

IN THE SUPREME COURT FOR THE STATE OF ALASKA

DAVID S. HAEG)
)
Appellant,)
)
v.)
)
BRENT R. COLE,) Supreme Court No.: S-12771
) Trial Court Case #3KN-06-844 CI
Appellee.)
)

Ak Bar Case No.: 2006F007

APPEAL FROM THE SUPERIOR COURT
 THIRD JUDICIAL DISTRICT AT KENAI
 THE HONORABLE HAROLD BROWN PRESIDING

From a final judgment of the Alaska Bar Association
 Fee Arbitration Panel
 Third Judicial District at Anchorage
 Nancy Shaw, Panel Chair/Attorney
 Yale Metzger, Attorney
 Robyn Johnson, Public Member

REPLY BRIEF OF APPELLANT

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Filed in the Supreme Court of
 The State of Alaska, this _____
 day of April _____, 2008.

David S. Haeg, Pro Se Appellant

Marilyn May, Clerk
 Appellate Courts

By: _____
 Deputy Clerk

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COLE'S APPELLEE BRIEF FAILS TO REFUTE HAEG'S CLAMS

1. Cole claims that factual determinations cannot be appealed & failed to provide evidence of affirmative wrongdoing. [Ap.Br.1].

AS 09.43.120 holds factual determinations can be appealed and vacated if (1) the award was procured by fraud or other undue means; (2) there was evident partiality or corruption; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to hear evidence material to the controversy or otherwise so conducted the hearing to substantially prejudice a party; or (5) there was no arbitration agreement & the issue was not adversely determined. Haeg claimed the award & confirmation was a product of (1) through (5) & provided evidence of this. [At.Br.1-86].

2. Cole claims Haeg violated “Fish & Game” laws by “hunting”. [Ap.Br.2].

The wolf control program (WCP), in which Haeg was participating, was specifically excluded from *hunting, game, and/or guiding* violations & Cole never found this out. *See 5 AAC 92.039 & 5 AAC 92.110*. Cole never disputes the State used perjury moving all evidence from the WCP Game Management Unit (GMU) to Haeg's GMU in order to prosecute Haeg for hunting, game, & guiding violations, & that he never challenged this. Cole never disputes failing to find & use the fact the WCP laws would have prevented Haeg with being charged with hunting, game, and/or guiding violations. [Ap.Br.1-22].

3. Cole claims Troopers found evidence Haeg & Zellers falsified records. [Ap.Br.2].

This is false. [Tr.80-81, 196].

4. Cole claims Haeg’s position was that he could not lose his guide license for five years. [Ap.Br.3].

This is irrefutably false. [Tr.480-482].

5. Cole claims to prevent felony charges & cancellation of hunts, “which were weeks away”, Haeg was advised to give a statement. [Ap.Br.4].

Haeg started guiding hunters 2 weeks before Haeg ever hired Cole. [Tr.52]. Cole testified he could not think of a theory that would support felony charges. [Tr.244].

6. Cole claims Haeg’s interview could not be used against Haeg. [Ap.Br.4].

Yet this interview was used as the primary evidence for the State’s entire case against Haeg. It was used (corrupted by the perjury moving the evidence) as the *only* probable cause for *most* of the charges filed against Haeg & as primary probable cause for the rest. [Ex.433-464]. It was used to get Zellers, the State’s main witness against Haeg, to testify against Haeg & to obtain evidence. [Tr.75-76, 83-84, 214, 247]. Cole at the very time in question, *told* Haeg the statement could be used against him. [Ex.475, 477, 491].

7. Cole claims “Zellers likewise agreed to cooperate”. [Ap.Br.4].

As proven above Zellers cooperated only because of Haeg’s statement. [Tr.75-76, 83-84, 214]. Zellers cooperation could not be used against Haeg.

See Kastigar v. United States; People v. Campbell; Counselman v. Hitchcock; Prudhomme v. Superior Court; People v. Gwillim; People v. Morris; Murphy v. Waterfront Commission of New York; Nelson v. Municipal Court; Daly v. Superior Court supra; & Alaska Rules of Evidence 410.

