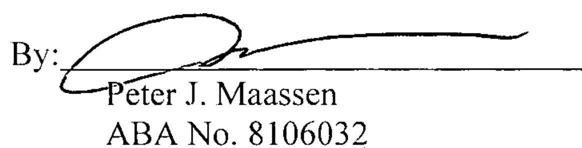
Peter J. Maassen and the firm of Ingaldson, Maassen & Fitzgerald, P.C., enter their appearance as attorneys of record for Alaska District Court Judge Margaret L. Murphy and Alaska Magistrate David Woodmancy for the limited purpose of responding to the Subpoenas to Appear, attached as Exhibits A and B. Pleadings, other documents, and all communications with these persons in this matter should be made to counsel as follows:

Peter J. Maassen
Ingaldson, Maassen & Fitzgerald, P.C.
813 West 3rd Avenue
Anchorage, Alaska 99501
(907) 258-8750

INGALDSON, MAASSEN & FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

DATED: 8-16-10

INGALDSON, MAASSEN &
FITZGERALD, P.C.
Counsel for Judge Murphy and
Magistrate Woodmancy

By: 
Peter J. Maassen
ABA No. 8106032

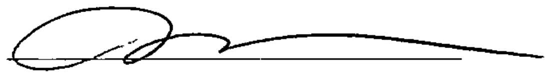
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 16th day of August, 2010, a copy of the foregoing was sent to the following via:

- [x] U.S. mail
- [ ] Hand-delivery
- [ ] Fax
- [ ] Federal Express

David Haeg
Pro Se
10 Box 123
Soldotna, AK 99664

A. Andrew Peterson
Assistant A.G.
Dept of Law - Criminal Division
310 K Street, Suite 308
Anchorage, AK 99501



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INGALDSON,
MAASSEN &
FITZGERALD, P.C.
Lawyers
813 W. 3rd Avenue
Anchorage, Alaska
99501-2001
(907) 258-8750
FAX: (907) 258-8751

2010-Aug-02 10:56 AM Alaska Court System 907-235-4257 2/2

Keep in file 1/28/10

2116

RECEIVED
Ingaldson, Maassen & Fitzgerald, PC

AUG 13 2010

File No: 2116-C Cal: ______
Approved for File: ______

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

David Haeg
Plaintiff(s),

vs.

State of Alaska
Defendant(s).

CASE NO. 3HO-10-00064CI

SUBPOENA TO APPEAR

To: Judge Margaret Murphy
Address: 3670 Lake St., Building A

You are commanded to appear in court to testify as a witness in the above case at:

Date and Time: August 25, 2010 @ 9:30 AM
Courtroom: 604 at Nesbett Courthouse, 825 W. 4th Ave., Anchorage, Alaska

7-28-10
Date

Carol McAllen
Carol McAllen, Clerk of Court

Subpoena issued at request of
David Haeg
Attorney for No Attorney
Address PO Box 123 Soldotna AK 99669
Telephone 907-262-9249
If you have any questions, contact the person named above.

This subpoena may not be used to order a witness to produce documents, nor may it be used to require a witness to appear for deposition.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, ______, in ______, Alaska.
I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

______
Date and Time of Service

______
Signature

Service Fees:
Service $ 25
Mileage $ 221
TOTAL $ 246

______
Print or Type Name

______
Title

If served by other than a peace officer, this return must be notarized.
Subscribed and sworn to or affirmed before me at on ______, 20___.

(SEAL)

______
Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires ______

CIV-111 ANCH (7/06)(st.3)
SUBPOENA TO APPEAR

Civil Rule 45
Dist. Ct. Civ. R. 11(f)

7010 1060 0000 8961 6593

Exhibit A
Page 1 of 1 Pages

Keep in file 7/28/2010

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

David Haeg

Plaintiff(s),

vs.

State of Alaska

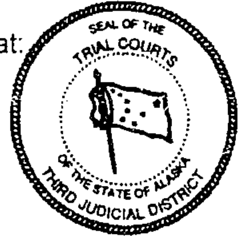
Defendant(s).

CASE NO. 3HO-10-00064CI

SUBPOENA TO APPEAR

To: Magistrate David Woodmancy
Address: PO Box 147 Aniak AK 99557

You are commanded to appear in court to testify as a witness in the above case at:



Date and Time: August 25, 2010 @ 9:30 AM
Courtroom: 604 at Nesbett Courthouse, 825 W. 4th Ave., Anchorage, Alaska

7-28-10
Date

Carol McAllen
Carol McAllen, Clerk of Court

Subpoena issued at request of
David Haeg
Attorney for No Attorney
Address PO Box 123 Soldotna AK 99669
Telephone 907-262-9249
If you have any questions, contact the person named above.

This subpoena may not be used to order a witness to produce documents, nor may it be used to require a witness to appear for deposition.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, ______, in ______, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

______
Date and Time of Service

______
Signature

Service Fees:
Service $ 25
Pen Air Plane Ticket Mileage $ 254
TOTAL $ 279

______
Print or Type Name

______
Title

If served by other than a peace officer, this return must be notarized.
Subscribed and sworn to or affirmed before me at on ______, 20____

(SEAL)

______
Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires ______

CIV-111 ANCH (7/06)(st.3) 7010 1060 0000 8961 6580
SUBPOENA TO APPEAR

Civil Rule 45
Dist. Ct. Civ. R. 11(f)

Exhibit B
Page 1 of 1 Pages

Faxed to Judge Joannides per chamber instruction

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

Attention Superior Court Judge Stephanie Joannides

Fax sent on 8-23-10 @ 9:20 AM to 907-264-0518

DAVID HAEG,	)
Applicant,	)
v.	)
	) POST-CONVICTION RELIEF
STATE OF ALASKA,	) CASE NO 3HO-10-00064CI
Respondent.	)

Trial Case No. 4MC-04-00024CR

8-22-10 OPPOSITION TO PETER MAASSEN REPRESENTING ANYONE IN THIS PROCEEDING OR CASE AND 8-22-10 OPPOSITION TO MAASSEN'S 8-18-10 MOTION TO QUASH SUBPOENAS OR ALTERNATELY TO ALLOW TELEPHONIC TESTIMONY

VRA CERTIFICATION I certify this document and its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12 61 140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this opposition to Peter Maassen representing anyone in this proceeding or case and to the motion to quash Judge Murphy's and Magistrate Woodmancy's subpoenas or alternately to allow them to testify telephonically.

Prior Proceedings

In 2004 and 2005 David Haeg and Tony Zellers were prosecuted as codefendants with Margaret Murphy presiding first as Magistrate and later as

District Judge. Haeg's attorneys and Zellers attorney, Kevin Fitzgerald, worked closely together to defend Haeg and Zellers, using the same tactics

After conviction and appeal Haeg filed for Post-Conviction Relief, claiming the attorneys and Judge Murphy had denied him a fair proceedings, trial, and sentencing. Judge Murphy herself was assigned to hear Haeg's PCR case.

On 3-9-10 Haeg filed a motion to disqualify Judge Murphy for cause

On 4-23-10 Judge Murphy denied Haeg's motion to disqualify herself.

On 4-30-10 Judge Joannides was assigned to review Judge Murphy's refusal to disqualify herself.

On 5-2-10 Haeg filed for an evidentiary hearing, specifically requesting Judge Murphy's testimony, on Judge Murphy's refusal to disqualify herself.

On 6-25-10 Judge Joannides set a Scheduling Conference for 7-9-10, when, after discussing any conflicts of the parties and witnesses, the date of the evidentiary hearing specifically concerning Judge Murphy would be set.

On 6-29-10 and 7-1-10, just prior to the 7-9-10 Scheduling Conference, Haeg contacted both Judge Murphy and Magistrate Woodmancy to see what dates would be acceptable for them to testify in person at the evidentiary hearing. Judge Murphy and Magistrate Woodmancy responded that Haeg should set the date he wished for the evidentiary hearing, subpoena them to testify, and they would adjust their schedules around the date their testimony was required

On 7-9-10 Judge Joannides, after hearing and discussing these facts, ruled Judge Murphy could be subpoenaed and set the evidentiary hearing for 8-25-10 and 8-26-10.

On 7-28-10 Haeg subpoenaed Judge Murphy and Magistrate Woodmancy to the 8-25-10 hearing.

On 8-21-10 @ 9:22 AM Haeg, on vacation in Idaho, received the following email from Peter Maassen (see attached complete copy), to which Haeg immediately replied:

Mr. Maassen,

I do object to the quashing of the subpoenas or to telephonic testimony.
I also
object to your law firm representing anyone related to this proceeding or
case. One
of the named partners of your firm, Kevin Fitzgerald, represented my
co-defendant,
Tony Zellers, in the same case and in the same manner my attorneys
represented me.
As I prove my sellout by Judge Murphy and my attorneys so will proof be
developed
of Zellers sellout by Judge Murphy and Fitzgerald: Because of this your
law firm
will have a compelling reason to protect itself at the expense of anyone it
represents in this proceeding or case. This precludes anyone, such as
yourself,
from representing anyone in this proceeding or case.

As I am on vacation and unable to put this into a proper opposition to
the court I
respectfully ask you include this objection in your motion to the court.

Sincerely,

David Haeg

Mr. Haeg,
>
>
>
> I'm sorry to have to interrupt your vacation. I'm an
> attorney in Anchorage and I've been asked to respond to the subpoenas
> you have had served on Judge Murphy and Magistrate Woodmancy for next
> week's hearing. I'll be filing a motion later today to quash the
> subpoenas or, at least, to allow the judge and the magistrate to testify
> telephonically. I'll also ask that my motion be heard on an expedited
> basis.
>

>
>
> Given your response to Andrew Peterson with regard to
> the Leader subpoena, I assume that you object to expedited consideration
> and to telephonic testimony -- is that right? I would like to inform
> Judge Joannides of your position.
>
>
>
> Thank you.
>
>
>
> Peter Maassen
>
> Ingaldson, Maassen & Fitzgerald

On 8-21-10 @ 11 PM Haeg arrived home from Idaho and found, in his mail, a motion signed on 8-18-10 from attorney Peter Maassen, of the firm Ingaldson, Maassen, and Fitzgerald, to quash the subpoenas for Judge Murphy and Magistrate Woodmancy, giving Haeg until 9 AM August 20, 2010 in which to respond. In other words attorney Maassen wrote a motion and then asks to give Haeg less then 2 days to receive the motion, write an opposition, and to then get the opposition into Judge Joannides hands

Attorney Peter Maassen's Conflict of Interest

As Haeg's email states, attorney Peter Maassen, of the firm Ingaldson, Maassen, and Fitzgerald, has a direct conflict of interest that prevents him from representing anyone during Haeg's upcoming evidentiary hearing or PCR proceeding. Attorney Kevin Fitzgerald, a named partner of attorney Maassen's law firm, represented Haeg's co-defendant Tony Zellers in the same deficient way Haeg's attorneys represented Haeg. The same exact case, as it is being made against Haeg's attorneys, is being made against Fitzgerald. Fitzgerald is also a

named and material witness in Haeg's PCR application/memorandum. See pages 10 and 14 of Haeg's PCR application and pages 8, 14, 15, 21, and 31 of the memorandum.

Attorney Maassen will have a compelling interest to protect his law firm at the expense of anyone else he represents in this proceeding or case

Haeg's Right to Compel Judge Murphy and Magistrate Woodmancy to Testify in Person

I

Haeg has a specific constitutional right to a compulsory process for obtaining witnesses in his favor.

The primary issue to be decided at this evidentiary hearing is whether Judge Murphy testified falsely to the Alaska Commission on Judicial Conduct in response to Haeg's complaint that Trooper Gibbens chauffeured her during Haeg's case. This is in direct contrast to attorney Maassen's claim that the issue is about whether or not it was permissible for Judge Murphy to ride with Trooper Gibbens during Haeg's case, and that since Haeg's complaint was "dismissed" his concerns are moot. While some apparently think it acceptable for the judge of a trial (but probably not if it were their trial) to be chauffeured by the prosecution's main witness, no one would think it acceptable for the judge to testify falsely during the official investigation into the chauffeuring. As prosecutor Andrew Peterson aptly

put it on the record during the 7-9-10 scheduling hearing, "this may be a career ender for Judge Murphy."

Haeg is not claiming Judge Murphy is a witness to some act by a third party; Haeg is claiming Judge Murphy is the knowing, voluntary, and/or malicious perpetrator of an act so egregious that by itself it would likely overturn Haeg's conviction and destroy her career; proving she has an overwhelming and undeniable interest in preventing a fair hearing of Haeg's PCR. In response to attorney Maassen's additional claims, (1) it is indisputable Judge Murphy possesses factual knowledge, (2) that knowledge is highly pertinent to the fact finders task, and (3) Judge Murphy is the only possible source on whether she knowingly, voluntarily, and/or maliciously committed the act. And, as Haeg's PCR judge will be incredibly critical to the success or failure of Haeg's PCR, he must be allowed to exercise his constitutional right to compel Judge Murphy's testimony about her own acts, unless and until she exercises her right against self-incrimination.

Similarly, Haeg is not just asking Magistrate Woodmancy about what he observed; Haeg is asking what Magistrate Woodmancy did himself.

II

Citing Ciarlone v. City of Reading, Attorney Maassen claims that "[I]t is imperative when [a judge] is called to testify as to action taken in [her] judicial capacity, to carefully scrutinize the grounds set forth for requiring [her] testimony."

None of the actions Haeg wishes to question Judge Murphy or Magistrate Woodmancy about were taken in their judicial capacity – eliminating this scrutiny.

Judge Murphy was not acting a judicial capacity when being chauffeured by Trooper Gibbens nor was she acting in a judicial capacity when she testified falsely to the Alaska Commission on Judicial Conduct.

Magistrate Woodmancy was not a magistrate during most of the time Haeg wishes to question him about and thus could not have been acting in a judicial capacity then. And the actions Magistrate Woodmancy took when he was a magistrate, that Haeg wishes to question him about, were not taken in his judicial capacity (asking Trooper Gibbens to chauffeur him and being turned down because of all the trouble Gibbens got into the last time).

III

Attorney Maassen claims Haeg's questions for Magistrate Woodmancy "apparently focuses on a brief exchange between the magistrate and Trooper Gibbens on August 15, 2006…", that this is "not highly pertinent" and is a "highly collateral subject." This is untrue. Magistrate Woodmancy, before he was a magistrate, was present during Haeg's 2005 prosecution in McGrath and thus is a material and direct witness.

IV

Attorney Maassen claims that Judge Murphy and Magistrate Woodmancy's "judicial duties" and "cost … of travel" preclude either from testifying in person. Just prior to the scheduling conference Haeg contacted both to find dates on which

they could testify in person without conflicting with their "judicial duties" Both replied Judge Joannides should set any date she wished and that they would work around it. It is plainly unfair to now allow Judge Murphy or Magistrate Woodmancy, in order to avoid testifying in person, to claim the date set will interfere with their "judicial duties". They very clearly waived any right to this claim when they refused to provide acceptable dates and stated they would just adjust their schedules around any date set.

As for the cost of travel, Haeg has already provided advance payment to each for actual travel costs.

V

Attorney Maassen claims that since this is a "preliminary hearing" Judge Murphy and Magistrate Woodmancy should be allowed to testify telephonically, even though Maassen admits "[the Supreme Court] has concluded that live testimony may be required where credibility of the licensee or witness is at issue."

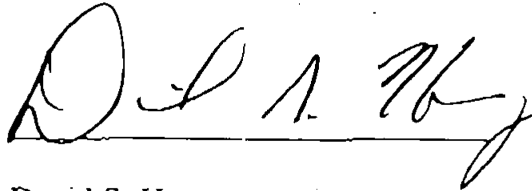
For Haeg this is anything but a "preliminary hearing." It is the last hearing at which he may prevent Judge Murphy from presiding over his PCR, by proving Judge Murphy lied during an official investigation into her actions and will sabotage Haeg's PCR proceeding in order to keep this "career ender" covered up.

That Judge Murphy's credibility will be at issue, requiring live testimony, is a forgone conclusion. The hearing is specifically focused on her credibility.

Conclusion

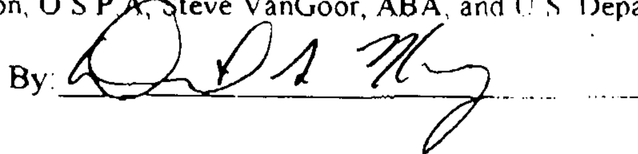
In light of the above Haeg respectfully asks this court to deny Peter Maassen from representing anyone currently involved in this proceeding and to deny the motion to quash Judge Murphy and Magistrate Woodmancy's subpoenas or to allow them to participate telephonically

I declare under penalty of perjury the forgoing is true and correct. Executed on 8-22-10 A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249
haeg@alaska.net

Certificate of Service: I certify that on 8-22-10 a copy of the forgoing was served by mail to the following parties Peter Maassen, I.M.F., Andrew Peterson, O.S.P.A., Steve VanGoor, ABA, and U.S. Department of Justice

By: 

From: haeg@alaska.net
Subject: Re: Murphy and Woodmancy subpoenas
Date: Sat, August 21, 2010 9:22 am
To: "Peter Maassen" <Peter@impc-law.com>
Cc: trzellers@aol.com,tdot2e@mtaonline.net,rwjtcj@msn.com,jones942@ak.net,dksavoie@msn.com,davebr

Mr. Maassen,

I do object to the quashing of the subpoenas or to telephonic testimony. I also
object to your law firm representing anyone related to this proceeding or case. One
of the named partners of your firm, Kevin Fitzgerald, represented my co-defendant,
Tony Zellers, in the same case and in the same manner my attorneys represented me.
As I prove my sellout by Judge Murphy and my attorneys so will proof be developed
of Zellers sellout by Judge Murphy and Fitzgerald. Because of this your law firm
will have a compelling reason to protect itself at the expense of anyone it represents in this proceeding or case. This precludes anyone, such as yourself,
from representing anyone in this proceeding or case.

As I am on vacation and unable to put this into a proper opposition to the court I
respectfully ask you include this objection in your motion to the court.

Sincerely,

David Haeg

Mr. Haeg,
>
>
>
> I'm sorry to have to interrupt your vacation. I'm an
> attorney in Anchorage and I've been asked to respond to the subpoenas
> you have had served on Judge Murphy and Magistrate Woodmancy for next
> week's hearing. I'll be filing a motion later today to quash the
> subpoenas or, at least, to allow the judge and the magistrate to testify
> telephonically. I'll also ask that my motion be heard on an expedited
> basis.
>
>
>
> Given your response to Andrew Peterson with regard to
> the Leader subpoena, I assume that you object to expedited consideration
> and to telephonic testimony -- is that right? I would like to inform
> Judge Joannides of your position.
>
>
>
> Thank you.
>
>
>
> Peter Maassen
>
> Ingaldson, Maassen & Fitzgerald
>
> 813 West Third Avenue
>

> Anchorage, Alaska 99501
>
> Tel (907) 258-8750
>
> Fax (907) 258-8751
>
> NOTICE: This message is intended only for the use of person(s) to whom
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID S. HAEG,)
)
Applicant,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
)

Case No. 4MC-09-00005 CI
In Connection w/4MC-04-024 CR

NOTICE OF MOTION AND MOTION FOR EXPEDITED CONSIDERATION

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

The State moves this Court for an order granting expedited consideration of its Motion to Quash the subpoena issued to Mr. Leaders by Mr. Haeg for the hearing set on August 25, 2010. The State is asking that Mr. Haeg file his opposition, if any, on or before Thursday, August 19, 2010 and that the court issues its order on Friday, August 20, 2010. Mr. Haeg opposes the State's motion.

PROCEDURAL POSTURE

By accompanying motion, the State seeks the Court's Order on the State's Motion to Quash the subpoena issued to Mr. Leaders by Friday, August 20, 2010. The State is asking that Mr. Haeg file his opposition, if any, by Thursday, August 19, 2010. Expedited ruling is required, because the hearing is set for August 25, 2010. Mr. Leaders has no direct knowledge of the issues involved in

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

the hearing and he is in trial the week of August 23, 2010 in Kenai and must give the court in Kenai advance notice of the necessity for his absence if this court denies the State's motion. Moreover, if the court adhered to the usual Rule 42 briefing timeline, the issue would be mooted by the passage of time.

This motion is accompanied by the attached affidavit of counsel, which is self-explanatory.

DATED at Anchorage, Alaska this 17th day of August 2010.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
Andrew Peterson
Assistant Attorney General
ABA #0601002

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

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

DAVID S. HAEG,)
Applicant,)
vs.)
STATE OF ALASKA,)
Respondent.)

Case No. 4MC-09-00005 CI
In Connection w/4MC-04-024 CR

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA ON EXPEDITED BASIS

VRA CERTIFICATION
I certify that this document and 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 and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska (hereinafter "State"), by and through its undersigned Assistant Attorney General, Andrew Peterson, and hereby moves this Court for an order quashing the subpoena issued to Scot Leaders on an expedited basis. In the alternative, the State moves for an order allowing Scot Leaders to testify telephonically at the hearing set for August 25, 2010. This Notice of Motion and Motion is supported by the attached affidavit of counsel and proposed Order.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

MOTION TO QUASH SUBPOENA ON EXPEDITED BASIS

The State hereby moves this court on an expedited basis for an order to quash the subpoena issued to Scot Leaders by David Haeg. The subpoena issued commands Mr. Leaders to appear at the hearing in the above identified matter on August 25, 2010 and to bring with him certain documents. The basis for the State's motion is that Mr. Leaders has no knowledge of Judge Murphy spending any time with Trooper Gibbens outside of trial. See Exh 1 (Leaders' Affidavit).

Mr. Haeg also commanded Mr. Leaders to bring Haeg's supplemental letter which was served on the State on November 8, 2004. See Exh. 2. Mr. Leaders is not in possession of the document that Haeg has commanded him to bring. See Peterson Affidavit. The State has stipulated to produce the letter that is in its file in accordance with Mr. Haeg's subpoena. See Exh. 3 (Email to Mr. Haeg).

In the alternative, if this court is unwilling to quash Mr. Leaders' subpoena, the State asks that the court allow Mr. Leaders to testify telephonically. Mr. Leaders has no direct knowledge of the issues to be covered in the hearing. See Exh. 1. Moreover, commanding Mr. Leader's presence is problematic as he will be in trial in the matter of State v. Gage, 3KN-08-2214 CR, which is an assault case involving a three year old boy that was burned as well as an out of state expert witness. See Exh. 1.

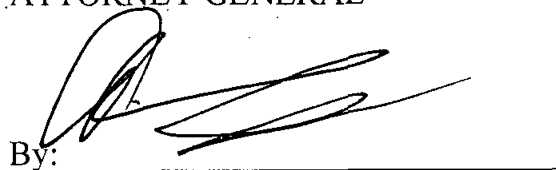
STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

CONCLUSION

The state requests that this court quash Mr. Leaders' subpoena given Mr. Leaders lack of knowledge on the issues to be covered during the hearing and the fact that Mr. Leaders is no longer in possession of the document identified in the subpoena. In the alternative, the state requests that Mr. Leaders be allowed to testify telephonically so as to limit the inconvenience his appearance will have in the trial of State v. Gage. Given Mr. Leaders lack of knowledge on the issue at hand, there is no reason to require his presence at the hearing.

DATED at Anchorage, Alaska this 17th day of August 2010.

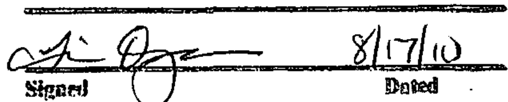
DANIEL S. SULLIVAN
ATTORNEY GENERAL



By: ______________________
Andrew Peterson
Assistant Attorney General
ABA #0601002

This is to certify that a copy of the foregoing is being mailed / ~~faxed / delivered~~ to: ______ W/ Notice of motion & motion for Expedited Consideration, Affidavits & proposed orders

David Haeg



Signed 8/17/10 Dated

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

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

DAVID S. HAEG,)
)
Applicant,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
)

Case No. 4MC-09-00005 CI
In Connection w/4MC-04-024 CR

FILED in the Trial Courts
State of Alaska, Third District
AUG 17 2010
By Clerk of the Trial Courts
Deputy

AFFIDAVIT

STATE OF ALASKA,)
) SS
)
THIRD JUDICIAL DISTRICT)

I, A. Andrew Peterson, being first duly sworn upon oath, state and depose as follows:

1. I am an assistant attorney general in the Office of Special Prosecutions and Appeals – Fish and Game Unit.

2. I represent the respondent in the above identified matter.

3. The facts set out in the State's Motion for Expedited Consideration and the State's Motion to Quash are true to the best of my knowledge and belief.

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4. The Motion for Expedited Consideration is necessary to allow for consideration of the matter presented in the State's Motion to Quash due to Mr. Leaders' pending trial in Kenai and the date of the evidentiary hearing in this matter.

5. I am in possession of the letter Mr. Haeg is asking Mr. Leaders to produce at the hearing on August 25, 2010 and will produce a copy for Mr. Haeg.

6. Mr. Leaders, in his affidavit, indicated that he has no direct knowledge of any contact between Trooper Gibbens and Judge Murphy outside of the court proceedings. Mr. Leaders' testimony and/or his presence is not necessary for the pending hearing due to his lack of knowledge on the topic for the hearing.

7. Mr. Leaders is in a felony trial in Kenai the week of August 23, 2010. Requiring his presence in Anchorage will result in delays in the trial and inconvenience to the jury and out of state witnesses.

8. Mr. Leaders is willing to appear telephonically if required by this court.

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9. I contacted Mr. Haeg and he is opposed to the State's Motion to Quash and the Motion for Expedited Consideration. See Exh. 3 (Haeg's Response to Peterson's Email).

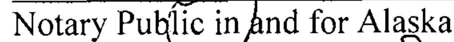
FURTHER YOUR AFFIANT SAYETH NOT.

DATED at Anchorage, Alaska this 17th day of August 2010.

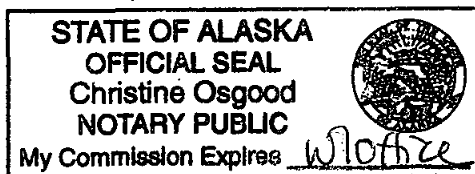
DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: ______________________
Andrew Peterson
Assistant Attorney General
ABA #0601002

SUBSCRIBED AND SWORN to before me this 17th day of August, 2010.



Notary Public in and for Alaska
My commission expires: w/office



STATE OF ALASKA
OFFICIAL SEAL
Christine Osgood
NOTARY PUBLIC
My Commission Expires w/office

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
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(907) 269-6250

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

DAVID HAEG,	)
Plaintiff,	)
vs.	)
STATE OF ALASKA,	)
Defendant.	)
Court No. 3HO-10-64 CI.	)

AFFIDAVIT

STATE OF ALASKA)
) ss
THIRD JUDICIAL DISTRICT)

I certify that this document and 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 a witness to any offense 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 and disclosure of the infomation was ordered by the court.

I, Scot H. Leaders, being first duly sworn upon oath, state and depose as follows:

1. I am an assistant district attorney in the Kenai District Attorney's Office,

2. I previously served as an assistant attorney general for the State of Alaska in the Office of Special Prosecutions and Appeals performing statewide prosecutions of fish and wildlife offenses. In that position, I prosecuted David Haeg in case 4MC-04-24 Cr.

STATE OF ALASKA
OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT
120 TRADING BAY RD., SUITE 200
KENAI, ALASKA 99611
PHONE: (907) 283-3131

Exh. 1

3. I have been served a subpoena to appear and produce from David Haeg in case 3HO-10-00064 CI, which I understand to be an Application for Post Conviction Relief. The subpoena orders me to bring "David Haeg's supplemental letter that you were served with on 11-8-04" to a hearing on August 25, 2010 at 9:30 am in Anchorage, Alaska.

4. I am not in possession of, nor do I have a specific memory of, the requested document. I transferred from my position of assistant attorney general with the Office of Special Prosecutions and Appeals to my current position as an assistant district attorney at the end of 2004. Nonetheless, I continued to represent the State of Alaska through the sentencing of Mr. Haeg in 2005 as well as performing initial administrative functions related to Mr. Haeg's appeal of his convictions in the 4MC-04-24 CR matter. After these functions were completed, the entire State's file relating to 4MC-04-24 CR was transferred from me back to the Office of Special Prosecution and Appeals. I did not retain any copies of the file and I currently do not have access to the file as I am located in Kenai, Alaska and the file is maintained in Anchorage, Alaska.

5. Through discussions with Andrew Peterson, I understand that among the issues to be addressed at the August 25, 2010 hearing is whether Judge Margaret Murphy, who presided over Mr. Haeg's trial in her then current capacity as a district court magistrate, received vehicle rides from and/or had other contacts with

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THIRD JUDICIAL DISTRICT
120 TRADING BAY RD., SUITE 200
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PHONE: (907) 283-3131

1
2 Trooper Brent Gibbons, the lead trooper investigating the case against Mr. Haeg,
3 outside of the trial. I have no information regarding this issue. I did not observe
4 Trooper Gibbons provide any rides or be in contact with Judge Murphy other than as a
5 witness during the trial. I also have no specific recollection of hearing of Trooper
6 Gibbons providing rides to or having additional contacts with then magistrate Murphy.
7 After the conclusion of trial, I have a vague recollection of over hearing a trooper
8 mention that then magistrate Murphy had asked him to take her diet coke to Aniak for
9 her. I recall that Trooper Matt Dobson had been in McGrath during portions of the
10 trial. My recollection is that he had flown a state plane in from the Bethel area where
11 he was stationed. I know that Trooper Gibbons was stationed in McGrath at the time
12 of the trial. Based on this I surmise that it was Trooper Dobson that made the
13 statement as he would have flown back towards Aniak on his return from McGrath.
14 However, I can not be certain as to who made the statement. Also, I have no
15 knowledge as to whether any trooper actually transported the diet coke, or anything
16 else, for then magistrate Murphy.
17
18 6. Mr. Haeg has not discussed this matter with me, nor has he
19 advised me of any intent to have me testify at the hearing on August 25, 2010. The
20 subpoena I received is a subpoena to appear and produce the document reference
21 above, which I do not have in my possession. I have not received a subpoena to
22 testify.
23
24
25
26

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THIRD JUDICIAL DISTRICT
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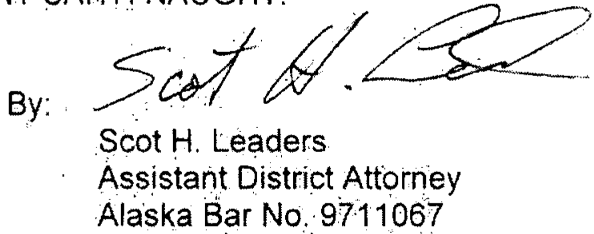
PHONE: (907) 283-3131

7. I am scheduled to be in trial in the matter of *State of Alaska v. Brandy Gage*, 3KN-08-2214 CR on August 25, 2010. The case involves felony assault charges against a child care provider who is charged with repeatedly burning a three year old child in her care with a cigarette lighter. The case involves multiple out-of-state defense expert witnesses with narrow availability for whom the specific trial week of August 23, 2010 was arranged. If I am required to appear in person in response to the subpoena to appear and produce it would create difficulties with the trial schedule.

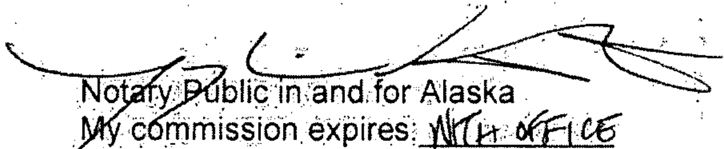
8. For the reasons stated above, I ask that the court quash the subpoena to appear and produce.

FURTHER YOUR AFFIANT SAITH NAUGHT.

By: 

Scot H. Leaders
Assistant District Attorney
Alaska Bar No. 9711067

SUBSCRIBED AND SWORN to before me this 16th day of August, 2010.



Notary Public in and for Alaska
My commission expires: WITH OFFICE

State of Alaska
NOTARY PUBLIC
Jacqueline Van Hatten
My Commission Expires With Office

STATE OF ALASKA
OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT
120 TRADING BAY RD., SUITE 200
KENAI, ALASKA 99611
PHONE: (907) 283-3131

Keep

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

David Haeg

Plaintiff(s),

vs.

State of Alaska

Defendant(s).

CASE NO. 3HO-10-00064CI

SUBPOENA TO APPEAR & PRODUCE

To: Scot Leaders
Address: 120 Trading Bay Dr, Ste 200 Kenai AK 99611

You are commanded to appear in court to testify as a witness in the above case at:
Date and Time: August 25 2010 @ 9:30 AM
Courtroom: 604 at Nesbett Courthouse, 825 W. 4th Ave., Anchorage, Alaska

You are ordered to bring with you David Haeg's supplemental letter that you were served with on 11-8-04

July 28, 2010
Date

(SEAL)
Deputy Clerk

Subpoena issued at request of
David Haeg
Attorney for No Attorney
Address PO Box 123 Soldotna AK 99669
Telephone 907-262-9249
If you have any questions, contact the person named above.

This subpoena must be filled in before being issued and may not be used to require a witness to appear for a deposition.

RETURN

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, ________________, in ________________, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance.

Date and Time of Service

Signature

Service Fees:
Service $ 25
Mileage $ 155
TOTAL $ 180

Print or Type Name

Title

If served by other than a peace officer, this return must be notarized.
Subscribed and sworn to or affirmed before me on ________________, 19____.

(SEAL)

Clerk of Court, Notary Public or other person authorized to administer oaths.
My commission expires ________________

Exh 2

7010 1060 0000 8901 6009

Peterson, Andrew (LAW)

From: haeg@alaska.net
Sent: Saturday, August 14, 2010 8:00 AM
To: Peterson, Andrew (LAW)
Subject: Re: Leader's Subpoena

> Mr. Peterson,

I just got your email now on August 14, 2010, as I am on vacation.

I require Mr. Leaders testimony on issues separate from the documents I asked him to produce, so I do not stipulate to Mr. Leaders subpoena being withdrawn.

I oppose an expedited motion to quash the subpoena, as I am exercising my constitutional right to require Mr. Leaders to testify in my favor.

I require Mr. Leaders testimony in person as it has to do with issues that are so significant they, as you yourself put it, "could be a career ender" for professional people. Telephonic testimony is not effective in allowing the court to judge someones truthfullness, rendering the testimony ineffective. In light of this I adamantly oppose Mr. Leaders testifying telephonically.

David Haeg

Mr. Haeg,
>
> Your subpoena issued to Assistant District Attorney Scot Leaders
> commands him to bring certain documents which are no longer in his
> custody or control. I have a copy of the document you are asking Scot
> Leaders to bring and I will produce it at the hearing on August 25,
> 2010. In light of my willingness to produce a copy of the requested
> document, will you stipulate to withdraw Mr. Leaders' subpoena?
>
> If you are unwilling to withdraw the subpoena, will you oppose the
> filing of an expedited motion to quash the subpoena? Last, is there
> any reason that Mr. Leaders cannot testify telephonically? I am
> asking as Mr. Leaders will be in trial on August 25 and the trip to
> Anchorage will cause delays in the trial.
>
> I would appreciate a response by Thursday, August 12, 2010 with
> respect to your position on the above requests.
>
> Thank you for your consideration.
>
>
>
> Andrew Peterson
> Assistant Attorney General
> State of Alaska, Department of Law
> Office of Special Prosecutions
> 310 K Street, Suite 403
> Anchorage, Alaska 99501
> (907) 269-7948 - office
>
>
> THIS MESSAGE, INCLUDING ANY ATTACHMENTS, IS FOR THE SOLE PURPOSE OF
> THE INTENDED RECIPIENT(S) AND MAY CONTAIN CONFIDENTIAL OR PRIVILEGED
> INFORMATION. ANY UNAUTHORIZED REVIEW, USE, DISCLOSURE OR DISTRIBUTION
> IS PROHIBITED. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE CONTACT
> THE SENDER BY REPLY E-MAIL, DELETE THIS MESSAGE AND ANY ATTACHMENTS,
> AND DESTROY ALL COPIES.
>

Exh. 3

>
>

00423

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FILED IN THE TRIAL COURTS
STATE OF ALASKA
FOURTH DISTRICT
2010 MAR -5 PM 1:
CLERK OF THE COURTS
BY ______ DEPUTY

DAVID S. HAEG,)
)
Applicant,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
)

Case No. 4MC-09-00005 CI
In Connection w/4MC-04-024 CR

MOTION TO DISMISS APPLICATION FOR POST-CONVICTION RELIEF

VRA CERTIFICATION
I certify that this document and 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 and disclosure of the information was ordered by the court.

COMES NOW the State of Alaska (hereinafter "State"), by and through its undersigned Assistant Attorney General, Andrew Peterson, and pursuant to Criminal Rule 35.1(f)(3) hereby moves this Court for dismissal of David S. Haeg's (hereinafter "Haeg" or "Applicant") Application for Post-Conviction Relief for the reasons stated below. For purposes of a factual summary, the State will rely upon the facts and proceedings statement set forth by the Court of Appeals decision in Haeg v. State, 2008 WL 4181532 (Alaska App. 2008). See Exh. A.

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OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

Haeg alleges three grounds for relief from his conviction in 4MC-04-024 CR. Haeg, however, fails to plead a *prima facie* case of ineffective assistance of counsel or any other grounds which would justify this Court granting him the relief sought.

Haeg was entitled to effective assistance of counsel. He was not entitled to error free assistance. Tucker v. State, 892 P.2d 832, 835 (Alaska App. 1995); Sate v. Jones, 759 P.2d 558, 568 (Alaska App. 1988). The constitution guarantees only a fair trial and a competent attorney; it does not insure that defense counsel will recognize and raise every conceivable constitutional claim. Jones, 759 P.2d at 568 (citing Murray v. Carrier, 477 U.S. 487, 106 S.Ct. 2639, 2645 (1986)).

In evaluating ineffective assistance claims, the court engages in a two pronged analysis. Risher v. State, 523 P.2d 421 (Alaska 1974). The court must first determine if counsel performed at least as well as a lawyer with ordinary training and skill in the criminal law and conscientiously protected the client's interest, undeflected by conflicting considerations. Risher, 523 P.2d at 424 (quoting Beasley v. United States, 491 F.2d 687, 696 (6th Cir. 1974)). The court then determines if the incompetence contributed to the conviction. Risher, 523 P.2d at 425. The two prongs of the Risher standard are the performance prong and a prejudice prong. Jones, 759 P.2d at 568.

Trial counsel is presumed to have acted competently. Arnette v. State, 938 P.2d 1079 (Alaska App. 1997). The presumption of competence is strong and it is presumed that counsel's actions were motivated by sound tactical considerations.

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Jones, 759 P.2d at 568 –569. The defendant bears the burden of rebutting the presumption of competence. As the Court of Appeals has observed, "[w]e have repeatedly held that a defendant asserting ineffective assistance of counsel must provide the court with an affidavit from the former attorney, addressing the various claims of ineffective representation, or must explain why such an affidavit can not be obtained." Peterson v. State, 988 P.2d 109, 113 (Alaska App. 1999)(citations omitted).

Haeg's real complaint in this case is with the law as it was applied to him. Haeg does not believe that the law allowed for him to be convicted under the guide statutes due to the fact that he was not guiding at the time of his offense. The Court of Appeals, however, soundly rejected this claim. See Exh. A, p. 6. Moreover, Haeg Haeg fails to account for the fact that he took the stand and admitted to killing all of the wolves outside of the predator control zone. This admission on the stand by itself is sufficient to uphold Haeg's conviction and deny this application. Consequently, Haeg is unable to rebut the presumption of competence attached to counsels' representations. Therefore, his application is fatally flawed and should be dismissed. Lott v. State, 836 P.2d 371 (Alaska App. 1992).

In addition, decisions of trial counsel are not to be the subject of "second guessing" in a post conviction relief matter. Risher, 523 P.2d at 424. The decisions are to be judged at the time they were made, not in hindsight. Id.; Brown v. State, 602 P.2d 221 (Alaska 1979). It is not enough to have a better idea than trial counsel. Tucker, 892 P.2d at 835. As the court observed in Tucker, Tucker was obligated to prove, not that his trial counsel could have done things better, but that no competent attorney

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would have done things as badly as his trial counsel did. Id. Even if trial counsel's actions in retrospect seem to be mistaken or unproductive, they are virtually immune from subsequent challenge if they were minimally competent. Id.

Under the circumstances of this case, the court will see that counsels for Haeg provided effective competent representation. Attorney Brent Cole negotiated a far better resolution to Haeg's case than was ultimately imposed at sentencing following trial. Robinson also was successful in getting at least two counts dismissed. See Exh. A, p. 4. That another counsel can postulate a different strategy with hindsight does not amount to ineffective assistance of counsel. Tucker, 832 P.2d at 835.