8. Cole claims he confirmed in a letter that Haeg’s statement could not be used against Haeg. [Ap.Br.4].

Yet the State used Haeg’s statement, unopposed by Cole, both before & after Cole wrote this letter. [Tr.83-84, 247, Ex.419-20, 433-464].

9. Cole claims “in August through October the parties discussed a number of different scenarios to resolve the case. On November 4, 2004 the State filed an information & requested an arraignment/change of plea/sentencing which was scheduled for November 9, 2004 in McGrath.” [Ap.Br.4].

Cole’s own itemized billings, however, prove the plea agreement (PA) was finalized on *August 27, 2004* [Ex.424-25] & prove *he* scheduled the November 9, 2004 arraignment/change of plea/sentencing on *September 15, 2004*. [ABAEx.3].

10. Cole states, “Both informations set forth Haeg & Zellers total criminal activity based upon their individual statements to law enforcement.” [Ap.Br.4-5].

How can this happen when both Cole & Fitzgerald testified under oath Haeg & Zellers had immunity for these statements? [Ex. 248-49, 252-53, 383-86].

11. Cole claims because further approval was needed the parties cancelled the COP/sentencing portion of the hearing. [Ap.Br.5].

Why would Cole have Haeg cancel a whole years income, schedule a COP/sentencing, & fly in witnesses from as far away as Illinois if he was going to have to cancel at the last minute to get approval – especially approval *not needed*? [Tr.58]. Numerous witness testimony & evidence prove Cole cancelled the COP/sentencing at the last minute because the just filed amended information violated the PA that had been in place for months & would require Haeg’s guide license be taken for at *least* 3 years. [Ex.531-35, Tr.57-58, 101, 102, 113, 124-126].

12. Cole claims settlement efforts after the COP/sentencing was cancelled were unsuccessful because Haeg refused to enter any PA which required forfeiture of the aircraft. [Ap.Br.5].

Recordings of Cole, while he was still Haeg’s attorney, prove that efforts were unsuccessful because the State had maliciously violated the open sentence PA that Haeg had already paid them for, and then asked for Haeg’s airplane to be forfeited, & Haeg

was unwilling to renegotiate after they had reneged. [Ex.479-82, 505-07, 511, 513-14, 531-35].

13. Cole claims Zellers's testimony against Haeg "independently" recounted the criminal activity of both individuals. [Ap.Br.5].

As proven by Zellers & Fitzgerald's sworn testimony, Zellers cooperation with the State was a fruit of Haeg's statement. [Tr.75-76, 83-84, 214, Ex.683].

14. Cole claims it was unclear if Haeg's statement was used. [Ap.Br.5].

Haeg's statement was used as the only probable cause for most of the charges & as primary probable cause for the rest in every information filed against Haeg including the information Haeg went to trial on. It was also used to obtain evidence & the State's primary witness against Haeg at trial. [Tr.75-76, 83-84, 214; Ex.433-464].

15. Cole claims Haeg, through his 2nd attorney, could have filed motions to dismiss charges, suppress evidence, & to suppress Haeg's statement. [Ap.Br.5].

Cole admits he did not provide effective representation – entitling Haeg to a refund.

16. Cole claims that Robinson agreed Cole's subpoenaed testimony would be detrimental to Haeg & that Cole did not have to appear in person. [Ap.Br.6].

Recordings of Robinson prove this false & show Robinson & Cole conspired so Cole did not have to testify about all Cole had Haeg do for a binding PA Cole let the State break, unopposed, at the last minute. [At.Br.18; Tr.286-87, Ex.707-709, 731-40].