I. Application Deficient – No Affidavits Of "Ineffective" Counsel Responding To Allegations In The Petition

In evaluating a trial or appellate counsel's conduct, the court is to apply a strong presumption of competence and presume that counsel's actions were motivated by sound tactical decisions.[1] If a counsel's actions were taken for tactical or strategic reasons, "they will be virtually immune from subsequent challenge, even if, in hindsight, the tactic or strategy appears to be mistaken or unproductive."[2] If an application for post-conviction relief fails to allege facts ruling out the possibility of a sound tactical choice, the application fails to make a *prima facie* case.[3]

The Court of Appeals of Alaska has repeatedly and consistently stated:

---

[1] Santillana v. State, 2002 WL 24486, *1 (Alaska App. 2002)
[2] Id.(citing State v. Jones, 759 P.2d 558, 568 (Alaska App. 1988).
[3] Id.

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> [A]n affidavit from the attorney in the underlying criminal case is an essential component of a prima facie case for post-conviction relief that alleges ineffective assistance of counsel. Without the required affidavit (or an explanation of why an affidavit cannot be obtained), the superior court may dismiss the application for failing to plead a prima facie case.[4]

Haeg failed to file any affidavit of any of the counsel supporting his allegatons that any/or all were ineffective. Rather, Haeg's affidavit merely states that he has no affidavits as the attorneys refused to provide them when asked. The affidavits provided do not aid Haeg in establishing his *prima facie* case of ineffective assistance of counsel. Consequently, this court should first order Haeg to specifically allege the acts of ineffective assistance by each trial attorney and his appellate attorney and then order each trial attorney and Haeg's appellate counsel to file an affidavit in this matter similar to that in Jones.[5]

II. Haeg Failed To Cite To The Record In Support Of His Allegations Of Ineffective Assistance of Counsel

Haeg fails to cite specifically to the instances which he believes resulted in ineffective assistance of counsel, but rather leaves this Court and the State guessing at what if any of the allegations in Part B, section 2 apply to his claims. Haeg sets forth 57 paragraphs of alleged violations that support his grounds for relief. Without citations to which ones actually support his claim for ineffective assistance of counsel, the State and

[4] Puisis v. State, 2003 WL 22800620 (Alaska App. 2003); See also Tall v. State, 25 P.3d 704, 708 (Alaska App. 2001); Knix v. State, 2001 WL 959589, *4 (Alaska App. 2001); Tanner v. State, 2000 WL 1593662, *1 (Alaska App. 2000); Peterson v. State, 988 P.2d 109, 114 (Alaska App. 1999);

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this Court are left to merely guess which paragraphs apply to which claims. Without more precise pleadings, Haeg's application for post conviction relief must be dismissed.[6]

III. Haeg's Allegations Of Ineffective Assistance of Counsel, Even If Accepted On The Limited Information Provided In The Pleadings, Are Tactical Decisions By Counsel And Not Subject To Claims Of Ineffective Assistance.

None of the claims of ineffective assistance of counsel allege any actions by trial counsel or appellate counsel that were not tactical decisions. Haeg appears to takes issue with Cole's decisions and trial strategy as set forth in paragraph G, H M, T, and V. Haeg next appears to argue that Robinson's was ineffective in paragraph's W, Y, CC, EE, FF, GG, HH, II, KK, LL, MM, and NN, QQ. Haeg's argument appears to be that by not pursuing every non-frivolous[7] motion, argument or appellate issue, his trial counsel was ineffective.

This type of argument was squarely rejected in Steffensen v. State.[8] In Steffensen, the court cited to State v. Jones and United States v. DeCoster to reiterate the responsibilities of counsel to pursue various claims:

> Given an unrestricted budget and freed of any constraints as to probable materiality or accountability, a lawyer might cheerfully log in many hours looking for the legal equivalent

---

[5] State v. Jones, 759 P.2d at 570 (noting that the trial court ordered trial counsel to file affidavits in the PCR matter).
[6] Fajeriak v. State, 520 P.2d 795, 806 (Alaska 1974).
[7] The state does not concede that any of the objections Haeg wanted his trial counsel or appellate counsel to make were not frivolous. Based on the limited amount of information about the types of motions alluded to in the petition, the State believes that these motions would have been frivolous.
[8] 837 P.2d 1123, 1126 (Alaska App. 1992).

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> of a needle in a haystack. A millionaire might retain counsel to leave not a single stone unturned. However, a defendant is not entitled to perfection but to basic fairness. In the real world, expenditure of time and effort is dependent on a reasonable indication of materiality.[9]

Haeg would like to be able to try his case several times to see which tactics work best. Haeg is not entitled to such an indulgence. This Court should dismiss Haeg's ineffective assistance claim because his counsels' tactical decisions cannot be grounds for a petition for post conviction relief.[10]

Haeg's claims of ineffective assistance with respect to tactical decisions have been found to be insufficient to make a *prima facie* case of post conviction relief in Valcarcel v. State.[11] There, the Court of Appeals pointed out that "the decisions on what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and all other strategic and tactical decisions are the exclusive province of the lawyer after consultation with the client." These decisions are not one of the four fundamental decisions that are ultimately up to the client.[12]

IV. Ineffective Assistance of Appellate Attorney Osterman

Haeg alleges his appellate attorney was ineffective because Osterman refused to allow Haeg to assist in writing the appeal and allegedly Osterman's fee

[9] Id,
[10] See also Henry v. State, 1998 WL 820226, *2 (Alaska App. 1998).
[11] 2003 WL 22351613 (Alaska App. 2003).
[12] Id.

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structure changed. Haeg does not allege how any of Osterman's alleged acts impacted his appeal given that he was allowed to represent himself and given all the time he needed to file his appeal. Haeg again fails to establish a *prima facie* case that his appellate attorney acted incompetently.

V. **Haeg Fails to Allege Specifically how his Conviction and Sentence Resulted in a Violation of U.S. and State Constitutions**

Haeg's petition is governed by Criminal Rule 35.1 and AS 12.72.010-040. Pursuant to AS 12.72.040, Haeg has the burden to prove all factual assertions by clear and convincing evidence. Haeg offered nothing to support the claim in his petition that his conviction and sentence violated the U.S. and State constitutions. In fact, Haeg's claims of sentencing errors or constitutional violations were repeatedly rejected by the Court of Appeals. See Exh. A. For example, the Court of Appeals specifically rejected Haeg's claim that the State's amended information was only possible due to statements he made during settlement negotiations. Rather, the Court of Appeals held that there was sufficient probable cause for the charges without Haeg's statements. See Exh. A, p. 6.

Haeg's pleadings fail to specify exactly how he believes his conviction and/or sentence resulted in a violation of the U.S. or State Constitutions. This failure on Haeg's part leaves the State guessing, like it did above, at what exactly is his alleged violation. At a minimum, this Court should order Haeg to be more specific in his

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allegations so that the State is not forced to speculate with respect to how Haeg's constitutional rights were allegedly violated.

VI. Haeg's Final Claim is that Evidence Exists Which Requires Vacating His Sentence in the Interest of Justice

In an application for post conviction relief, an applicant asserting newly discovered evidence must establish the same facts as a defendant moving for a new trial under Criminal Rule 33. Lewis v. State, 901 P.2d 448 (Alaska App. 1995).

Under Criminal Rule 33, the defendant must establish that the evidence is newly discovered, establish facts demonstrating diligence in pursuing the evidence and claim, establish that the evidence is not merely cumulative or impeaching, establish that the newly discovered evidence is material and establish that the newly discovered evidence would probably produce an acquittal. State v. Salinas, 362 P.2d 298 (Alaska 1961); Rank v. State, 382 P.2d 760 (Alaska 1963); Charles v. State, 780 P.2d 377 (Alaska App. 1989).

Haeg advances nothing that begins to suggest he is entitled to relief under this standard. In fact, the State has no idea what "new evidence" Haeg is referring to and thus once again is put in the unenviable position of merely guessing what Haeg is referring to in his pleadings. That being said, there is nothing in Haeg's pleadings that comes close to newly discovered evidence justifying a new trial or negating the testimony of Haeg himself who admitted killing all of the wolves outside of the predatory control permit area. See Exh. A, p. 6.

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Defendant's application for a new trial is also barred by AS 12.72.020(1),(2) and (5). AS 12.72.020(1) bars claims based on the admission or exclusion of evidence at trial. Haeg is asserting that evidence of material fact exists which was not previously presented which justifies vacating his sentence. Therefore, his claim is barred.

Further, AS 12.72.020(2) prohibits claims for relief if "the claim was or could have been but was not, raised in a direct appeal from the proceeding that resulted in the conviction". The Court of Appeals addressed all of Haeg's claims with the exception of his claim for ineffective assistance of counsel. For example, the Court of Appeals denied Haeg's claim related to the alleged perjury of Trooper Gibbens in his search warrant affidavit or that Trooper Gibbens committed perjury at trial. See Exh. A, pp. 4-6. The Court of Appeals decided the issue on its merits and upheld the trial court's ruling with respect to every aspect of Haeg's case.[13] Thus, Haeg is barred and estopped from re-raising these claims as a basis for post conviction relief. Thus, Haeg's application should be summarily dismissed.

VII. The Specific Facts Alleged in Support of Haeg's Claim For Relief Were Previously Addressed by The Court of Appeals

Haeg's PCR application contains 57 paragraphs of information that allegedly support one of the three alleged grounds of relief. Most of these issues were previously raised during Haeg's appeal and rejected by the Court of Appeals which

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again makes it impossible to figure out what specific factual allegations support Haeg's claim for post conviction relief.

1. Paragraphs B-D and BB allege that the State falsified the wolf kill evidence and locations. The Court of Appeals dealt with this issue repeatedly. See Exh. A, pp. 4-6 and 9.

2. Paragraphs E-F and KK allege that the State failed to tell Haeg he could bond out his plane or to give him a hearing within days if not hours. The Court of Appeals addressed this issue exactly on point. See Exh. A, pp. 10-13.

3. Paragraphs H-K, N, Q, R-S, U-V, X, AA, DD and YY all deal with statements made by Zellars and Haeg in relation to plea agreements. The Court of Appeals dealt with this issue in detail and ruled that Haeg failed to show that plain error occurred and that the State did not offer Haeg's pretrial statement during its case-in-chief or during its rebuttal case. Additionally, the Court of Appeals noted that Zellers testified for the State and that his testimony along with that of Trooper Gibbens was sufficient to convict Haeg. See Exh. A, p. 6.

4. Paragraph Z, deals with a combination of Haeg's claim that the State falsified the locations of the wolf kills and that he could not

[13] The only modification by the Court of Appeals with respect to Haeg's sentence was to direct the trial court to change the judgment to reflect that Haeg's Big Game Guide's License was suspended for five years as opposed to revoked for five years. See Exh. A, pp. 9-10.

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be prosecuted for guiding violations. Again, the Court of Appeals ruled against Haeg on both of these issues during his underlying criminal appeal. See Exh. A, pp. 4-6.

5. Paragraph JJ deals with Haeg's claim that the State falsely argued that Haeg was killing wolves with the intent to eliminate them within his guide use area. The Court of Appeals specifically found that there was sufficient evidence to support this proposition. See Exh. A, p.9.

With the above issues and/or allegations eliminated from consideration in Haeg's application, there is nothing left for consideration other than Haeg's displeasure with the tactical decisions of his counsel and his disagreement with how the Court of Appeals allowed him to be convicted under the guiding statutes when he was not in fact guiding. For these reasons, Haeg's application should be dismissed.

CONCLUSION

Haeg's Petition for Post-Conviction Relief should be dismissed. Haeg's application should be dismissed because he failed to plead and prove a *prima facie* case - he has not submitted affidavits from his trial or appellate counsel; he failed to demonstrate that either his trial or appellate counsel were ineffective; he failed to cite to the record to support his allegations; his claims of ineffective assistance challenge tactical decisions made by his attorneys are not subject to ineffective assistance claims; he presents claims that have not been and cannot be supported by any available

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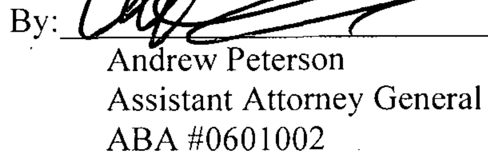
evidence; he presents claims that were already addressed by the Court of Appeal and he produced no new evidence which would allow for a new trial. Additionally, Haeg testified at trial that all of the wolves were killed outside of the predator control boundary.

Lastly, it is impossible to discern from the pleadings what information supports which of Haeg's claims. Most of the specific facts offered by Haeg have already been addressed by the Court of Appeals and the remainder is completely insufficient to meet his burden of establishing a prima facie claim justifying this court not dismissing his application.

DATED at Anchorage, Alaska this 23rd day of February 2010.

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Andrew Peterson
Assistant Attorney General
ABA #0601002

This is to certify that a copy of the forgoing is being:
X mailed ____caused to be mailed
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to the following attorney/parties of record:
David Haeg

Sherry Cowan 3-3-10
Signature Date

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Only the Westlaw citation is currently available.

NOTICE: UNPUBLISHED OPINION

NOTICEMemorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding precedent for any proposition of law.

Court of Appeals of Alaska.
David S. HAEG, Appellant,
v.
STATE of Alaska, Appellee.
No. A-9455/10015.

Sept. 10, 2008.
Rehearing Denied Sept. 26, 2008.

Appeal from the District Court, Fourth Judicial District, McGrath, Margaret L. Murphy, Judge, and David Woodmancy, Magistrate.
David Haeg, pro se, Soldotna.

A. Andrew Peterson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Talis J. Colberg, Attorney General, Juneau, for the Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

MEMORANDUM OPINION AND JUDGMENT

COATS, Chief Judge.

*1 David S. Haeg was convicted of five counts of unlawful acts by a guide: hunting wolves same day airborne; [FN1] two counts of unlawful possession of game; [FN2] one count of unsworn falsification; [FN3] and one count of trapping wolverine in a closed season.[FN4] Haeg appeals these convictions in Case No. A-9455.

FN1. AS 8.54.720(a)(15) & 5 AAC 92.085(8).

FN2.5 AAC 92.140(a).

FN3.AS 11.56.210(a)(2).

FN4.5 AAC 84.270(14).

While this appeal was pending, Haeg asked the district court to suppress the evidence used during his trial that the State had seized from him during its criminal investigation and to have the property returned to him. The district court denied the motion, and Haeg appeals this decision in Case No. A-10015.

In Case No. A-9455, Haeg primarily argues that the State used perjured testimony to obtain search warrants and that he should not have been charged as a guide for hunting wolves same day airborne-first, because he was not guiding at the time, and second, because he was not hunting at the time. He also argues that the prosecutor violated Alaska Evidence Rule 410 by using statements that Haeg made during the parties' failed plea negotiations. And he asserts that his attorneys provided ineffective assistance of counsel.

In addition, Haeg claims that the district court committed various errors during the course of the proceedings. In particular, he contends that the district court (1) failed to inquire into the failed plea negotiations, (2) failed to rule on a motion protesting the State's use of **Haeg's** statement made during plea negotiations as the basis for the charges, (3) made prejudicial rulings concerning **Haeg's** defense that he was not "hunting," (4) failed to instruct the jury that **Haeg's** co-defendant, Tony Zellers, was required by his plea agreement to testify against **Haeg**, (5) unfairly required **Haeg** to abide by a term of the failed plea agreement, (6) failed to force his first attorney to appear at **Haeg's** sentencing proceeding, and (7) when imposing sentence, erroneously identified the location where the majority of the wolves were taken. In a separate claim, he contends that the district court erred by revoking his guide license instead of suspending it.

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Exh. A

In Case No. A-10015, Haeg asserts that the district court erred when it denied his post-conviction motion to suppress the evidence that the State had seized from him during its criminal investigation and to return the property to him. He also contends that AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195 (criminal seizure and forfeiture statutes) are unconstitutional because these statutes do not require the government to inform defendants in a criminal case that they have the right to contest the seizure of their property.

For the reasons explained here, we affirm Haeg's convictions. But we conclude that the district court meant to suspend rather than to revoke his guide license. Therefore we direct the district court to modify Haeg's judgment to reflect that Haeg's guide license was suspended for five years.

Facts and proceedings

***2** Haeg was a licensed master big game guide operating in game management unit 19. In early March 2004, he and Zellers received permits allowing them to participate in a predator control program near McGrath.

The predator control program applied to wolves in game management unit 19D-East, which was located inside unit 19D. Within unit 19D-East, participants in the program were allowed to kill wolves by shooting them from an airborne aircraft or by landing the aircraft, exiting it, and immediately shooting them. FN5 The purpose of the program was to increase the numbers of moose in unit 19D-East by decreasing the number of wolves preying on them. In March 2004, unit 19D-East was the only unit where this type of predator control was permitted.

FN5. *See* 5 AAC 92.039(h)(1), (3).

To help the Department of Fish and Game monitor the progress of the predator control program, the participants were required to separately identify and seal the hides of all wolves taken under the program and to report the locations where the wolves were killed. Alaska State Trooper Brett Gibbens, among others, was notified whenever wolves were taken under the program. One of his duties was to verify the locations where the wolves were reportedly killed.

Soon after Haeg and Zellers received their permit, they reported that on March 6, 2004, they had taken three gray wolves in the area of Lone Mountain near the Big River. When Gibbens was notified of this report, he suspected that the information was inaccurate. The coordinates that Haeg and Zellers gave placed the kill site just within unit 19D-East. But Gibbens knew that the wolves in the pack then frequenting that area were predominately black, with only two that might be considered gray.

On March 11, 2004, Gibbens inspected the reported kill site. He found wolf tracks but no kill site near the reported location. In addition to this discrepancy, Gibbens recalled that on the day of the reported kills, when he was off-duty, he had seen Haeg's distinctive airplane. The airplane was a mile or two outside of unit 19D-East and was flying away from that unit. To Gibbens, it appeared that the pilot was following a fresh wolf track.

On March 21, Gibbens met and spoke to Haeg and Zellers when they returned to McGrath to seal the three wolf hides. While Haeg refueled his airplane, Gibbens and Haeg talked about the airplane's skis and its oversized tail wheel. Gibbens noticed that the airplane's skis and its oversized tail wheel would leave a distinctive track when it landed in snow. Gibbens and Zellers discussed the weapons and the shotgun ammunition that Zellers was using to shoot the wolves. This ammunition was a relatively new variety of buckshot. During this meeting, Haeg said that he knew the boundaries of the area where he was allowed to take wolves under the predator control program.

On March 26, while flying his airplane, Gibbens spotted wolf tracks from a large pack of wolves on the Swift River. He also saw where another airplane had landed to examine the track and determine the wolves' direction of travel. Because his airplane was low on fuel, Gibbens continued home. The next day, he returned to investigate. From the air, he confirmed that the area was not a trap site or kill site. He then followed the wolf tracks up the Swift River and found where wolves had killed a moose on an island in the river. The island was covered with heavy brush and had numerous wolf trails. Gibbens saw that someone had set snares and leg traps on the island.

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*3 Gibbens followed the wolf tracks further upriver. About a half mile away from the moose kill, he saw where a wolf had been killed. It looked like the wolf had been shot from the air, and there was a set of airplane tracks that had taxied over the wolf kill site. He continued to follow the wolf tracks up the Swift River and found three more places where wolves had been shot from the air. He saw evidence that the wolf carcasses had been picked up and placed in an airplane, and he saw a staging area nearby where the airplane had landed several times.

These kill sites were all about forty to fifty-five miles from the nearest boundary of unit 19D-East. There was no evidence near these sites of snaring or trapping, nor of any ground transportation like a snow machine. Rather, the evidence indicated that an airplane had landed near the kill sites and that someone had gotten out of the airplane, approached the wolf carcasses, and hauled them back to the airplane. The airplane tracks at the kill sites and at the staging area appeared to be the same. Gibbens recognized that they were similar to Haeg's airplane's distinctive ski and tail wheel arrangement.

With the help of other troopers, Gibbens more thoroughly investigated the kill sites. The troopers found shotgun pellets that were consistent with the type of buckshot Haeg and Zellers were using. They also found a spent .223 cartridge stamped with ".223 Rem-Wolf." At the staging area, they found where a carcass had been placed in the snow.

After finding this evidence, Gibbens applied for and obtained a search warrant for Haeg's airplane and for his lodge at Trophy Lake. The lodge was listed as Haeg's base of operations for the predator control program and was not far away. The lodge was located in unit 19C.

At the lodge, the troopers found wolf carcasses, evidence that the wolves had been recently skinned, and rifle magazines loaded with ammunition stamped with ".223 Rem-Wolf." Gibbens also saw airplane ski tracks leading up to the front of the lodge that matched the tracks from the kill sites and the staging area. Troopers seized six carcasses from the lodge. Gibbens later performed a necropsy on each carcass. The necropsies indicated that all six wolves had been shot from the air with a shotgun.