17. Cole claims Haeg has no proof of corruption, bias, partiality, collusion, & conspiracy of panel members. [Ap.Br.6].

Haeg presented the panel irrefutable evidence Cole lied to Haeg to deprive Haeg of rights that would ensure fundamentally fair procedures, presented the panel irrefutable

evidence Cole perjured himself to the panel to cover this up, & the panel conducted the proceeding to prejudice Haeg, did nothing against Cole, & then awarded Cole money Haeg never had notice was at issue. [Tr.1-386]. In a taped conversation with panel chair Shaw, she refused to tell Haeg who wrote the decision & award & refused to tell Haeg she didn't have any concerns with the decision & award. Attorney Metzger, one of the 3 panel members made this statement,

METZGER: "I guess and – and my point is if – if – if I don't hear you plowing any ground that you haven't already plowed and you're – you're concern – you're complaint that Mr. Cole cou – might of committed malpractice and that's why he's - your owed a refund of his fees. I understand that argument and I think everybody else – I don't want to speak for everybody else – but I think everybody else on the panel understands that argument. We don't have to plow that ground again. You did that on direct..."

HAEG: "Well he..."

METZGER: "*You did that when you called Mr. Cole as witness and asked him questions* and frankly I'm getting impatient with you because you are burning up a lot of time over things that we have already heard and this has been – I – I – I believe this is a pretext for something else and you should be able to get a read from where I'm going." [Tr.296].

Haeg had not called Cole as a witness & asked him questions yet. [Tr.1-296].

18. Cole claims that the game violations that Haeg “admitted” to “subjected Haeg to significant possible criminal penalties which were ultimately imposed.” [Ap.Br.6].

Haeg's immunity, which Cole testified Haeg had, *precluded* Haeg from *any* consequences, no matter how small, from Haeg's "admission".

19. Cole claims Haeg fired Cole “shortly after the charges were filed.” [Ap.Br.9].

Haeg fired Cole a whole *month* after charges were filed. [Ex.433-48 & ABAEx.3]. During this month Haeg numerous times requested Cole to stand up for

Haeg's PA – with Cole lying to Haeg so this wouldn't be done. [Ex.475-535].

20. Cole claims Haeg hired a new attorney who could have, but never did, contest any of the State's "legal maneuverings". [Ap.Br.9].

Cole admits he was so ineffective Haeg had to hire a second attorney who was also ineffective – entitling Haeg to a refund.

21. Cole claims it is "personal frustration with our justice system" that led Haeg to complaints of fraud. [Ap.Br.9-10].

It is the misrepresentation & lies of Haeg's attorneys to help the State deprive Haeg of fundamentally fair proceedings that led to complaints of fraud. [At.Br.1-86].

22. Cole claims Haeg's brief is devoid of any specific evidence of fraud or undue means. [Ap.Br.10].

Haeg showed specific evidence of affirmative wrongdoing on the following pages of his brief. [At.Br.2-25, 27-29, 31-38, 57-74, 77-80, 83-84].

23. Cole claims Haeg raised new issues on appeal & that Haeg failed to adequately brief issues. [Ap.Br.11].

Haeg did not raise new issues, Cole fails to cite what these new issues are, and Haeg's issues are adequately briefed [At.Br.1-86].

24. Cole claims, "It is unclear from Haeg's brief why he does not believe the State agreed with Cole's assertions in the letter to Leaders." [Ap.Br.11].

Haeg does not believe Cole because the State, *in every information filed against Haeg, including that he went to trial on, specifically used Haeg's "immunized" statement, made when Haeg was "king for a day", against Haeg.* Haeg does not believe Cole because Haeg's "immunized" statement made when Haeg was "king for a day" was used to obtain Zellers's cooperation & testimony against Haeg at trial. [Tr.75, 83-84, 214]. Haeg does not believe Cole because Fitzgerald, on open record, *stated that there*

was no immunity for the statements & that this was proved by the State's use of them "for whatever it was goanna do with that information and as is demonstrated they used it to charge additional charges against both Mr. Zellers & Mr. Haeg." [Ex.683]. Haeg does not believe Cole because the State *used Haeg's immunized statement to obtain physical evidence against Haeg.* [Tr.247 & Ex.683]. Haeg does not believe Cole because of the following *taped* conversations between Haeg & Cole when Cole was still representing Haeg:

HAEG: "I don't know have you seen all the crap hitting the newspapers etc. etc. I assume?"