Other evidence found during the search indicated that the leg traps set around the moose kill on the Swift River island belonged to Haeg. On April 2, Gibbens found that six of those leg traps were still set and catching game even though leg trap season for wolves and wolverines had ended. He also saw that two wolverines were caught in nearby snares. The season for taking wolverines with traps or snares had ended March 31.

Based on the evidence found during the search of the lodge, additional search warrants were issued, including one for Haeg's residence in Soldotna. While searching Haeg's residence, troopers seized a 12 gauge shotgun and a .223 caliber rifle along with magazines, spent casings, and ammunition. The .223 ammunition seized was stamped with ".223 Rem-Wolf." The troopers also seized Haeg's airplane.

*4 Evidence seized at the residence indicated that the snares set around the moose kill on the Swift River belonged to Haeg. Gibbens later went back to the Swift River moose kill site after the snare season for wolf ended and found that the snares were still active and catching game. The remains of two wolves were in these snares.

Later, executing one of the search warrants obtained after searching Haeg's residence, troopers seized nine wolf hides from a business in Anchorage. These hides had been dropped off by Zellers. Eight of the nine hides clearly showed that the wolves had been shot with a shotgun. Of these eight hides, many had damage indicating that the wolves had been shot from the air. But despite this evidence, only three of the hides had been sealed under the predator control program. According to the sealing certificates-and despite evidence to the contrary-Haeg and Zellers claimed that the remaining six hides had not been shot from an airplane. Rather, when sealing these six hides, Haeg and Zellers reported that they had killed the wolves in unit 16B by shooting them from the ground and transporting them with snowmobiles.

After completing this investigation, Gibbens concluded that the nine wolves had been shot from an airplane, that none had been taken in unit 19D-East, that the sealing certificates had been falsified, and that Haeg and Zellers had unlawfully possessed the hides. He also concluded that the relevant leg traps

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and the snares belonged to Haeg and that they were still actively catching game after the relevant leg trap and the snare seasons had closed.

Sometime after Gibbens completed his investigation, the State entered separate plea negotiations with Haeg and Zellers. The negotiations with Haeg broke down, but the State reached a plea agreement with Zellers. Among other things, Zellers was required to enter a plea for two consolidated counts of violating AS 8.54.720(a)(8)(A), unlawful acts by a guide. He was also required to testify against Haeg.

In April 2005, Haeg moved to dismiss the information. Among other things, he argued that the State could not charge him for hunting wolves same day airborne because his predator control permit allowed him to do so, even if only in unit 19D-East. In a written decision, District Court Judge Margaret L. Murphy rejected Haeg's arguments and denied the motion.

A jury trial began July 26, 2005, with Judge Murphy presiding. Among others, Gibbens, Zellers, and Haeg testified. The gist of Gibbens's testimony is set out in the preceding paragraphs. This testimony was corroborated not only by Zellers, but by Haeg himself.

Haeg testified that he was a licensed guide. He conceded that he and Zellers knew (or, in one instance, should have known) that they were taking the wolves outside of unit 19D-East, that they had intentionally falsified the sealing certificates for all nine wolves, and that they had possessed the wolves and hides illegally. He also admitted that he was responsible for the leg traps that were still catching game after the leg trap season had closed.

*5 But in his defense against the hunting charges, Haeg testified that he was not unlawfully "hunting" the wolves, but was only violating his predator control permit. Haeg denied responsibility for snaring wolves out of season and explained that the snares had been turned over to another trapper who was supposed to close them out when the season ended.

The jury found Haeg guilty of all five counts of unlawful acts by a guide: hunting wolves same day airborne; two counts of unlawful possession of game; one count of unsworn falsification; and of one count of trapping wolverines in a closed season. The jury found Haeg not guilty of one count of snaring wolves in a closed season [FN6] and of failure to salvage game.[FN7]

FN6.5 AAC 84.270(13).

FN7.5 AAC 92.220(a)(1).

At sentencing, Judge Murphy ordered Haeg to forfeit the nine wolf hides, a wolverine hide, the airplane, and the guns and ammunition used to take the wolves. She also revoked Haeg's guiding license for five years. This appeal followed.

While this appeal was pending, Haeg filed a motion requesting this court to order the State to return to him the property that had been seized during the criminal investigation. We remanded the case for the limited purpose of allowing the district court to resolve **Haeg's** motion. Relying on Criminal Rule 37, **Haeg** asked the district court to suppress the evidence seized during the investigation and to return the property to him. Magistrate David Woodmancy denied **Haeg's** motion. **Haeg** appeals this decision.

Another of **Haeg's** motions asks this court to modify part of his sentence. **Haeg** asserts that Judge Murphy erred when she revoked his guide license instead of suspending it.

Discussion

***Haeg's** appeal in No. A-9455*

***Haeg's** claim that the State used perjured testimony*

Haeg contends that Trooper Gibbens intentionally made false statements in his search warrant affidavit. In particular, **Haeg** claims that Gibbens lied when he said in his affidavit that he found evidence in unit 19C that **Haeg** had taken wolves. But **Haeg** did not challenge the search warrant affidavit prior to trial. Because of this, his claim is forfeited.[FN8] And, under *Moreau v. State*,[FN9] he is barred from bringing this claim on appeal, even as a matter of plain error.[FN10]

FN8.*See* Alaska R.Crim. P. 12(b) and (e).

FN9.588 P.2d 275 (Alaska 1978).

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FN10.*Id.* at 279-80.

In *Moreau,* the Alaska Supreme Court acknowledged that it was "clear that a false affidavit in support of a search warrant can, in appropriate circumstances, nullify the warrant." FN11 But the court went on to rule that "[w]hile we do not state that search and seizure issues are incapable of plain error analysis, we believe that the exclusionary rule which requires the suppression of illegally obtained evidence is usually not appropriately raised for the first time on appeal." FN12 The court explained that the exclusionary rule "is a prophylactic device to curb improper police conduct and to protect the integrity of the judicial process. Thus, justice does not generally require that it be applied on appeal where it is not urged at trial [.]" FN13 In light of *Moreau,* Haeg cannot pursue this claim.

FN11.*Id.* at 279.

FN12.*Id.* at 280 (footnote omitted).

FN13.*Id.*

Why we conclude that Haeg could be convicted of unlawful acts by a guide: hunting wolves same day airborne

*6 In a related argument, Haeg contends that it was Gibbens's perjured affidavit that allowed the State to charge Haeg with unlawful acts as a guide. In Haeg's view, had Gibbens's affidavit stated that the wolves were killed in unit 19D, instead of unit 19C, then the State could only charge him with violating his predator control permit.

But Haeg misrepresents what his permit allowed. The record shows that Haeg was permitted to take wolves same day airborne only in unit 19D-East. He had no authority to take the wolves same day airborne in any other part of unit 19D. Gibbens's affidavit states that the four kill sites he found were well outside of unit 19D-East, the only area where Haeg and Zellers were permitted to take wolves same day airborne. In addition, Haeg acknowledged at his trial that he and Zellers killed all nine wolves outside of the permitted area. In short, the information in the affidavit did not result in Haeg being wrongly charged.

Haeg further contends that even if he did kill wolves beyond the authority granted by his predator control permit, he was not engaged in the "hunting" of wolves-and, thus, he did not violate any statute or regulation that prohibits same-day airborne hunting.

This argument is mistaken. Under the definition codified in AS 16.05.940(21), the term "hunting" is not confined to the killing of animals for food or sport. Rather, "hunting" is defined as "[any] taking of game under AS 16.05-AS 16.40 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. And because Haeg's acts of chasing and killing wolves were not authorized under the terms of his predator control permit, these acts constituted unlawful hunting. Under Alaska law (specifically, AS 16.05.920(a)), *all* taking of game is unlawful unless it is permitted by AS 16.05-AS 16.40, AS 41.14, or a regulation adopted under those chapters of the Alaska Statutes.FN14

FN14.*See State v. Eluska,* 724 P.2d 514, 515 (Alaska 1986); *Jones v. State,* 936 P.2d 1263, 1266 (Alaska App.1997).

For these reasons, Haeg could lawfully be convicted of violating AS 08.54.720(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.

We understand that Haeg was not guiding when he and Zellers were taking the wolves. But this does not matter. Alaska Statute 08.54.720(a)(15) does not make it a crime to knowingly violate a statute or regulation prohibiting same day airborne *while guiding.* Rather, that statute makes it a crime for any *person licensed to guide* to knowingly violate a statute or

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regulation prohibiting same-day airborne hunting.

*7 Haeg suggests that he was convicted of the hunting offenses because Gibbens lied when he testified that some wolves were killed in unit 19C. But Gibbens retracted this testimony during cross examination, clarifying that the wolves were killed in unit 19D but not in unit 19D-East. As already noted, **Haeg** admitted that none of the wolves was killed in unit 19D-East.

Haeg also asserts that Gibbens lied by testifying at sentencing that he did not know why **Haeg** had not guided for an entire year. **Haeg** argues that this alleged testimony was perjury because Gibbens-according to **Haeg**-was aware that part of the failed plea agreement required **Haeg** to give up guiding for a year. But because **Haeg** did not litigate the terms of the failed plea agreement in the district court, there are no factual findings supporting **Haeg's** claim. Furthermore, **Haeg** had the opportunity to refute any testimony Gibbens gave during the sentencing proceedings, and it was up to Judge Murphy to determine whether Gibbens was credible.

Haeg's *claim that the prosecutor violated Evidence Rule 410*

Haeg claims that the State violated Evidence Rule 410 by using a statement he made during failed plea negotiations to charge him with crimes more serious than he had initially faced. But **Haeg** did not litigate this issue in the district court. Because he did not preserve this claim of error below, **Haeg** now has to show plain error .[FN15] As we have explained in the past, "[o]ne of the components of plain error is proof that the asserted error manifestly prejudiced the defendant." [FN16]

FN15.*See* Wettanen v. Cowper, 749 P.2d 362, 364 (Alaska 1988) (issues and arguments not raised below are considered waived on appeal absent plain error); *see also* John v. State, 35 P.3d 53, 63 (Alaska App.2001) (where record reflected no lower court ruling on appellant's Evidence Rule 410 claim, appellate court declined to address it).

FN16.*Baker v. State*, 22 P.3d 493, 501 (Alaska App.2001); *see also Crutchfield v. State*, 627 P.2d 196, 198 (Alaska 1980) ("[A]n alleged error is reviewable as plain error only if it raises a substantial and important question and is obviously prejudicial.").

In this case, the State filed an initial information and then amended it twice. Each version of the information was supported by a probable cause statement that set out Gibbens's investigation and a summation of the statements made by Haeg and Zellers. Thus, even had Haeg's statements been removed from the charging document, the remaining evidence from Gibbens and Zellers would still support the charges against Haeg.[FN17] And even though the State initially charged Haeg with less serious charges, the State had the discretion to file more serious charges.[FN18] In other words, even if the State had not used his statement's to support the information, Haeg would still have faced charges that he committed unlawful acts by a guide, hunting same day airborne. Because Haeg has not shown that the error he asserts manifestly prejudiced him, he has not shown that plain error occurred.

FN17.*Cf. State v. McDonald*, 872 P.2d 627, 638 (Alaska App.1994) (If inadmissible evidence is presented to a grand jury, "the indictment will be vitiated only 'if the remaining evidence was insufficient to support [the] indictment or the improper evidence was likely to have had an overriding influence on the grand jury's decision.' " (quoting *Boggess v. State*, 783 P.2d 1173, 1176 (Alaska App.1989) (alteration in *McDonald*)).

FN18.*See State v. District Court*, 53 P.3d 629, 633 (Alaska App.2002) (The State "[has] the discretion to decide whether to bring charges against a person who has broken the law and, if so, to decide what those charges will be.").

Haeg also suggests that the State used his interview to convict him. But Haeg did not raise this issue at trial, nor does the record support this conclusion. The record shows that the State did not offer Haeg's pretrial statement during its case-in-chief or during its rebuttal case. In addition, Zellers testified for the State and his testimony, along with Gibbens's, was sufficient to support Haeg's convictions. Finally, in

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his own testimony, Haeg admitted that he had committed all but two of the charged offenses (and he was acquitted of those two). As we explained earlier in this decision, Haeg testified that he was a licensed guide, that he had taken the wolves same day airborne, that he knew that he was acting outside the predator control program area, that he and Zellers had falsified the sealing certificates, that they had unlawfully possessed game, and that his leg traps were still catching game after the season had closed. Haeg has not shown that plain error occurred.

Haeg's claim that his attorneys were ineffective

***8** Haeg claims that his attorneys provided ineffective assistance of counsel. We have consistently held that we will not consider claims of ineffective assistance for the first time on appeal because, in most instances, the appellate record is inadequate to allow us to meaningfully assess the competence of the attorney's efforts.[FN19] Haeg's case is typical-that is, the appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts. Haeg's claim of ineffective assistance must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1.

FN19.*See* *Tazruk v. State,* 67 P.3d 687, 688 (Alaska App.2003); *Hutchings v. State,* 53 P.3d 1132, 1135 (Alaska App.2002); *Sharp v. State,* 837 P.2d 718, 722 (Alaska App.1992); *Barry v. State,* 675 P.2d 1292, 1295-96 (Alaska App.1984).

Haeg's claim that the district court erred by failing to inquire about plea negotiations

Haeg argues that Judge Murphy should have asked the parties about the failed plea negotiations. If Haeg believed that he had an enforceable plea agreement with the State, he was entitled to ask the district court to enforce it. [FN20] But we are aware of no requirement that a trial court in a criminal case, without a motion or request from the parties, must ask why plea negotiations failed. We conclude that Haeg has not shown that any error occurred.

FN20.*See* *State v. Jones,* 751 P.2d 1379, 1381 (Alaska App.1988).

Haeg's claim that the district court failed to rule on an outstanding motion

Haeg claims that Judge Murphy failed to rule on his motion "protesting the State's use" of the statement Haeg claims he gave during plea negotiations. But Haeg mischaracterizes the motion that was filed seeking dismissal of the charges. Although he moved to dismiss the charges on various grounds, he did not assert that the State had violated Evidence Rule 410. He did not mention this issue until he replied to the State's opposition to his motion to dismiss the information, where he told the court that "[t]here is another piece of information that needs to be addressed."

Judge Murphy was not required to rule on Haeg's new contention. A trial court can properly disregard an issue first raised in a reply to an opposition. [FN21] If Haeg wanted a ruling on this issue, he was obligated to file a new motion asking for one. Because he did not ask for a ruling, he has waived this claim.[FN22]

FN21.*See* *Demmert v. Kootznoowoo, Inc.,* 960 P.2d 606, 611 (Alaska 1998) ("The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments...."); *Alaska State Employees Ass'n v. Alaska Pub. Employees Ass'n,* 813 P.2d 669, 671 n. 6 (Alaska 1991) ("As a matter of fairness, the trial court could not consider an argument raised for the first time in a reply brief.").

FN22.*See* *Stavenjord v. State,* 66 P.3d 762, 767 (Alaska App.2003); *Marino v. State,* 934 P.2d 1321, 1327 (Alaska App.1997).

Haeg's claim that the district court prejudiced his defense

Haeg contends that Judge Murphy made inconsistent rulings about who-the court or the jury-would determine whether Haeg was "hunting" when he took the wolves. But Haeg has not shown that Judge Murphy's rulings prejudiced his defense.

The first ruling that Haeg refers to came when he moved to dismiss the information. There, he argued

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that the hunting same day airborne charges were improper because he was acting under the authority of the predator control program. In his view, even though he had taken the wolves outside the area where the predator control program was authorized, the State could only charge him for violating the conditions of the permit. Judge Murphy rejected this argument, noting that the State had charged Haeg for taking wolves outside of the permit area. She explained that Haeg might defend against these charges on the grounds that he was acting in accordance with his permit, but that this was a factual issue that would be decided by the fact finder at trial.

*9 The second ruling that Haeg refers to occurred when Judge Murphy addressed Haeg's pre-trial argument that his permit precluded a conviction for any hunting violations. Judge Murphy found that this was a legal question that she, not the jury, had to decide.

Haeg asserts that Judge Murphy's rulings prejudiced his defense because they prevented him from arguing that he was not hunting. But Judge Murphy allowed Haeg to make this very argument.

At trial, the parties had a lengthy discussion concerning Haeg's desire to tell the jury that he was not "hunting" same day airborne when he took the wolves. Haeg's defense was that his conduct was not "hunting" because he was acting under a permit that allowed predator control. He asserted that the statute defining "predator control" excluded "hunting" and, therefore, "he couldn't have been knowingly violating a hunting law."

Judge Murphy ultimately told Haeg that he could argue to the jury that if the jury found that he was acting in accordance with the permit, then he was not hunting. Consequently, Haeg argued at length during his closing that he was not guilty of hunting same day airborne because his predator control permit allowed him to kill wolves same day airborne. Despite this argument, the jury found Haeg guilty of the hunting charges. Haeg's defense was not prejudiced by Judge Murphy's rulings.

Haeg's claim that the district court failed to give a required jury instruction

Haeg argues that Judge Murphy was required to sua sponte give a jury instruction that Zeller's plea agreement required him to testify against Haeg. But under Criminal Rule 30(b), there are no required jury instructions. Rather, the rule provides that a trial court "shall instruct the jury on all matters of law which it considers necessary for the jury's information in giving their verdict." The rule that required instructing the jury that it should view the testimony of an accomplice with distrust was rescinded in 1975. [FN23] Because Haeg did not request this or a similar instruction, he has not preserved the issue for appeal.[FN24]

FN23. *See* Heaps v. State, 30 P.3d 109, 115 (Alaska App.2001).

FN24. *See* Alaska R.Crim. P. 30(a) (objections to instructions must be raised before the jury retires to deliberate).

Haeg's claim that the district court held him to a term of the failed plea agreement

Haeg claims that Judge Murphy unfairly held him to a term of the failed plea agreement. Haeg asserts that this occurred during an exchange between his attorney and the judge during a post-trial status hearing.

The purpose of this status hearing was to establish a date for sentencing and to determine whether a defense witness would be available. The prosecutor indicated that he intended to call witnesses at sentencing in an effort to prove that Haeg had committed uncharged misconduct-in particular, the prosecutor wanted to show that in 2003 Haeg had been involved in unlawfully taking a moose same day airborne.

When Judge Murphy asked why the State had not charged the moose incident along with the current case, the prosecutor explained that initially, during plea negotiations, the parties had discussed litigating the issue at sentencing. Haeg's attorney then said he did not "know how ... [a discussion of a moose case] could be part of any negotiations to the un-negotiated case." Judge Murphy responded, "Well, it was at one point." Haeg argues that in this exchange, Judge Murphy was forcing Haeg to comply with a term of the failed plea agreement. We disagree.

*10 At sentencing, the State is allowed to put on evidence of a defendant's uncharged offenses even when

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the defendant objects.[FN25] A sentencing court may consider this evidence if it is sufficiently verified and the defendant is provided the opportunity to rebut it.[FN26] Here, the record reflects that the State, irrespective of the failed plea agreement, was attempting to show that Haeg had committed an uncharged offense. The State was entitled to do so. We conclude that Judge Murphy did not force Haeg to abide by a term of the failed plea agreement. We note that she later ruled that the State had not proven that Haeg had committed the uncharged offense and she did not consider it when imposing sentence.

FN25. *See* Pascoe v. State, 628 P.2d 547, 549-50 (Alaska 1980) (State allowed at sentencing, over defendant's objection, to put on evidence of defendant's uncharged offenses).

FN26. *See id.*

Haeg's claim that the district court erred by not ordering a defense witness to appear at sentencing

Haeg claims that Judge Murphy committed error by not ordering his first attorney to testify at Haeg's sentencing proceedings. Although Haeg subpoenaed this attorney, the attorney did not appear. The record shows that at sentencing Haeg did not ask Judge Murphy to enforce the subpoena or seek any other relief. Consequently, this claim of error is waived.

Haeg's claim that the district court erred when it found that most of the wolves were taken in unit 19C

Haeg asserts that Judge Murphy erred when she found that "a majority, if not all of the wolves taken were in [unit]19C." It is true that the evidence did not show that most of the wolves were killed in unit 19C. But taking Judge Murphy's sentencing remarks in context, we conclude that she found that Haeg was taking wolves unlawfully in an effort to benefit his own guiding operations. This finding is supported by the record.

At trial, Haeg testified that he and Zellers knew that they were killing the wolves outside of the permit area. And the evidence at trial showed that they spent little time looking for wolves in unit 19D-East, the permit area around McGrath. Instead, the first wolves were taken about thirty-five miles from Haeg's hunting lodge, which was located in unit 19C. Haeg took at least one animal just ten miles from his hunting grounds. Zellers testified that he and Haeg wanted the game board to include unit 19C in the predator control program.