COLE: "Well yeah."

HAEG: "Um & is that you know *at the time we gave our – our statements & 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 & uh not do anything about that or what?*"

COLE: "*Well um I don't know what we're goanna do, ok.*" [Ex.475].

HAEG: "*... 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...*" [Ex.477].

25. Cole claims he did not have to file motions because Haeg fired Cole & Cole could not file any motions after he was fired. [Ap.Br.11-12].

Cole represented Haeg for *9 months*, including representing Haeg for a whole month *after* two (2) informations were filed that used Haeg's immunized statement against Haeg. [Ex.433-64]. Not *once* did Cole ever indicate to ignorant Haeg a motion could be filed to stop all of this malicious/vindictive prosecution. [Tr.61, 102, 104-105, 117, 321 & Ex.433-464, 475-535]. In *9 months* Cole never mentioned the word "motion." [See *all record*]. The only thing he told Haeg & the other witnesses is "I can't piss

Leaders off because after you are finished I still have to be able to make deals with him” & “The only thing I can do is call Leaders boss.” [Tr.29, 33, 95, 380].

26. Cole claims the State could use Zellers’s testimony against Haeg because “Haeg’s limited immunity did not insulate him from his co-defendants cooperation with the State at trial through his testimony.” [Ap.Br.12].

Zellers & Fitzgerald testified Zellers cooperation was a fruit of Haeg’s statement – precluding the use of Zellers’s testimony against Haeg. [Tr.75-84, 214]. Cole & Fitzgerald testified that Haeg had “king for a day” immunity that protected Haeg’s statement from being used “for any purpose *whatsoever*”. [Tr.181-182, 283-285].

27. Cole claims Haeg failed to demonstrate that Cole or Fitzgerald perjured themselves by testifying about their understanding of the “limited protection their clients received by cooperating & giving a voluntary statement”. [Ap.Br.12].

As shown above Cole & Fitzgerald testified Haeg & Zellers had “king for a day” immunity and the prosecution “wouldn’t be able to use it for any purpose whatsoever.” Cole’s recorded statements while he was still Haeg’s attorney & Fitzgerald’s statements during Zellers’s sentencing prove they *knew* there was no immunity whatsoever – irrefutably proven by all the informations which used the statements as probable cause. [Ex.475, 477, 493, 495, 683]. Cole & Fitzgerald’s sworn testimony otherwise is perjury.

28. Cole claims Alaska State Housing Authority & Law Offices of Vincent Vitalle support his position. [Ap.Br.13-14].

Both cases hold an award may be overturned only if there is a claim of affirmative wrongdoing & not just gross error. [Ap.Br.14]. Haeg claims affirmative wrongdoing & not gross error. [At.Br.1-86].”Fraud is not even mentioned. Fraud, even in an initial pleading, must be averred with particularity.” Haeg specifically claimed fraud, perjury,

deception, conspiracy, & other affirmative wrongdoing & specifically cited instances of fraud, perjury, deception, conspiracy, & other affirmative wrongdoing. [At.Br. 1-86].

29. Cole claims Haeg's allegations do not amount to proof of fraud & that Haeg did not demonstrate Cole or Fitzgerald misrepresented any fact to the panel or that this was instrumental to the panels decision. [Ap.Br.14].

As shown this is false.

30. Cole claims Haeg presented no evidence that Haeg's statement to law enforcement was not what Cole represented it to be. [Ap.Br.14].

The informations Haeg presented are irrefutable evidence that Cole's claim Haeg had immunity is perjury. [Ex.433-64]. Fitzgerald's on record statement during Zellers's sentencing & Cole's statements while representing Haeg, that Haeg presented, are further irrefutable evidence. [Ex.475, 477, 491, 493 & 683].

31. Cole claims, "Perjury is not simply a misstatement or an incorrect statement. People can & do see & hear things differently. Having a different recollection – does not make a statement a lie." [Ap.Br.14].