In addition, Haeg testified that he guided moose hunts in units 19C and 19B. He admitted that they had killed one of the wolves in unit 19B. And although Haeg testified that he did not guide moose hunts on the Swift River where the rest of the wolves were taken, he conceded that some of the moose taken during his guided hunts come from that area. He testified that he could schedule eight or nine moose hunts in a season and that he charged a significant amount of money per person per hunt. He also testified that he and Zellers killed the wolves because they were frustrated that the wolves were killing so many moose.

Based on this record, we conclude that Haeg has not shown that Judge Murphy committed clear error when she found that Haeg was illegally killing wolves for his own commercial benefit.

Why we find that Judge Murphy intended to suspend, not revoke, Haeg's guide license

*11 While this appeal was pending, Haeg filed a motion requesting that we modify the portion of his sentence revoking his guide license. At that time, we indicated that even if Haeg was entitled to any relief, we would not grant it until we decided the appeal. (We also told Haeg that based on his claim that this portion of the sentence was illegal, he could seek immediate relief from the district court. He apparently did not do so.) Although Haeg did not include this issue in his claims of error, we deem the motion a request to amend his points on appeal and resolve it. For the reasons explained here, we conclude that Judge Murphy intended to suspend Haeg's guide license, not to revoke it.

Judge Murphy ordered the guiding license "revoked for five years ." The written judgments reflect the same language. The revocation was part of Haeg's sentence for violating the law and was not a condition of probation.

Under AS 12.55.015(c), Judge Murphy could "invoke

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any authority conferred by law to suspend or revoke a license." The authority to suspend or revoke a guiding license is provided in AS 08.54.720(f)(3). In Haeg's case, this statute required Judge Murphy to order the game board to suspend Haeg's guide license for a "specified period of not less than three years, or to permanently revoke [it]." But Judge Murphy combined the two alternatives and ordered the license revoked for five years. Under the authorizing statute, Judge Murphy could either order the license suspended for five years or else revoke it permanently. But the statute did not allow her to revoke it for five years.

Although Judge Murphy had the authority to revoke the license, the circumstances indicate that she meant to suspend it. When Judge Murphy imposed sentence, she was using pre-printed judgments that required her to fill in blank spaces. The judgments have a section where various types of licenses can be "revoked" followed by a blank space for the court to insert the length of the revocation. Judge Murphy wrote "for 5 years" in the blank space. But the option to suspend a license was not offered. Because Judge Murphy wrote "5 years" rather than "permanently," we conclude that she meant to suspend the license for a specified period of time rather than to revoke it permanently. We therefore order the district court to modify the judgments in this case to show that Haeg's guide license was suspended for five years.

Haeg's appeal in Case No. A-10015

While his original appeal was pending, Haeg filed a motion in the district court asking for the return of his property that had been seized by the State. Because his case was on appeal, the district court ruled that it lacked jurisdiction to address Haeg's motions. Haeg then asked this court to order his property released. We remanded the case back to the district court "for the limited purpose of allowing Haeg to file a motion for the return of his property[.]"

Once the case was remanded, Haeg-relying on Alaska Criminal Rule 37-asked the district court to suppress the evidence that had been seized during the criminal investigation and to return the property to him. Haeg argued that the State had violated his fundamental rights by not giving him notice that he had the right to contest the seizure of his property. He also argued that AS 16.05.190 and AS 16 .05.195 were unconstitutional on their face and as applied to him because they did not require the State to provide such notice. Magistrate David Woodmancy ordered some property returned, but otherwise denied Haeg's request. Haeg initially petitioned for review of this decision, but we concluded that he had the right to appeal.

Why we uphold the district court's decision not to suppress evidence or return to Haeg property Judge Murphy had ordered forfeited

***12** Haeg contends that Magistrate Woodmancy erred when he refused to suppress the evidence and to return to him the property the State seized during the criminal investigation of this case. The forfeited property consisted of the airplane and the firearms that Haeg and Zellers used when taking the wolves, the wolf hides, and a wolverine hide.

Haeg contends that he was entitled to have the property suppressed as evidence and returned to him because the State, when it seized the property during the criminal investigation, did not expressly inform him that he had the right to challenge the seizure. He also asserts that the statutes that authorize search and seizure in criminal cases-AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195-are unconstitutional because they do not require the State to provide owners of seized property with notice that they have the right to challenge the seizure. He claims that the federal and state due process clauses require this notice.

To support his claim under the federal due process clause, Haeg relies primarily on the Ninth Circuit's decision in *Perkins v. City of West Covina.*[FN27] In *City of West Covina,* police lawfully searched a home where a murder suspect was renting a room.[FN28] Pursuant to a search warrant, police officers seized property from the home.[FN29] The police provided the landlord, Perkins, with written notice of the search, an inventory of the property seized, and information necessary for him to contact the police investigators.[FN30] But the written notice did not explain the procedures for retrieving his property.[FN31] Although police later told Perkins that he needed to file an appropriate motion in court, Perkins ran into difficulty when he attempted to retrieve his property.[FN32] Ultimately, he filed a civil suit in federal court, alleging a violation of his constitutional rights in that the notice

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did not mention he had the right to seek the return of his property.[FN33]

FN27.113 F.3d 1004 (9th Cir.1997), *rev'd,*525 U.S. 234, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999).

FN28.*Id.* at 1006.

FN29.*Id.*

FN30.*Id.* at 1007.

FN31.*Id.*

FN32.*Id.*

FN33.*Id.* at 1007, 1012-13.

The Ninth Circuit ruled that in these circumstances, due process required the government to provide written notice explaining to property owners how to retrieve the property.[FN34] The Ninth Circuit held that, among other things, "the notice must inform the ... [property owner] of the procedure for contesting the seizure or retention of the property taken, along with any additional information required for initiating that procedure in the appropriate court." [FN35] The notice "also must explain the need for a written motion or request to the court stating why the property should be returned." [FN36]

FN34.*Id.* at 1012-13.

FN35.*Id.* at 1013.

FN36.*Id.*

Relying on the Ninth Circuit's decision, Haeg contends that the federal due process clause required a similar notice when the state troopers seized his property. But in *City of West Covina v. Perkins,*[FN37] the United States Supreme Court reversed the Ninth Circuit's decision and rejected the notice requirement imposed by the Ninth Circuit.[FN38]

FN37.525 U.S. 234, 119 S.Ct. 678, 142 L.Ed.2d 636 (1999).

FN38.*Id.*

The Supreme Court ruled that when police lawfully seize property for a criminal investigation, the federal due process clause does not require the police to provide the owner with notice of state-law remedies.[FN39] The Court explained that "state-law remedies ... are established by published, generally available state statutes and case law." [FN40] Once a property owner has been notified that his property has been seized, "he can turn to these public sources to learn about the remedial procedures available to him." [FN41] According to the Court, "no ... rationale justifies requiring individualized notice of state-law remedies." [FN42] The "entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny." [FN43]

FN39.*Id.* at 240, 119 S.Ct. at 681.

FN40.*Id.* at 241, 119 S.Ct. at 681.

FN41.*Id.* at 241, 119 S.Ct. at 681-82.

FN42.*Id.* at 241, 119 S.Ct. at 681.

FN43.*Id.* at 241, 119 S.Ct. at 682 (quoting *Atkins v. Parker,* 472 U.S. 115, 131, 105 S.Ct. 2520, 86 L.Ed.2d 81 (1985)).

***13** In other words, federal due process is satisfied if the police give property owners notice that their property has been seized and if state law provides a post-seizure procedure to challenge the seizure and seek the return of the property. In Haeg's case, he received notice that his property was seized, and Alaska Criminal Rule 37 provides for a post-seizure procedure allowing property owners to seek return of their property.[FN44] In light of the Supreme Court's decision in *City of West Covina,* we conclude that Haeg's due process rights under the federal constitution were not violated.

FN44.Alaska R.Crim. P. 37(c) ("[Any] ... person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property[.]").

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To support his claim under Alaska's due process clause, Haeg relies primarily on the decisions in *F/V American Eagle v. State*[FN45] and *State v. F/V Baranof*.[FN46] He points out that under these decisions, property owners have "an immediate and unqualified right to contest the [S]tate's justification" when the State seizes their property.[FN47] But nothing in either of these decisions imposes a notice requirement similar to that discussed by the Ninth Circuit in *City of West Covina*. Rather, in both cases, the State provided the property owners notice that their property had been seized.[FN48] This notice and the subsequent opportunity to challenge the seizures under Criminal Rule 37 satisfied due process.[FN49] Here, Haeg had notice of the seizure, which in turn provided him with the opportunity to challenge the seizure of his property.

FN45. 620 P.2d 657 (Alaska 1980).

FN46. 677 P.2d 1245 (Alaska 1984).

FN47. *F/V American Eagle*, 620 P.2d at 667.

FN48. *See F/V Baranof*, 677 P.2d at 1255-56 (*in rem* forfeiture action holding that due process was provided when owners were notified that property was seized and were given an opportunity to contest the State's reasons for seizing property); *F/V American Eagle*, 620 P.2d at 666-68 (*in rem* forfeiture action).

FN49. *F/V Baranof*, 677 P.2d at 1255-56; *F/V American Eagle*, 620 P.2d at 667.

Conceivably, there might be circumstances where the Alaska due process clause would require the government to take affirmative measures to notify a property owner of the right and the procedure to challenge the seizure of his or her property. But nothing in Haeg's case supports a finding that his due process rights were violated. Haeg was present when the troopers searched his residence in Soldotna and seized an airplane of his, a shotgun, and a rifle. Consequently, he knew that his property had been seized as part of a criminal investigation. In addition, less than two weeks after his property was seized, he retained an attorney. Thus, he had access to legal advice regarding the seizure. Finally, **Haeg**-albeit some months after the seizure-asked the district court to bond out his airplane. Under these circumstances, the fact that the State did not specifically inform **Haeg** that he had the right to challenge the seizure did not infringe his state due process rights.

Based on the record in **Haeg's** case, we conclude that neither the federal nor the state constitutions required the State, after giving **Haeg** notice that his property had been seized, to separately inform him that he had a right to contest the seizure of his property. Because neither **Haeg's** federal nor state due process rights were violated, Magistrate Woodmancy did not err when he denied **Haeg's** post-conviction motion to suppress evidence seized during the criminal investigation. For similar reasons, we reject **Haeg's** attack on the constitutionality of Alaska's seizure and forfeiture statutes, AS 12.35.020, AS 12.35.025, AS 16.05.190, and AS 16.05.195. Furthermore, we note that **Haeg's** motion to suppress was waived because he failed to file it prior to trial.[FN50]

FN50. *See* Alaska R.Crim. P. 37(c); Alaska R.Crim. P. 12(b) and (e).

***14** We also conclude that **Haeg** provided Magistrate Woodmancy no grounds for overturning Judge Murphy's decision to forfeit property related to **Haeg's** hunting violations. **Haeg** argued at sentencing against forfeiture of the airplane. At sentencing, **Haeg's** attorney did not contest the fact that the airplane was the one that **Haeg** and Zellers used when unlawfully taking the wolves, nor did he claim that **Haeg** was not the airplane's owner. Rather, he argued that the airplane should not be forfeited because **Haeg** used the plane "not only for guiding, but ... also ... for part of his economic livelihood of flight seeing, and if ... [the court forfeits] his plane ... he won't even be able to do that.... [M]aybe over the next few years ... he's going to have ... to beef up more work for his flight seeing business, ... [and with the airplane] at least he'd have the means to do it." The attorney emphasized that "if you take his plane ... he'd be out of the guiding business, he'd be out of the flight seeing business, he'll just be out of business. Period. After twenty-one years of an occupation, just it's gone."

Haeg did not object to the forfeiture of the shotgun, the rifle, or the animal hides. The record supports these forfeitures. At trial, Zellers testified that they

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had specifically purchased the shotgun to use for the predator control program and that they used it to unlawfully take the wolves. Zellers also testified that the rifle was used to unlawfully take one wolf. And finally, **Haeg** testified that he and Zellers had taken the animal hides unlawfully. Because the record supports Judge Murphy's forfeiture of the property relating to **Haeg's** hunting violations and **Haeg** did not show why the decision to forfeit this property should be overturned, we affirm Magistrate Woodmancy's decision to not return the forfeited property to **Haeg**.

Haeg also claims that Magistrate Woodmancy erred when he resolved **Haeg's** motion to suppress evidence and return of property without an evidentiary hearing. But **Haeg** has not shown that Magistrate Woodmancy abused his discretion. The basis of **Haeg's** post-conviction motion was his assertion that the State, when it seized **Haeg's** property, was required to tell him that he had a right to challenge the seizure. This was a question of law that Magistrate Woodmancy could resolve without an evidentiary hearing. And as we have already explained, the State was not required to notify Haeg that he had a right to challenge the seizure of his property.

Other potential claims

Haeg's briefs and other pleadings are sometimes difficult to understand, and he may have intended to raise other claims besides the ones we have discussed here. To the extent that Haeg may be attempting to raise other claims in his briefs or in any of his other pleadings, we conclude that these claims are inadequately briefed.[FN51]

FN51.*See* Petersen v. Mutual Life Ins. Co. of New York, 803 P.2d 406, 410 (Alaska 1990) (issues that are only cursorily briefed are deemed abandoned); *see also* A.H. v. W.P., 896 P.2d 240, 243-44 (Alaska 1995) (waiving for inadequate briefing majority of fifty-six arguments raised by pro se appellant).

Conclusion

Haeg's convictions are AFFIRMED. The district court shall amend the judgments to reflect that Haeg's guide license was suspended for a period of five years.

Alaska App.,2008.
Haeg v. State
Not Reported in P.3d, 2008 WL 4181532 (Alaska App.)

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

DAVID HAEG, Applicant, v. STATE OF ALASKA, Respondent.	
(Trial Case No. 4MC-04-00024CR)	POST-CONVICTION RELIEF Case No. 3HO-10-00064CI

NOTE TO FILE

In reviewing Mr. Haeg's allegations that Judge Murphy requested rides from Tropper Gibbens while on the record during Mr. Haeg's trial or sentencing hearing, this court requested a copy of the relevant portion of the transcript from the Aniak District Court. On August 6, 2010, the Aniak District Court faxed to chambers said copy. The received fax is attached.

Josef Rawert
[signature] 8/27/10
Law clerk for Judge Joannides

August 6, 2010

Alaska Court System
P.O. Box 147
Aniak, AK 99557-0147
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ANIAK DISTRICT COURT

Fax

To:	Judge Joanides	**From:**	Jean Ekemo/Clerk of Court
Fax:	907-264-0518	**Pages**	5 w/cover
Phone:		**Date:**	8/6/10
Re:	David Haeg – 4MC-04-24CR selected transcripts	**CC:**	

• **Comments:**

Following this cover you should find

1 page) a copy of the cover of "Transcript of Proceeding" Volume III

3 pages) Pages 1257-1268 (4 pages per 8x11 page so actually (3) 8x11 size pages)

ATTACHMENT I

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STATE OF ALASKA
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BY: ______
DEPUTY CLERK

1 IN THE DISTRICT COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT

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STATE OF ALASKA,

5

Plaintiff,

6

vs.

7

DAVID HAEG,

8

Defendant.

9

A09455

10 Case No. 4MC-04-24 CR

11 VOLUME III

12 TRANSCRIPT OF PROCEEDINGS

13

September 29, 2005 - Page 1037 through Page 1454

14

15

16

17 DISCLAIMER

Transcripts prepared for the Alaska Court System

18

The Alaska Court System accepted this transcript based on either review of a random sample or without review because the transcriber's prior work has consistently met court system standards. Because it is possible that this transcript may contain some errors, the court system encourages parties to listen to the recordings of critical portions of the proceedings and to bring any significant errors to the ACS Transcript Coordinator's attention immediately.

19

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21

22

23

24

25

1 A I never -- I never saw that moose
2 Q Okay That's the one you told Mr Haeg that had been
3 chased off or whatever, right?
4 THE COURT: That was on the 5th
5 MR. LEADERS. Okay Apologize, that's the 5th, okay.
6 Q But you don't note that anywhere?
7 A No
8 Q The – is it possible you -- the days may have somehow
9 gotten mixed up or confused in any way during your hunt?
10 A No
11 Q All right. The -- Mr. Jayo's moose was taken fairly
12 early in the morning?
13 A Yes, as -- as I stated, around 7.30 that morning.
14 Q Okay Shortly after light then?
15 A Yes.
16 Q You guys had to hike how far?
17 A We hiked approximately two and a half miles. We started
18 about 5:00 o'clock in the morning. At that time of year
19 about 5:30 is when it starts getting twilight out, and
20 by 6:00 o'clock you've got enough – plenty of light to
21 – to hunt. 7:00 o'clock the -- the sun wasn't up over
22 the -- the Revelation Mountains yet
23 Q So it took you almost a couple hours to get down to this
24 location?
25 A Yes.

1 Q Roughly, I guess, we heard the pace is about a mile an
2 hour earlier?
3 A Roughly – roughly, yeah.
4 Q That's pretty accurate?
5 A Yes. Uh-huh (Affirmative).
6 Q The – were you – I guess I was a little but unclear on
7 some of this Someone -- you climbed a tree for
8 observation once you crossed the river and that's where
9 you first see the cows?
10 A No.
11 Q Oh, okay.
12 A We did not see any moose from – from the tree
13 Q From the tree, I see, okay.
14 Q When we came down and I decided to take Doug a little
15 further down the ridge so I could see a little further
16 down river, that the river bend made a shallow bend to
17 the left and then it came back hard to the right, down
18 by the sandbar that Dave landed on, later, and that's
19 where I saw the -- the two cows along the river.
20 Q And that's where you then called – from that location
21 is where you called the bull to?
22 A Correct, I went down maybe 20 yards near a big rock or a
23 husgik(ph) for Doug to have a laying down steady rest
24 Q Okay. And it was two shots ultimately to kill this
25 moose?

1 A Two shots, yes
2 Q The initial?
3 A One from the. ..
4 Q To take it down?
5 A One from -- one from my rifle a 375. and one from Doug
6 Jayo's rifle which is I believe he was shooting .330
7 Q Okay. They were spaced approximately 15, 20 minutes
8 apart or so?
9 A Correct
10 Q And then there was a lot of flying activity after that?
11 A Yes.
12 Q Mr. Haeg's plane?
13 A Correct.
14 Q He hadn't -- you hadn't noticed any other planes in that
15 area flying during the few days that you – the couple
16 days you were hunting that specific area?
17 A No, I did not. I've heard other planes but I did not
18 observe them with my eyes. Maybe not fly up into that
19 valley.
20 Q So you heard them in the distance type thing?
21 A Correct.
22 Q I mean you can hear planes off for miles away at times
23 (indiscernible)?
24 A At times, yeah, you can hear them a long ways.
25 Q Okay.

1 A The weather wasn't conducive to – to seeing a lot of
2 them.
3 MR. LEADERS: I have no further questions.
4 TONY ZELLERS
5 testified as follows on:
6 REDIRECT EXAMINATION
7 BY MR. ROBINSON
8 Q Mr. Zellers, you entered a plea of, I think, no-contest
9 to your charges in this wolf case, right?
10 A That's correct.
11 Q And you were required to come to court and testify
12 truthfully were you not?
13 A Correct
14 Q And in your opinion when you came to testify at the
15 trial did you give truthful testimony?
16 A Yes. I did
17 Q And anything you said today, was it truthful testimony?
18 A Yes, it was
19 Q Particularly with your diary concerning when you noted
20 the day that Mr. Jayo shot this moose, is there anything
21 untruthful about that?
22 A No, there isn't.
23 Q Is there anything untruthful about the fact that before
24 Mr. Jayo took that moose on the morning of September 7th
25 that Mr Haeg was not flying around, was not using any

1 kind of communications from the airplane to direct that
2 hunt for Mr. Jayo?
3 A No, he wasn't
4 Q And that's truthful?
5 A That's truthful
6 Q As truthful as you testified about matters at trial
7 here?
8 A Yes, it is
9 MR ROBINSON: I don't have anything further.
10 TONY ZELLERS
11 testified as follows on:
12 RECROSS EXAMINATION
13 BY MR LEADERS:
14 Q The -- let me ask you. In your mind, your perception of
15 the wolf charges which you pled to and that now Mr
16 Haeg's -- do you consider those less serious based on
17 the nature that they were wolves taken than you do what
18 we're discussing here, whether or not a moose, a game
19 animal was taken from the -- with the use of an
20 airplane?
21 A No, it's the same charge Same day -- same day
22 airborne, so.
23 Q So you don't see -- okay, you don't perceive any
24 difference between the wolves or the moose or anything
25 like that? As to the way they should be treated?