Haeg relies almost exclusively on actual tape recordings & Court records at the time in question – tapes & records which irrefutably prove Cole & Fitzgerald's known & intentional perjury to the panel. [Ex.475-535, 683].

32. Cole claims Haeg's arguments of perjury are unfounded & unsupported. [Ap.Br.14].

As shown in this reply & in Haeg's opening brief [At.Br.2-25, 27-29, 31-38, 57-74, 77-80 & 83-84].Haeg's claims of perjury are overwhelmingly founded & supported.

33. Cole claims Haeg asked Cole be referred to Discipline Counsel because he did not properly advise Haeg about or enforce a PA. [Ap.Br.15].

Haeg asked Cole be disciplined because Cole lied to deprive Haeg of rights while he was Haeg's attorney & then, while under oath, lied to the panel & conspired with

Fitzgerald to cover this up - along with not appearing when subpoenaed. [At.Br.1-86].

34. Cole claims it was Robinson who should have filed a motion to enforce the PA, not Cole. [Ap.Br.15].

It was Cole who had Haeg give the prosecution a 5 hour statement, a whole years income, & fly in witnesses from all over for a PA the State violated just 5 business hours before it was to be completed by filing an *amended* information (which unjustifiably increased the severity of the charges that had been agreed to – & used Haeg’s statements to do so) – & was still representing Haeg for a *whole month after the violation*. Robinson told Haeg he couldn’t enforce the PA because anything that happened while Cole was Haeg’s attorney was “water under the bridge” & “nothing could be done about it.” [Ex.562-563]. In other words Cole & Robinson blame each other for the ineffective assistance of counsel & malpractice while it is Haeg & family who have to pay for it with everything they have in life.

35. Cole claims none of his or Fitzgerald’s testimony could possibly constitute “fraud” as required by the statute. [Ap.Br.15-16].

Both Cole & Fitzgerald, while under oath, affirmatively misled the panel to get a decision favorable to Cole & unfavorable to Haeg – the very definition of fraud. Cole & Fitzgerald worked together to accomplish this – the very definition of conspiracy – another description of fraud.

36. Cole claims Haeg argued it was “perjury or fraud” that Cole never informed Haeg of Haeg’s right to recover his aircraft. [Ap.Br.16].

Haeg claimed it was a breach of Cole’s duty to Haeg not to inform Haeg of the right to get his airplane back when it was of such overwhelming concern to Haeg. [Ex.475-530]. Haeg claimed it was perjury & fraud that Cole lied to the panel, while

under oath, that this was not possible when it most certainly is possible. See Waiste v. State, supra. [Ap.Br. 1, 3-5, 7, 18, 20, 24, 38-59, 71-73, 77; Ex. 479-86, 489, 505-07, 511, 513-14, 518, 524, 533, 535].

37. Cole claims Haeg’s argument that he was entitled to prompt notice of a hearing when he was deprived of property was “not legally correct”. [Ap.Br.17-18].

Overwhelming & controlling case law & principles provide absolute proof that *prompt notice of an opportunity to contest is required by due process* & that Cole is affirmatively misleading this Court – as he did the panel & the Superior Court.

See: Waiste v. State; F/V American Eagle v. State; State v. F/V Baranof; Perkins v. City of West Covina; Mathews v. Eldridge; Mullane v. Central Hanover Bank; Sniadach v. Family Finance Corp.; Goldberg v. Kelly; U.S. v Seifuddin; Coe v. Armour Fertilizer Works; Armstrong v. Manzo; U.S. v. James Daniel Good Real Property; Brock v. Roadway Express; Joint Anti-Fascist Comm. v. McGrath; Etheredge v. Bradley; Wiren v. Eide; Boddie v. Connecticut; Fuentes v. Shevin; Powell v. Alabama; Johnson v. Zerbst; Marbury v. Madison; Memphis Light, Gas & Water Div. v. Craft; U.S. v. Hall; Goss v. Lopez, supra all.