1 A No, I've got probably -- I don't like the wolves any
2 more than anybody else out in this area.
3 Q Right.
4 A But -- because I mean if I look at this charge versus
5 this charge they're the same charge, so
6 Q Shouldn't be treated any differently in your mind?
7 A No
8 MR. LEADERS Nothing further.
9 THE COURT: Anything else?
10 MR. ROBINSON: No.
11 THE COURT. Okay. Thank you, Mr. Zellers, you can go
12 back.
13 MR. ROBINSON: Before we get going again I think we're
14 going to need about a 10 minute break
15 THE COURT: At least. I have to get to the store because
16 I need to get some.....
17 MR. ROBINSON So why don't we take long enough to go to
18 the store and.....
19 THE COURT Get some diet Coke And I'm going to
20 commandeer Trooper Gibbens and his vehicle to take me because
21 I don't have any transportation.
22 MR. ROBINSON: All right.
23 THE COURT: All right, Trooper Gibbens?
24 TROOPER GIBBENS: Well, yeah.
25 MR. ROBINSON: You've been commandeered.

1 MR. LEADERS. As long as there's no issue of.....
2 MR ROBINSON Oh, no, no, I don't have any problem. . .
3 THE COURT: Yeah, I'm just telling you that I -- I can
4 tell you I'm not going to talk about the case .
5 MR ROBINSON: You've been commandeered.
6 THE COURT: He's just going to drive me over there to get
7 some diet Coke and we'll be back.
8 MR ROBINSON: All right
9 THE COURT: Why don't we start back up at like 10 after?
10 MR ROBINSON Okay.
11 THE COURT: Okay?
12 (Whispered conversation)
13 THE COURT: Off record
14 (Off record)
15 THE COURT: Okay. We're back on record. Who did you
16 want to call, Mr Leaders? Or Mr. Robinson, I'm sorry.
17 MR. ROBINSON: Mr. Wendell Jones
18 THE COURT: Okay.
19 (Whispered conversation)
20 THE COURT: Mr. Jones, if you'd raise your right hand.
21 (Oath administered)
22 MR. JONES: I do.
23 THE COURT: Okay. Please be seated.
24 MR. JONES: Thank you.
25 WENDELL L. JONES

1 called as a witness on behalf of the defendant, testified as
2 follows on:
3 DIRECT EXAMINATION
4 THE COURT: Spell your first and last name for the
5 record, please.
6 A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.
7 THE COURT: Okay. Thank you, sir.
8 BY MR. ROBINSON:
9 Q Good evening, Mr. Jones. Where do you live?
10 A I live in Cordova, Alaska.
11 Q And how long have you lived there?
12 A Well, I first moved there in '76 and I moved to Soldotna
13 in about '84. Moved back to Cordova about '94.
14 Q And what is your occupation?
15 A I'm sorry?
16 Q What is your occupation?
17 A I'm a commercial fisherman.
18 Q (Coughing) Excuse me. How long have you been a
19 commercial fisherman?
20 A Since 1978.
21 Q What kind of commercial fisherman? (Indiscernible).
22 A I purseine, I gill net and I used to spot herring when
23 we had herring.
24 Q So when you were a purseiner or gill netter was that in
25 the salmon fisheries? Was that for salmon?

1 A Salmon Salmon I'm sorry. I don't hear well.
2 Q Okay And that was in the salmon fisheries?
3 A Yes.
4 Q And where in the state did you do your salmon fishing?
5 A In Prince William Sound, and on the Copper River Delta.
6 Q Other than being a commercial fisherman have you had any
7 other occupations?
8 A Yes. I was a fish and wildlife protection officer for
9 five years and prior to that I was a commercial pilot,
10 prior to that I was an A&P mechanic. And prior to that
11 I was a kid
12 Q What years were you a fish and wildlife enforcement
13 officer?
14 A From '73 to '78.
15 Q And where was that at?
16 A In Ketchikan and then in Cordova.
17 Q Are you still fishing commercially?
18 A Yes, I am.
19 Q Do you know the defendant in this case, David Haeg?
20 A Very well.
21 Q And how do you know him?
22 A Let's see. He was about 19, maybe 20 when he wanted Dan
23 France to build an airplane for him and Dan was busy so
24 Dan referred David to -- referred me to David
25 (indiscernible) to me. So he came and talked to me

1 about this airplane that he wanted to build, and wanted
2 to know if I'd work with him on it. We made an
3 agreement and we went to work in the winter time. He
4 was commercial fishing during the summer and so was I,
5 so it was -- it took us a couple years to finis --
6 couple winters to finish it. And so I got to know him
7 very well.
8 Q All right. What kind of plane was this?
9 A This was the Batcub, the PA-12.
10 Q The PA-12, the airplane that we've all come to call in
11 this proceeding the Batman plane?
12 A Well, it's been redone since he and I did it, but, yes,
13 it's the same design, yes.
14 Q So how long has he had this plane?
15 A Since he was 20 years old, something like that. Well,
16 it took two years to build it, so -- let's see, so 22
17 and he's 38 now, aren't you, Dave?
18 MR. HAEG: (Indiscernible).
19 Q All right. So he's had it for quite some time?
20 A Oh, yeah.
21 Q Tell us the kind of -- other than the contacts you had
22 with him in building the plane, what other kind of
23 contacts have you had with David over the years?
24 A Well, in herring spotting he -- I took him over to the
25 Sound. He flew back seat for me for part of a season

1 and then there was a fatality in the herring fishery and
2 David took over that position, and was very successful.
3 He's good at whatever he does
4 Q Okay. Over the years, Mr. Jones, have you developed an
5 opinion about Mr -- about David's character since
6 you've known him?
7 A Without a doubt.
8 Q And what is that opinion?
9 A I wouldn't be surprised if he couldn't walk on water
10 No I think he's -- he's -- well, I love him like he's
11 my son. He -- I think he's just a wonderful person,
12 he's got a beautiful family.
13 Q Now you know that he was convicted in this case of
14 several fishing -- I mean hunting violations?
15 A That's true, I know.....
16 Q And several counts of ...
17 A Concerning the wolves, yes.
18 Q Concerning hunting wolves, same day airborne, unlawful
19 possession of game, making a false statement regarding
20 the taking of game. Also hunting wolverine out of
21 season -- trapping out of season. Despite your
22 knowledge of these convictions what do you think of Mr.
23 Haeg?
24 A Well, I wasn't familiar with wolverine, I don't
25 understand that charge, but the wolves -- first off, you

1 have to look at David's life. He was raised in Chinitna
2 Bay in the wilderness. His dog -- his folks dog was
3 killed by wolves. Then you have to look at what's going
4 on. We all know that there's mismanagement by our fish
5 and game that we're not -- we aren't doing the charge
6 that we have as far as managing our resources on a
7 sustained yield basis. And we all sitting here know
8 that they -- that the influence of the Sierra Club and
9 -- and all the Walt Disney lovers that are influencing
10 our state government to where they're not allowing
11 management by fish and game of the wolves. We used to
12 have poison programs and all kinds of programs to keep
13 them in balance with our other game that we used. They
14 -- they are a predator and the other ones are -- are
15 game that we harvest and we don't harvest the wolves for
16 -- as consumption. So -- but we aren't managing them as
17 a predator so that we can maintain the moose in a
18 balanced situation. And -- so it's -- it's hap -- it's
19 gone on for so long that the frustration level is very
20 high. I don't -- I admit that what David has done, the
21 way he handled the situation is wrong. He'll admit it's
22 wrong to me, but -- but the frustration of it -- have
23 you read -- well, I shouldn't ask you the questions, I'm
24 sorry. But if you've read Harrower's letters to
25 Governor Knowles. The -- the frustration level has been

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

Attention Superior Court Judge Stephanie Joannides

DAVID HAEG,	)	
Applicant,	)	
v.	)	
	)	POST-CONVICTION RELIEF
STATE OF ALASKA,	)	CASE NO. 3HO-10-00064CI
Respondent.	)	
Trial Case No. 4MC-04-00024CR	)	

Received in Civil 8/3/10

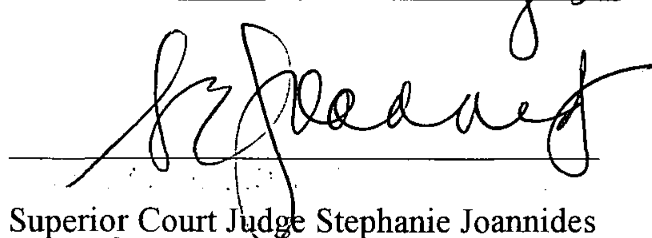
AUG 03 2010

ORDER

Having considered David Haeg's motion to supplement the case to disqualify Judge Murphy for cause and this courts 7-9-10 order that he may do so,

IT IS HERBY ORDERED that David Haeg's motion to supplement the case to disqualify Judge Murphy for cause is granted.

Dated this 5th day of August, 2010 in Anchorage, Alaska.



Superior Court Judge Stephanie Joannides

D1/51

Certificate of Service: I certify that on 7-30-10 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve VanGoor, ABA; and U.S. Department of Justice

By: ______________________

I certify that on 8-6-10 a copy of the above was mailed/faxed/handed to each of the following at their address of record

____
Judicial Assistant

Haeg
AG. A. Peterson

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

DAVID HAEG,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	
STATE OF ALASKA,	)	
	)	
Respondent.	)	POST-CONVICTION RELIEF
	)	Case No. 3HO-10-00064CI
	)	

(Trial Case No. 4MC-04-00024CR)

CONFIDENTIAL
ORDER GRANTING REQUEST TO SEGREGATE JULY 28, 2010 ORDER FOR INFORMATION FROM JUDICIAL CONDUCT COMMISSION AND STAYING SAME

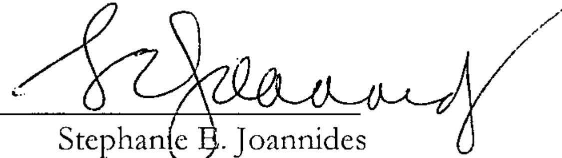
The Alaska Judicial Conduct Commission has requested that this court's July 28, 2010 Order for Information from Judicial Conduct Commission, including attachments, "be segregated from the public court file and designated 'confidential'"[1] and has requested a 60-day stay of that order.

The Commission's request is GRANTED. The court's request for supplemental information is being reconsidered *sua sponte*. A supplemental order addressing whether there is a need for the Judicial Conduct Commission documents shall be issued.

\

[1] This segregation request is granted notwithstanding the fact that Mr. Haeg raised the "confidential" matters and discussed them extensively in open court on in a July 9, 2010 scheduling conference.

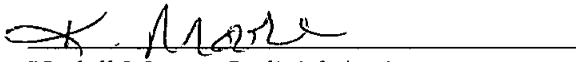
DONE this 4th day of August 2010, at Anchorage, Alaska.



Stephanie E. Joannides
Superior Court Judge

I certify that on 8·4·10
a copy of the above was mailed to
each of the following at their
addresses of record:

A. Peterson - AAG
D Haeg
AK Comm. Judicial Conduct



Kadell Moore, Judicial Assistant

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

DAVID HAEG, Applicant, v. STATE OF ALASKA, Respondent.	 POST-CONVICTION RELIEF Case No. 3HO-10-00064CI

(Trial Case No. 4MC-04-00024CR)

ORDER

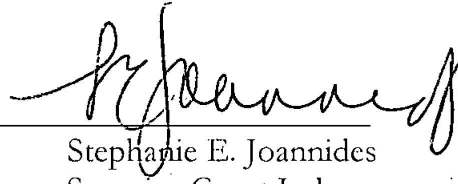
Granting *Applicant's 7-31-10 Motion to Schedule Haeg's Representation Hearing for 8-25-10 Instead of the Proposed 8-12-10*

On July 9, 2010 this court held a status hearing at which it scheduled a two-day evidentiary hearing, on August 25-26, 2010, on the issue of whether to disqualify Judge Murphy. At the status hearing, Haeg informed the court that he would be out of state August 5-27, but agreed to the August 25 hearing date. On July 28, 2010, this court issued its Order Re: Applicant's 3-26-10 Motion for Representation Hearing, setting a representation hearing on August 12, 2010, "[i]f no objection is filed by the parties by August 2, 2010." Haeg's motion on this matter is time-stamped August 3, 2010 but is hereby deemed timely. The motion "respectfully asks this court to schedule his representation hearing for the morning of 8-25-10 instead of the proposed 8-12-10." Haeg's motion is GRANTED. A representation hearing is

D57

scheduled for **August 25, 2010 at 9:30 a.m. to 1:45 p.m., courtroom 604, Nesbett Courthouse, 825 West 4th Avenue, Anchorage**. Haeg is still under an obligation to contact pre-trial services for a determination of whether he qualifies for court-appointed counsel.

DONE this 4th day of August 2010, at Anchorage, Alaska.



Stephanie E. Joannides
Superior Court Judge

I certify that on 8/10/10 a copy of the above was mailed/faxed/handed to each of the following at their address of record
Judicial Assistant

Haeg
C. Peterson

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

DAVID S. HAEG,	)
	)
Applicant,	)
	)
vs.	)
	)
STATE OF ALASKA,	)
	)
Respondent.	)
______________________________	)

Case No. 4MC-09-00005 CI
In Connection w/4MC-04-024 CR

~~AUG 17 2010~~

ORDER GRANTING MOTION TO QUASH

This matter having come before this court, and the court being fully advised in the premises,

IT IS ORDERED that the subpoena served on Mr. Leaders is hereby quashed. .

ENTERED at Anchorage, Alaska this __ day of ______________, 2010.

NOT USED
____
SUPERIOR COURT JUDGE

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

DAVID HAEG,	)
Applicant,	)
v.	)
	) POST-CONVICTION RELIEF
STATE OF ALASKA,	) CASE NO. 3HO-10-00064CI
Respondent.	)
Trial Case No. 4MC-04-00024CR	

NOT USED 8.25.10

AUG 0 3 2010

ORDER

Having considered David Haeg's motion to reconsider this courts 7-28-10 order narrowing scope of review of Judge Murphy's order denying motion to disqualify Judge Murphy for cause and David Haeg's motion to schedule his representation hearing for 8-25-10,

IT IS HEREBY ORDERED that David Haeg's motion for reconsideration is granted, allowing him to present evidence and witness testimony, during his 8-25-10 and 8-26-10 hearing, that Judge Murphy is a witness in his PCR case.

IT IS HEREBY FURTHER ORDERED that David Haeg's representation hearing is set for 9:00 AM on 8-25-10.

Dated this_______day of________________, 2010 in Anchorage, Alaska.

____
Superior Court Judge Stephanie Joannides

FILED
STATE OF ALASKA
THIRD DISTRICT
2010 AUG -3 AM 11:25
CLERK TRIAL COURTS
BY DEPUTY CLERK

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

Attention Superior Court Judge Stephanie Joannides

DAVID HAEG,	)
Applicant,	)
v.	)
	) POST-CONVICTION RELIEF
STATE OF ALASKA,	) CASE NO. 3HO-10-00064CI
Respondent.	)
Trial Case No. 4MC-04-00024CR	

7-31-10 MOTION FOR RECONSIDERATION OF THE 7-28-10 ORDER NARROWING SCOPE OF REVIEW OF JUDGE MURPHY'S ORDER DENYING MOTION TO DISQUALIFY JUDGE MURPHY FOR CAUSE AND 7-31-10 MOTION TO SCHEDULE HAEG'S REPRESENTATION HEARING FOR 8-25-10 INSTEAD OF THE PROPOSED 8-12-10

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

COMES NOW Applicant, DAVID HAEG, in the above case and hereby files this motion for reconsideration of the 7-28-10 order narrowing scope of review of Judge Murphy's order denying motion to disqualify Judge Murphy for cause and motion to schedule Haeg's representation hearing for 8-25-10 instead of the proposed 8-12-10.

Prior Proceedings

On 11-21-09 Haeg filed a motion for his required representation hearing.

On 3-9-10 Haeg filed a motion to disqualify Judge Murphy for cause.

On 4-23-10 Judge Murphy denied Haeg's motion to disqualify herself.

On 4-30-10 Judge Joannides was assigned to review Judge Murphy's refusal to disqualify herself.

On 5-2-10 Haeg filed for an evidentiary hearing on Judge Murphy's refusal to disqualify herself.

On 7-9-10 Judge Joannides held a scheduling conference to set a date for Haeg's evidentiary hearing. During this conference Haeg discussed his intention, during the upcoming evidentiary hearing, of proving Judge Murphy was a material witness to the disappearance of Haeg's letter that evidenced a complete defense to the charges Haeg was convicted of. Haeg also expressed his intention of subpoenaing multiple witnesses to the evidentiary hearing to prove this and to prove Judge Murphy rode around with the primary witness against Haeg during Haeg's trial and sentencing – and that Judge Murphy lied about this during its investigation. Judge Joannides set a deadline of 7-28-10 to supplement the record and set the evidentiary hearing for 8-25-10 and 8-26-10.

On 7-25-10 Haeg filed a motion to supplement the record.

On 7-28-10 Haeg subpoenaed 7 witnesses to the 8-25-10 evidentiary hearing and made arrangements for 8 other witnesses to testify without subpoenas.

On 7-28-10 (received by Haeg on 7-30-10) Judge Joannides filed two orders. One order narrowed the scope of Haeg's review, eliminating all but the question of Judge Murphy's contacts with the witness against Haeg, of Judge Murphy's order denying she must be disqualified. The other order was unless a party objected by 8-2-10 Haeg's representation hearing would be set for 8-12-10.

Order Narrowing Scope of Haeg's Review

It has never been disputed that the letter in question was placed into the official court record of Haeg's case while Judge Murphy presided and was then removed. This happened prior to Haeg's conviction or sentencing – in contrast with Judge Joannides ruling that she does not find any prejudice from the missing letter because Haeg had already been tried and convicted. The sentencing that was scheduled to happen on 11-9-04 was cancelled and Haeg went to trial many months after. [*See* Haeg's attached 3-7-08 Emergency Motion to Restore the Record and the attached 3-26-08 order by the Alaska Court of Appeals granting Haeg's motion to restore the record with "Dave Haeg's Wolf Statement", without opposition from the State of Alaska].

As justification for eliminating this issue from Haeg's hearing, the court specifically relies upon the fact there were four pages accompanying the notice (making 5 pages total) and that all were sequentially numbered. Yet the sequential numbering starts on page number 2 and there is no indication how many pages were faxed. The missing page 1 would almost certainly been the cover page

documenting how many pages followed. Alternately, there could have been an entirely separate fax transmittal of Haeg's letter that was eliminated entirely. If this was the case it could explain why the cover page, if the same one was used, states, "David Haeg, by and through his counsel, hereby submits his supplemental letter" (singular), when neither letter was from David Haeg and there were two separate letters (plural) that were sent.

Several of the witnesses Haeg has already arranged for and subpoenaed will present compelling testimony supporting the case David Haeg's letter was faxed to Judge Murphy before he was convicted or sentenced and that there was tremendous motive for it to be taken out while Judge Murphy was still responsible for the record.

Haeg agrees that with the evidence presently available to the court it would appear Judge Murphy never seen the letter or could have been involved with its disappearance. Yet many, if not most, cases could never be made before sworn witness testimony is presented. Haeg feels the incredible burden he and his family have borne for many years and the detrimental reliance he has already taken since the hearing was agreed to and set entitles him to a fair opportunity to present evidence Judge Murphy is a material witness to the missing letter.

Haeg does not oppose Judge Joannides decision there was no impropriety in Haeg's PCR being first assigned to Judge Murphy as she was the trial judge.

Scheduling Haeg's Representation Hearing for 8-25-10 Instead of 8-12-10

On 11-21-09 Haeg first motioned for his required representation hearing. Four months later, on 3-26-10, he again motioned for this required hearing. During the 7-9-10 scheduling conference Haeg stated that he and his family were going on vacation from 8-5-10 until 8-21-10. It seems unfair to now schedule this hearing in the middle of the first vacation Haeg has been able to afford in over 6 years, especially when the exact dates of Haeg's vacation were known. Because Haeg has experienced how ineffective telephonic participation can be he would rather postpone the hearing then conduct it telephonically. Haeg firmly believes that this court is, as clearly stated in its order, only trying to expedite a case that has gone on far too long already.

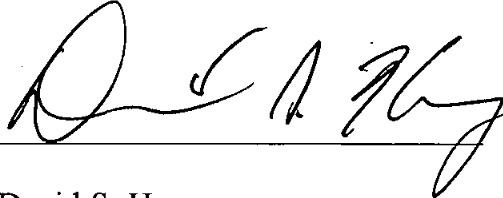
As the already scheduled 8-25-10 and 8-26-10 hearing will be narrowed by at least one issue, and the one attorney Haeg wishes to call during his representation hearing should already be there, Haeg respectfully asks this court to schedule what should be a brief representation hearing for the morning of 8-25-10.

Conclusion

Haeg respectfully asks this court to reconsider its order preventing Haeg from presenting witness testimony already arranged, which may conclusively prove Judge Murphy is a material witness to the disappearance of Haeg's letter.

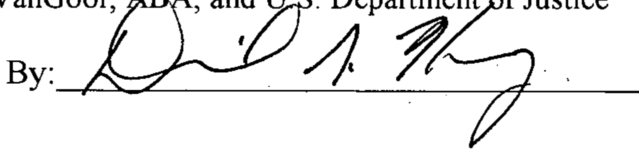
In addition, Haeg respectfully asks this court to schedule his representation hearing for the morning of 8-25-10 instead of the proposed 8-12-10.

I declare under penalty of perjury the forgoing is true and correct. Executed on 7-31-10. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249
haeg@alaska.net

Certificate of Service: I certify that on 7-31-10 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve VanGoor, ABA; and U.S. Department of Justice

By: 

In the Court of Appeals of the State of Alaska

David S. Haeg, Appellant, v. **State of Alaska,** Appellee.	Court of Appeals No. **A-09455**
	Order
Trial Court Case # **4MC-04-00024CR**	Date of Order: **3/26/08**

On consideration of the appellant's emergency motion to restore the record, and no opposition having been received,

IT IS ORDERED: The motion is GRANTED.

Entered at the direction of Chief Judge Coats.

Clerk of the Appellate Courts

Shannon M. Brown, Deputy Clerk

Distribution:

A Andrew Peterson
OSPA
310 K Street Suite 403
Anchorage AK 99501

David Haeg
PO Box 123
Soldotna AK 99669

Ours

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249 & 262-8867 fax

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG)
)
Appellant,)
)
vs.)
)
STATE OF ALASKA,) Case No.: A-09455/A-10015
)
Appellee.)
)

Trial Court Case #4MC-S04-024 Cr.

3/7/08 EMERGENCY MOTION TO RESTORE THE RECORD

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

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby respectfully asks this Court of Appeals to restore a missing letter in Haeg's record.

While examining the record in his case (which is now in the Kenai Court) Haeg noticed his supplemental letter [*Dave Haeg's Wolf Statement*-included] for sentencing, which was scheduled for 11/9/04, is missing from the file.

This letter was given to Brent Cole, Haeg's attorney at the time, to give to the court for it's consideration before he was sentenced on November 9, 2004.

The cover letter (*Notice of Supplemental Letter for Sentencing Hearing* – included) is in the file but not the letter. The cover letter specifically states;

> "David Haeg, by and through his counsel, hereby submits his supplemental letter for consideration during the sentencing hearing in the above-captioned case scheduled before Magistrate Murphy in McGrath on November 9, 2004, at 10:30 a.m."

This cover letter is date stamped as received my Magistrate Murphy in McGrath on November 8, 2004.

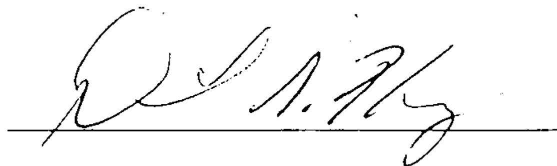
Haeg wishes to use his letter in support of his reply brief due 3/17/08, or just 10 days away.

Because of the forgoing circumstances Haeg respectfully asks this court for an order as soon as possible allowing Haeg to restore the record with the missing letter.

Haeg contacted Andrew Peterson and he stated he does not know if he will oppose this motion until he sees it.

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this 7th day of March 2008.

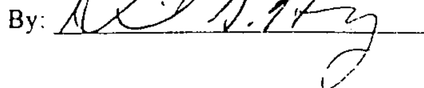


David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE
I certify that on the 7th day of March 2008,
a copy of the forgoing document by ___ mail, X fax, or
___ hand-delivered, to the following party(s):

Andrew Peterson, Attorney, O.S.P.A.

U.S. Department of Justice

By: 

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249 & 262-8867 fax

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG	)
	)
Appellant,	)
vs.	)
	)
STATE OF ALASKA,	) Case No.: A-09455
	)
Appellee.	)
	)

Trial Court Case #4MC-S04-024 Cr.

AFFIDAVIT OF APPELLANT

VRA CERTIFICATION. I certify that this document and 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 and disclosure of the information was ordered by the court.

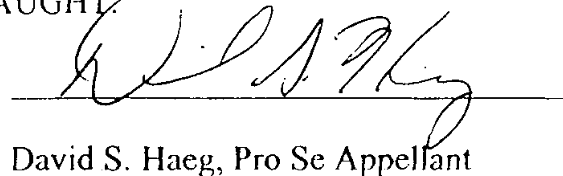
I, DAVID HAEG, being first duly sworn deposes & states as follows:

1. I am the Pro Se Appellant in the above case & have personal knowledge of the statements made herein.

2. All factual assertions in the *3/7/08 Emergency Motion to Restore the Record* are true & correct to the best of my knowledge.

I, DAVID S. HAEG, certify under penalty of perjury that the foregoing is true to the best of my knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



David S. Haeg, Pro Se Appellant

SUBSCRIBED & SWORN on this 7th day of March, 2008 in Browns Lake, Alaska. A notary public or other official empowered to administer oaths is unavailable & thus I am certifying this document in accordance with *AS 09.63.020* which authorizes that a matter required or authorized to be supported or proven by the sworn statement, oath, or affidavit, in writing of the person making it may be supported or proven by the person certifying in writing "under penalty of perjury" that the matter is true.

#39

Dave Haeg's Wolf Statement

Your Honor - members of the court I appreciate your being here and apologize in advance for taking up so much of your time.

The issues we are here to resolve are of an importance to me eclipsed only by that of my wife and daughters. I sincerely hope you listen very carefully and take notes from which to question myself, my wife, my friends, and anyone else involved.

First, I would like to make is absolutely clear that I realize I made a horrendous mistake that will probably haunt me and my family for the rest of my life. I have regretted my actions every minute of every day of every month since. If you doubt this I suggest talking to my wife and kids.

I have not slept a whole night in 6 months, have been diagnosed with severe depression and feel I am a total outcast, staying in my home unless forced to do otherwise. I cannot express just how sorry I am and feel I have let the State and the people who depend on its resources down by jeopardizing a desperately needed program to reduce predation, before there is absolutely nothing left.

Although I am guilty of most of the charges I face I did experience circumstances which could have clouded anyone's judgment and caused them to act the same way.

I grew up with just my parents in a very remote area of Alaska where there are no roads and the nearest family lived 35 miles away. All my schooling was by correspondence from which I graduated with honors at our lodge in 1984. I learned very early on the irreplaceable value of our fish and wildlife resources - as a vital source of our winter food, as watchable wildlife for our lodge guests, and as an income from our fishing and trapping.

My love and skill with wildlife led me to become an assistant big game guide in 1984 at the age of 18, under Master Guide John Swiss. I passed the registered guide test in 1992 and became a Master Guide just recently at the age of 38. I purchased Eberhard Brunner's guide operation in 1997 after working for him for many years. After purchasing Mr. Brunner's business my wife Jackie and I devoted all of our time and money to it - building a beautiful lodge, putting in electricity and indoor plumbing,

rebuilding almost all of the out buildings, and establishing the way of life we loved and hoped to pass on to our children.

During the same time we were getting into the guiding business wolf numbers started to increase dramatically. At first I thought all the old time guides were blowing the wolf problem way out of proportion and I was actually thrilled to see more wolves. By the winter of 1992 even I had the feeling they may be right - when I followed one pack of 46 wolves that averaged 2 moose kills per day. Moose and resident caribou numbers started to drop and after several years I started to see more bull moose kill sites than I saw live bull moose. The wolf predation levels at this time were horrific.

One of my strongest beliefs is that to be an Alaskan Guide you must be first and foremost a good steward of the resource, willing to adjust hunting pressure to game numbers, willing to conduct yearly surveys, willing to pass that information on to the area biologists, Board of Game, Legislature, Governor, media, etc. And be willing to aid ADF&G in their efforts to maintain healthy wildlife numbers through the State Constitutions sustained yield principle - essentially to be willing to leave the resource to future generations in as good <u>or</u> better shape than at present.

To this end we started decreasing moose and caribou hunts while trying to increase pressure on wolves. In 2003 we took less than 1/3 of our former moose hunts with caribou hunts essentially eliminated.

I also began attending and testifying at all Board of Game meetings dealing with my area along with submitting proposals, writing compass pieces to the Anchorage Daily News, calls and letters to Native communities, the Governor and all legislators, and talking extensively with every wolf biologist in the State of Alaska. I organized Alaska Western Wildlife Alliance, an association of mostly guides to better address the problem, traveled to Juneau to educate legislators, and have been a guest on live radio programs discussing wolf predation. I also attended and became a member of the Kenai F&G Advisory Committee.

As conditions grew worse with not much being done I learned how to trap and snare wolves and devoted as much time as I could to this effort. This seemed to have promise when I was able to catch over a dozen wolves in one winter. Yet success at this

started to drop as each wolf pack learned to avoid my traps and snares.

When ADF&G solicited applications, last fall, for people and planes to conduct aerial wolf control in Unit 19D I felt as if those of us who had been fighting so hard for so long were finally getting somewhere. I later applied for a permit but didn't get a response for several months. In February ADF&G called me in Pennsylvania to see if I was still willing to participate. ADF&G told me the 4 teams who had hunted all winter had taken less than ¼ of the wolves specified and that there was a concern the program might be terminated if more wolves were not killed. I told ADF&G that I would be more than happy to help when I got back to Alaska and after I testified at the Board of Game meeting in Fairbanks. When these were done I purchased a very expensive shotgun and ammo, which had been recommended, and we set out to McGrath, determined to kill wolves so the program would not be a failure and terminated.

On our way to McGrath from Soldotna we found virtually no moose, no caribou, no wolves, and hardly any tracks. As we were landing in McGrath there were more moose along the river beside the runway than we had seen during the entire trip. It was truly stunning to us that the wolf predation problem was so bad that the only moose left had gathered within a ½ mile of town for protection from the wolves. It should have dawned on us at this time why the first 4 aerial wolf control teams had been unable to take even ¼ of the 40 wolves specified in the previous 4 months. I now realize that there were not enough moose and caribou left in the control area to support the number of wolves ADF&G wanted to take. It probably would not have mattered how many aerial wolf teams were permitted by ADF&G - just about all of the wolves that used to live in the control area had to move to other areas that still had game. What ADF&G did by issuing more permits was just adding to the number of pilots frustrated by not being able to find wolves inside the area. After we left McGrath we couldn't find anything again for hours. We finally did find a fresh moose kill close to the Southern boundary and started trailing the wolves. We caught up to them after a couple miles and didn't think about anything but trying to get them before they got off the river and into the trees. We managed to get one wolf out of the 3 we had seen. From the tracks I would say 5 others went into the trees before we seen them. When we stopped to figure out where we were we realized we were likely outside the area by a little over 1 mile which is about 45 seconds flying time. They next day we continued trying

to locate wolves inside the area with no success. We later found another moose kill further outside the area up Big River with 2 of the wolves out in the open. We went after those wolves and got them as they tried to get to the timber. At the time we thought we were doing the right thing, as the wolves we killed were undoubtedly the ones that had finished off the moose that once lived in the control area. I guess to us it was clear the wolves Fish and Game wanted killed were no longer in the control area and that if these wolves that were now outside the open area were not killed they would finish off the last of the moose surrounding the control area - which would be needed to repopulate the control area which was already devoid of moose.

The more we flew the more I realized we were and are at the very last hour in being able to do anything about reversing the plummeting and dangerously low moose and caribou numbers. Of the 5000 resident caribou that used to winter from Lime Village to Rainy Pass we spotted exactly 0. How many years will it be to bring this herd back? Say we get a very healthy 15% increase per year? 0 caribou x 15% = 0 caribou. Of the over 500 moose that used to winter on the Swift River up stream of Lime Village there are now 40 left. How many years will it take to bring this herd back? What if the 12 wolves that had killed one moose out of this 40 and were after another within 3 days had been left alone? Remember each wolf consumes an average of 1 moose a month. This means every 3rd day this pack will kill a moose, which is exactly what we observed. How long will the 40 moose last this pack? About 120 days or 4 months and it will likely be gone as wolves generally stay with a good food source till it's gone. How long will it take to replace this herd if it is 0? How many years does biologist Toby Bodro think it will take for moose numbers to recover to a point to support the harvest hoped for or needed by Alaskans? Does he think control should have started sooner? These are the grim realities that face all of us who depend on the wildlife of this area.

In the 50 plus hours we flew in Unit 19 during the control program we saw a total of 8 wolf-killed moose, 27 wolves and 110 live moose. This is an absolutely unbelievable ratio of about 1 wolf to 4 moose. State biologists have determined a healthy ratio to be 1 wolf to 40 moose and when ratios get down to 1 to 20 the moose are in trouble. What kind of trouble are moose in when they are just about gone and there is 1 wolf to every 4 moose? 8 wolf killed moose and 110 live moose in 2 weeks flying indicates a mortality of at the very least of 7% per month or 84% per year. Calf survival in this area is under 7% per year.

This means in 15 months there will be very few if any moose left. Is it time to hit the panic button?

During the time we were out looking for wolves we flew over 5000 air miles, which covered about 5000 square miles of the best moose habitat we could find. It is easy to see ½ mile out each side of the airplane while traveling giving 1-mile wide coverage. We did this, as good moose habitat is also good wolf habitat. Since we saw 110 moose in 5000 square miles we come to a density of .022 moose per square mile. I realize we did not cross section all these square miles to find every moose. But we did put 5000 air miles over just the best winter habitat - along rivers and just above tree line on the hills. Since we just covered the highest density areas I feel this figure to likely average out if the lower density areas were figured in.

A moose density of .022 per square mile is absolutely unheard of. Nothing has ever been recorded this low where moose occur. Several years ago before things really got bad even official surveys came up with the lowest moose densities ever recorded - in an area which 15 years ago had one of the highest and one in which the habitat continues to be extremely healthy.

Moose densities in these areas used to average well over 1 per square mile or over 45 times what we recorded last winter. If this is not a biological emergency I don't know what is.

The original area opened around McGrath was later expanded to include the area in which it was thought the wolves would range into. This was figured to be another 20 miles or so. Yet every pack, which kills all the game in its territory, will just keep traveling until it finds food. An example of this is a pack of 24 wolves I followed from Two Lakes on the Stony River through Merrill Pass and then down to the Drift River. This is over 100 miles on the ground and over 75 miles straight line. I quit following them as I was getting low on fuel so God only knows how far they went from Two Lakes that is devoid of any moose. I guess my point is that if you try to conduct wolf control where the game is already gone the wolves that ate everything will be gone also - hunger overpowers any desire to stay in their territorial range.

Probably because of this a current Board of Game member at the February meeting told me that if we ended up shooting wolves outside the open area to just report them taken inside the area.

When talking about the control program Toby Bodro stated "what is being done and what should be done are two different things". He also said the BOG was planning on expanding the wolf control program to include all of Unit 19. Meaning there was a problem everywhere - not just in the control area. A former State biologist said he 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. I told him I thought poison was outlawed because it killed wolverine, fox, lynx, eagles, and ravens also. Several other Board of Game members along with high level ADF&G personnel and many others testifying at the February BOG meeting all had the same comment to me: It is much more important for a pilot as good as you to be out killing wolves then to be here testifying at this meeting. A Board of Game member also suggested I contact Lucky Egress in McGrath, who had one of the four original aerial control permits, to work with him to find wolves. I contacted Mr. Egress, before heading to McGrath, and he said his airplane engine was broken and that there were few if any wolves inside the open area. When you hear comments like this from our leading wildlife managers and experts you get the feeling of just how overwhelmingly important it is to reduce wolf numbers immediately.

Several ADF&G people at the BOG meeting again made the comment that 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.

I don't know if I was exactly brainwashed at this point but I was feeling immense pressure from all sides to kill wolves. Conditions to find and track them would disappear as the snow started to melt and my spring bear hunting season was also getting close - which added to the pressure to do something effective soon.

The State prosecution will probably portray me as a renegade outlaw guide with little or no respect for the State, its laws, or its wildlife. They will probably say I did this to make money by selling the wolves or by selling more moose hunts. My response is if someone doesn't do something soon there will be no moose, no caribou and no wolves left to hunt. I have heard the troopers feel that I should never be allowed to guide again. Is this because I'm such a bad guide or that they feel enormous political pressure to punish me severely? I have been told that even the governor was contacted over my actions. Why should I and especially my family be signaled out for severe punishment

when I was just trying to help? I even assisted the troopers in every way possible during their investigation. Does this action also call for the harshest punishment? I hope you realize just how much I love and respect this State and its wildlife and exactly how much pressure I was under when I broke the law. The only violations I have ever had in my whole life are two speeding tickets - even though my entire life has revolved exclusively around hunting, fishing, and trapping. Is this the past conduct and record of someone who is a renegade, does not respect the resource should not be shown any mercy and not given one chance to learn from his mistake?

The only license required for the issuance of the aerial control permit was a trapping license and in fact only my trapping license number was written on the permit. Firearms are a legal method of taking furbearers under a trapping license and wolves are classified as furbearers. At the same time we were taking wolves by shooting we were setting snares and traps. At no point during the wolf control program did we do any hunting or guiding whatsoever. Yet the State prosecutors maintain we were hunting and wish to suspend both my personal hunting and guiding privileges along with probation of 10 years of no jailable offenses and no fish or wildlife or guiding offenses. In other words if I snagged a red salmon in the Kenai River, which is done continuously by accident, I would lose my guide license and the only way I have to provide for my family? Doesn't this seem excessive? Why don't they add in speeding & parking tickets? If the troopers and the governor feel I must pay dearly let me pay the price and not my family. Put me in jail - don't cripple the only way I have to provide for my family.

The Prosecution has said it is trying to keep emotion and feelings out of this to a big point because of what it is. What is it to the Prosecution? A very controversial and political issue very much in the publics' eye? How can I keep emotion and feeling out of this when my whole life is wrapped up in it? Am I not supposed to fight for my family just because the governor and prosecution would probably like it if I just dried up and blew away?

(Let Brent argue the penalties and technicalities?)

As far as what we did wrong trapping I was planning on flying out and pull the snares just as soon as everything settled down after getting our bear hunters out into the field. Before this happened my home was searched and my airplane seized. This was

so devastating and stunning I didn't sleep at all for over a week and with spring hunters coming I was mentally a very big wreck. I relied on my wife and employees to make pretty much every decision from then on. That I had leg-hold traps out along with the snares at the wolf set was overlooked and I accept responsibility for these.

In early April a guide friend of mine, named Tony Lee, called and left a message that he had found a wolf set on the Swift and wanted to know if it was mine. On April 4th I returned his call and confirmed it was mine. He wanted to know if I needed help with it. I said yes and that I was in big trouble with the State along with trying to somehow get through my spring season. I said that the last thing I wanted to do was make the 300-mile round trip flight through the Alaska Range just to shut the set down. I told him to set off all the traps and snares if he would. Tony Lee replied he would do that but since the set was still catching wolves he would really like to keep it going and that a bear-hunting client of his wanted a wolf or two out of it. I told him he could do whatever he wanted.

On April 11 I was so worried that the set may get me into more trouble that I called Tony Lee and told him I didn't want to worry about the set and to shut it down no matter what. Tony Lee said he would do that and that he would send me $1000.00 when he sold the wolves and wolverine he had gotten out of the set.

My wife at some point here also talked to Tony Lee about all this. As a result I don't know what to say about the trapping charges except I counted on Tony Lee to do as he said and that he wanted to take over maintenance of the set because it was still catching wolves.

To date I have yet to hear again from Tony Lee and he is avoiding my attorney. We have not received any money from the furs as he promised either. If you would like confirmation of any of this my wife can help you. We also have phone records showing when I called Tony Lee.

As I indicated before this has literally crushed my life and to a large extent the life of my family. For over a week I didn't sleep at all and after that only with medical help. Both my wife and I quit eating and each lost 20 lbs. before we could force ourselves to eat. During the first couple months I would get severe anxiety attacks that at night forced me to hide under

my desk and during the day led to dry heaving, uncontrolled sweating and shaking. I developed severe back pain from remaining bent over virtually day and night and to this day have non-stop headaches. I rack my brain non-stop while I'm awake to figure out where I went wrong. I still refuse to go outside unless forced.

I have made 4 half-hearted attempts at suicide - 3 while flying and once while helping Jake get a wounded bear out of his den.

My wife, Jackie, finally convinced me to not take my own life because she said she couldn't bear raising our daughters without me. I guess to the extent possible my stunned brain has realized that by trying to protect the future of my family and of those that also depend on moose and caribou I had just thrown my families future away.

I guess at times I feel like the State of Alaska has let all of us down. I poured my heart and soul into my life's dream only to watch the State do absolutely nothing for many years to stop it from being slowly wiped out. In a way it's like slow agonizing torture. I look at how carefully the State sheppard's and guards the businesses of loggers, fishermen, miners, tourism operators, oil companies and all others. I see how the state spends millions promoting tourism and subsidizing commercial fisherman when they have a weak salmon return. Yet my business was literally fed to the wolves and there will be no compensation for my family or me when our business collapses. It's kind of a cruel joke to me that the very first line of the State Constitution declares "This Constitution is dedicated to the principals that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry". I have been denied my right to enjoy the rewards of my industry.

I understand that I did something wrong and I understand I must be punished. I hope you understand that it was only after I received a permit for aerial shooting that I purchased the best shotgun and ammo money could buy and spent hours modifying my best plane to help ADF&G. This does not excuse what I have done but it shows there was absolutely no intent to do so until started down this path by the State. I did not do this with the thought I was hunting or guiding or making money. I did it because of all the people out there; I understand probably best the staggering impact wolf predation has had in recent years. In the many, many hours I have flown this area in winter I have

seen virtually no sign of anyone else doing anything to control wolf numbers. The expense to operate in these areas is enormous. During the 50 hours of flying we did during the aerial control program alone we burned close to 500 gallons of fuel that costs me in excess of $6.00 per gallon.

After this springs season, which by the way I truthfully did not expect to live through, we cancelled all of our fall hunts. I took everything extremely seriously and would not risk letting hunters depend on me when I did not know what was going to happen. The cancelled fall hunts would have provided ¾'s of our total years income to Jackie and I. Yet we still had to pay the State thousands in land leases and permits for our lodge and hunting camps even though we did not use them this past season. We had to cancel all my summer flightseeing trips because the plane I used for this was seized. Our legal bills are growing and we lost not only my income for this past season but also my wife's. Neither of us have any other income.

Again I cannot even begin to explain how much I regret what we did. I have a very hard time thinking of anything else. I look at life and how short it really is and how in an instant I threw a very large part of mine away. How can my wife and daughters forgive me? How can my friends? How can anyone else whose future I jeopardized by threatening the only program that can save the moose and caribou resource? How will I put my daughters through college now that I may have to start over and learn a new trade?

If you can find it in your heart to give me a chance I promise to never, never let you or the State down again. Please let me have the chance for me to live out the rest of my dream of being able to provide for my family as an Alaskan Big Game Guide.

In Trooper Gibbens report he states that "based on his experience there is clear economic incentive for Haeg & Zellers to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for them to harvest with clients".

Since Mr. Gibbens is allowed to give an opinion based on his experience in his report I would like him to give an opinion based on his experience with some other issues. I would like to have him and state biologist Toby Bodro answer these questions:

1. If they think there has been a huge drop in moose and/or caribou numbers in Unit 19 in the last 15 years?

2. If there has been a huge increase in wolves in the last 15 years in this same area?

3. If there are large areas almost devoid of moose and/or caribou such as around McGrath and the Upper Stony River that previously had abundant populations?

4. That if wolves are not reduced Unit wide all of Unit 19 will likely join the other areas which are now virtually devoid of moose and/or caribou?

5. If Mr. Gibbens and Mr. Bodro would agree that if moose and/or caribou numbers get much lower it likely will not be viable to operate or keep a hunting lodge and camps on leased State land in any of Unit 19? If Mr. Gibbens, who has seen the lodge my family and I built, can understand the effort and money required to build it and the pain and stress involved in likely having to burn it down?

6. If Mr. Gibbens and Mr. Bodro think the State has maintained its wildlife on the sustained yield principle – as required by the Alaska State Constitution?

7. If Mr. Gibbens agrees with the numbers of moose, wolves, and kills we compiled while flying in and around the wolf control area – 110 live moose, 27 wolves, and 8 dead moose?

8. If Mr. Gibbens feels if that I had not received a permit if I would have still purchased a shotgun and went out and shot wolves from the air?

9. If Mr. Gibbens and Mr. Bodro feel what I did was needed even if it was illegal?

I don't really know how to explain or express what I know to be true of wildlife numbers and trends in Unit 19. It is what I believe most would call a biological emergency. Moose numbers have bottomed out to very close to zero in the last couple years around McGrath and more recently in the Upper Stony River. The wolves responsible have moved to other areas with some moose left. Last winter was the last chance to keep moose numbers from hitting virtually zero around Lime Village in my opinion.

In a very misguided way I felt I had to step in and keep this biological emergency from happening. There was a very overwhelming compulsion to do something. After so many years of watching moose and caribou decline so fast that to stand by and watch the very last of them to be eaten wasn't possible for me. I think in most emergency situations it is natural to react without thinking things through. Now that I know the consequences it would be very possible for me to stand by - I just won't go out there in the winter when the battle that is being lost is so obvious.

We assisted in the investigation in everyway possible including rushing a map with kill locations to Mr. Leaders ASAP at his request.

As an observation the Board of Game must also want wolves reduced Unit wide because for years now they allow anyone, even aliens, hunting or trapping to take an unlimited number of wolves anywhere in Unit 19. This regulation sounds effective has done just about nothing to increase the wolf harvest.

I never contemplated the consequences of what we did until after the fact. We flew out with the best of intentions and got carried away before we ever stopped to think how it could affect our lives. Being that I've never been in trouble before has probably added to my naivety. I now have had 7 months of round the clock mind crushing fear to examine in minute detail every last consequence of my actions. The amount of fear I have gone through has changed my life forever. This new fear has eclipsed all the really big fears I had before including flying low over miles of open ocean on wheels, getting into instrument flight conditions in very bad weather while in the mountains, and prying a wounded brown bear out of his den. I now can do and have done all of these without the slightest hesitation.

In the end I guess I should not have cared or tried so hard to keep the resource from self-destructing. Yet how do you do that when the resource is almost as big a part of your life as your family? Just watch it run off the edge of a cliff? Or do you flight as hard as you possibly can as I have done? In a way I feel I was in the same exact situation when I was 15. My parents left me to watch our lodge for the very first time by myself. An 8-1/2' sow brown bear and her 2 very large cubs broke into our lodge at night and started eating our winter food supply. Our bear dog was no match for 3 bears at once and I tried shooting in the air, cracker shells, roman candles, and

spot lights to make them leave, all to no avail. In the morning they were gone and I boarded up the wall they had went through with 2 layers of ¾" plywood. The next night they came back and broke through again. Again I was unable to make them leave. They even started charging me whenever I got close. The next day I boarded up the hole again and was shocked at how much food they had eaten and destroyed. I realized if this went on there wouldn't be anything left for my parents and I to eat that winter. The next night I shot one cub in the dark at 10' away as it charged and shot both the sow and other cub inside the lodge the following night. At the time I only knew this was the right thing to do and didn't consider if it was legal. One main difference in this situation as compared to the wolf/moose situation is that our winter food could be replaced in one day; the moose may not be able to be replaced for decades.

If you ask everyone that lives or spends time in Unit 19 I know virtually all would agree the right thing to do is to reduce wolf numbers rapidly and that it is long overdue and possibly too late. But just because something is right does not make it legal however. No matter how important I feel it to be to save viable caribou and moose populations it is wrong to take the law into my own hands. I ask you to again look carefully at my intentions, at the State Constitutions mandate to the Department of Fish and Game, at my lack of <u>any</u> prior offenses except 2 speeding tickets, at the Board of Games intention of expanding aerial wolf control to include the area where we took wolves, at the likelihood of me ever doing anything to jeopardize my families future again, at the circumstances involved, at the extent to which my actions harmed the public, at how much Jackie and I have suffered already physically and emotionally, at how much we both have suffered already financially, at what motivated me, at the fact there are absolutely no limits on the number of wolves anyone, including non-resident aliens, can take either hunting or trapping, at the local peoples feelings toward unregulated wolf numbers, at the fact that I have been steadily decreasing the number of hunts we conduct in Unit 19 to the point we may no longer be able to pay the land lease our lodge sits on, the fact that every State biologist I have talked to agree unchecked wolf numbers will continue to drive the moose population down, that I have exhausted every option possible to control wolf numbers legally, that I embarked on the wolf control program legally, that I felt under pressure to make the program a success, that the program ultimately ended up taking less than ½ the wolves specified, that my observations led me to believe wolves had eliminated all the caribou in one individual

herd and would virtually eliminate all remaining moose within a large radius around Lime Village before the next winters program, 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 was encouraged to poison wolves by a former State biologist, that several current Board of Game members told me it was much more important to kill wolves than to testify at the Board of Game , that you read carefully each and every letter sent in my behalf, that we assisted the troopers in every way possible in their investigation, that we were told by ADF&G that if more wolves weren't taken the program may be cancelled, why were we the only team added to the original 4 teams that took less than ¼ of the wolves wanted in the first 4 months of a 6 month program? Wouldn't you add 30 teams to the program instead of one? They were averaging ½ of a wolf per team per month. If they needed 30 more wolves taken in 2 months they would need to add 30 teams, that every wolf we killed was near a freshly killed moose, that I gave my very best to the State to help with the control program - my best airplane that is the backbone of my ability to provide for my family, the best shotgun money could buy, the best ammo and my best intentions, that you request of Trooper Gibbens his personal feelings and thoughts of my intentions and why we did what we did and how we got to where we could do something illegal like this, that I have come very close to committing suicide over this, that I have been denied my right to the enjoyment of the rewards of my own industry as guaranteed by the State Constitution, that I accept responsibility for breaking the law, that I have voluntarily given up guiding since May 26, 2004, that I had told Tony Lee not once but twice to close my snare set down and he agreed both times, that you look very closely at what happened to my southern guide neighbor Jim Harrower and tell me that the strain of watching everything you have being wiped out might cause people to do something they would never consider otherwise.

My attorney has counseled me many times against bringing to attention the fact that I am a big game guide and that I make my living by killing moose and caribou among other animals. He says people invariably receive harsher penalties when it is brought out they are big game guides acting out of greed and they did something illegal just to make more money at the expense of a public resource. It is also of great concern that we take a very valuable and much depended upon source of food from the residents of Alaska and give it to rich people who don't live in Alaska and may not even live in the United States.

First I would like to point out that less that 1% of all the meat produced by our business leaves the State. A large portion of meat is given to Alaskan residents who are unable or too old to hunt anymore and the rest is divided between my family, my guides and others who would kill their own moose if moose meat weren't given to them. I figured out the difference between a moose killed by one of my clients and a moose killed by one of my guides. Both moose would be eaten by my guide but the one killed by a client would also help employ at the very minimum 8 Alaskan residents with the approximately $15000.00 he will leave in the State.

More importantly if someone was only interested in money and didn't care about the resource wouldn't you think they would have charged a rich hunter $5000 to shoot just one wolf from the air? Wouldn't it be even better to charge $20000 to shoot a 70" moose from the air when there was no snow on the ground to record you did something illegal? What about $30000 for a guaranteed 10' brown bear that also represents a fraction of the risk of killing wolves in the snow?

What we did does indeed benefit my guide business along with subsistence users and especially those who will come to depend on moose and caribou in the future. It may preserve a resource that my business, lodge, cabins, camps and land leases must have to survive. If the moose resource goes much lower than what exists at this moment in time I will be forced to give up or burn our lodge, cabins, camps, and leases - as Mr. Harrower has had to do. This may not seem a big sacrifice to some but to me who grew up in the wilderness it is a very beloved and integral part of my life's dream that I hoped my kids would be able to continue.

If I was looking to just make money with no regard to the resource would I have spent the many thousands of dollars and untold hours educating the legislators in Juneau, the BOG all over the State, the Governor, started Alaska's Western Wildlife Alliance, became a member of Kenai Fish & Game Advisory Committee, and sent out literally thousands of letters explaining what was happening to the moose and caribou of Unit 19 from wolf predation?

If I wanted to just make money why did I fly for over 30 hours inside the open wolf control area looking in vain for wolves

when it costs me at least $100 per hour to operate my plane out there?

Again I urge you to remember Jim Harrower who was my neighbor to the south and east if you think I am not serious when I tell you we are hanging on by a thread. This year Mr. Harrower was forced to give up his beautiful lodge, cabins, camps, and leases on the Stony River which represented 27 years of hard work and an investment that is incalculable. This was a catastrophic blow to Mr. Harrower.

(Read Harrower's letters to Knowles at this time)

As Mr. Harrower indicated in his letters to then Governor Knowles many subsistence users and guides have considered suing the State for mismanagement of wildlife resources in violation of the State Constitution.

I received a phone call on November 1, 2004 from a board member of the Alaska Professional Hunters Association. Due to the increasing numbers of guides in western Alaska that have lost and will lose their guide businesses and lodges APHA is starting action to file suit against the State of Alaska. I will be included in this action as I am one of the many APHA members that are losing his lodge and business.

In closing I hope you realize just how grim the situation really is and the hardship and strain endured by both guides and subsistent users alike for the past 10 years. Also that both Jackie & I voluntarily gave up our fall guide season, which represents ¾ of our combined yearly income. This is a very steep price to pay - especially for a family raising 2 kids. I did not do this for any monetary gain - I did it to protect the future of a resource I hope everyone, including my kids, will one day be able to depend upon again. I tried every legal available means to do this until it became such a biological emergency I lost my perspective. As everyone who has tried to cheer me up in the past 8 months has said - I'm only human and humans make mistakes.

When it comes time to sentence Tony Zellers you must remember it was my idea to get the aerial wolf control permit, that I was the one deciding where we should fly, that in most instances I am the employer and Tony the employee, and that I was constantly making observations at the unbelievable low numbers of moose and caribou where 10 years ago there were thousands - pretty much

telling him all the reason I felt why it was so vitally important to reduce wolf numbers before they finished off any remaining moose and caribou.

I give you my word I will never knowingly break another game law for the rest of my life. ***Read letters of support now***

Dave Haeg

STATE OF ALASKA THIRD DISTRICT
2010 AUG -2 AM 11:44
CLERK TRIAL COURTS

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

Attention Superior Court Judge Stephanie Joannides

DAVID HAEG,

Applicant,

v.

STATE OF ALASKA,

Respondent.

) POST-CONVICTION RELIEF
) CASE NO. 3HO-10-00064CI

Trial Case No. 4MC-04-00024CR

7-29-10 CERTIFICATION OF SERVICE

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

COMES NOW Applicant, DAVID HAEG, in the above case, hereby files this certification of service.

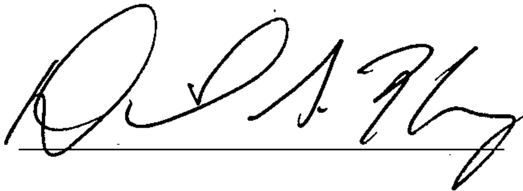
Facts

On July 13, 2010 Haeg emailed Wendell Jones a request for an affidavit. Due to internet problems Mr. Jones did not get the affidavit request until July 23, 2010.

Because there was not sufficient time to send it back to Haeg so he could include it in his motion to supplement the record, Mr. Jones sent a copy of his affidavit directly to Judge Joannides so it would make it to her before the July 28, 2010 deadline for supplementing the record.

Haeg now certifies that a copy of this affidavit was mailed to opposing counsel on 7-29-10.

I declare under penalty of perjury the forgoing is true and correct. Executed on 7-29-10. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249
haeg@alaska.net

Certificate of Service: I certify that on 7-29-10 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A; Steve VanGoor, ABA; and U.S. Department of Justice

By: ____________________

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249

STATE OF ALASKA THIRD DISTRICT
2010 AUG -2 AM 11:44
CLERK TRIAL COURTS
BY:

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

DAVID HAEG
Applicant,
vs.

STATE OF ALASKA,
Respondent.

Case No.: 3HO-10-00064CI

AFFIDAVIT

1. My name is Wendell Jones and I am a former Alaska State Trooper.

2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued straight through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

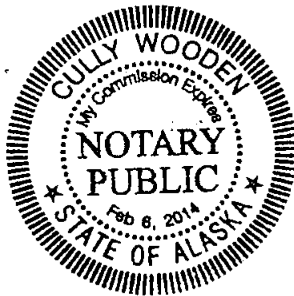
6. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, WENDELL JONES, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.

Wendell Jones

SUBSCRIBED AND SWORN to before me this 20th day of July, 2010.

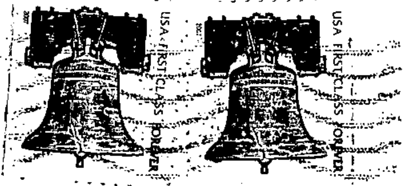


Notary Public in and for Alaska

My Commission Expires: 2-6-14

P.O. BOX 123 • SOLDOTNA, AK. 99669

ANCHORAGE AK 995
30 JUL 2010 PM 3 1



Anchorage Superior Court
825 W. 4th Ave
Anchorage AK 99501

99501+2004

Attn Judge Joannides

00496

FILED
STATE OF ALASKA
THIRD DISTRICT
2010 JUL 30 PM 1:
CLERK TRIAL COURT
BY:
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

DAVID HAEG)
)
Applicant)
) POST CONVICTION RELIEF
v.) case No. 3HO-10-0064CI
)
STATE OF ALASKA)
)CERTIFICATE OF SERVICE
) BY MAIL
)

(Trial case No. 4MC-04-00024CR)

CERTIFICATE OF SERVICE

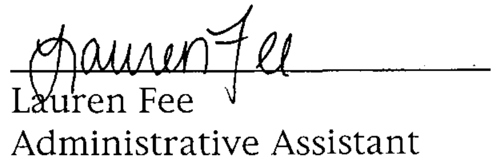
I, Lauren Fee, state that I am employed by the Alaska Commission on Judicial Conduct, 1029 W 3rd Avenue, Suite 550, Anchorage, Alaska 99501, and that on the 30th of July 2010, I mailed the "Request for 'Confidentiality' of Order for Information Dated 7/28/2010 and Stay of Order Pending Commission Meeting to Address the Request", in the above-titled case. By mail delivery:

David S. Haeg
P.O. Box 123
Soldotna, Alaska 99669

Andrew Peterson
310 K Street Suite 403
Anchorage, Alaska 99501

Alaska Commission on Judicial Conduct
1029 W. 3rd Ave., Suite 550
Anchorage, Alaska 99501
(907) 272-1033
FAX (907) 272-9309

Judge Margaret Murphy
3670 Lake Street, Building A
Homer, Alaska 99603



Lauren Fee
Administrative Assistant

Alaska Commission on Judicial Conduct
1029 W. 3rd Ave., Suite 550
Anchorage, Alaska 99501
(907) 272-1033
FAX (907) 272-9309

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

FILED
STATE OF ALASKA
THIRD DISTRICT
2010 JUL 30 PM 1:35
CLERK TRIAL COURTS
BY: ______
DEPUTY CLERK

DAVID HAEG,	)	
	)	
Applicant,	)	
v.	)	
	)	
STATE OF ALASKA,	)	
	)	
Respondent,	)	POST-CONVICTION RELIEF
	)	case No. 3HO-10-00064CI
	)	

(Trial case No. 4MC-04-00024CR)

REQUEST FOR "CONFIDENTIALITY" OF ORDER FOR INFORMATION DATED 7/28/10 AND STAY OF ORDER PENDING COMMISSION MEETING TO ADDRESS THE REQUEST

In an order of the court dated July 28, 2010, the court identified confidential Commission on Judicial Conduct documents and attached correspondence labeled "confidential" by the Commission. The order also tied the facts of a specific complaint to a Formal Ethics Opinion. Formal Ethics Opinions are drafted with care by the Commission to preserve the confidentiality of the judicial officer and the complainant in complaints that either have been dismissed or privately and informally addressed. Consequently, the order makes public what the Commission; by statute, is required to keep confidential (see AS22.30.060 and Commission Rules of Procedure Rule 5).

The 7/28/10 "Order for Information" is unique, as the Commission has never before had a court request access to

Alaska Commission on Judicial Conduct
1029 W. 3rd Ave., Suite 550
Anchorage, Alaska 99501
(907) 272-1033
FAX (907) 272-9309

Received in Civil 8/3/10