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

“NOTICE TO OWNER/LIEN HOLDER - You are hereby given notice that you have an opportunity for a hearing under AS 28.05.131. The reason your vehicle was impounded is stated on the reverse side of this form. If you make no request for a hearing to the nearest Department of Public Safety office within 10 days of receipt of this notice, your right for a hearing is considered to be waived.”

“AS 28.05.131. Opportunity For Hearing Required. (a) Unless otherwise specifically provided, or unless immediate action in ... impounding is necessary... the Department of Public Safety ... shall give notice of the opportunity for an administrative hearing before a ... vehicle is impounded by that department. If action is required under this section and prior opportunity for a hearing cannot be afforded, the appropriate department shall promptly give notice of the opportunity for a hearing as soon after the action as possible to the parties concerned. (b) The notice under this section must state the reasons for the proposed action of the Department of Public Safety... and must provide for a reasonable attendance date of not

less than 10 days after service of the notice. If there is no request for a hearing by the attendance date specified in the notice, the hearing is considered to have been waived.

If Cole was correct any Bristol Bay commercial fisherman, using a boat during the 3-week salmon run (like Haeg's airplane used during a 2-month guiding season), could be deprived of an *entire years income by the unopposed word of a single Trooper*. The State would not even have to file a single charge to bankrupt the fisherman (or hunting guide). It would be summary judgment with no opportunity to contest – absolutely & irrefutably forbidden by the Alaska & U.S. Constitutions. In *Waiste v. State*, supra this Court ruled a fisherman has a constitutional *right* to bond his boat out pending outcome of his case, along with an entire “ensemble” of procedural protections, any of which, if violated, require the return of the property & to suppress it as evidence – regardless of whether it was seized “in connection with an official investigation of a crime or is subject to forfeiture”. See Criminal Rule 37(c).

38. Cole claims “Haeg was not precluded from engaging in his livelihood after the forfeiture of his aircraft as he was able to demonstrate by conducting his 2004 spring bear hunts.” [Ap.Br.17].

The seized plane was modified to get in & out of the short bush strips Haeg conducted hunts out of & because of this Haeg had a disastrous hunting season. [Tr.51, Ex.485-86, 507]. That summer (2004) Haeg could not conduct his flight-seeing & banner towing business because the plane was seized. [Tr.378]. Cole then told Haeg to cancel the whole next years guiding starting that fall (2004) for a PA. [Tr.251-252]. Then, after that year was gone (Sept. – Oct., 2004) Cole tells Haeg there is nothing he can do except “call Leaders boss” when the prosecution breaks the PA by filing an *amended*

information increasing the severity of the charges with *no* justification whatsoever just 5 business hours before the PA was to be finalized with the Court in McGrath. [Ex.479-84].

39. Cole claims, “By contesting the seizure of his aircraft [Haeg] would have lost his ability to negotiate a lesser loss of his guide license.” [Ap.Br.17].

Cole *never* told Haeg of his constitutional *right* to contest the seizure, never told Haeg that this would help “negotiate a lesser loss of his guide license” & *even though Haeg never contested the seizure of his plane (because no one told him he could) the State asked for & received a 6 year loss of guide license. How is this a lesser loss of license?* [Tr. 251-252, Ex.475-530].

40. Cole claims there was no proof the panel was bias or corrupt. [Ap.Br.17].

Haeg provided proof of this in [At.Br.18-24, 59-65] - with the panel refusing to admit evidence; [Tr.26-28, 30, 34, 38, 40, 42, 357]; stopping Haeg’s cross-examination of Cole when Cole was being forced into admitting perjury [Tr.221, 323-24, 326]; limiting Haeg on time in which to present his case [Tr.310-11, 326]; advocated and/or showed evident partiality for Cole [Tr.281, 295-96, 298, 323]; refusing to reconstruct “missing” official record [At.Br.19, 65]; issuing a decision that had no support in the record [At.Br.19, 59-64]; refusing to tell Haeg who wrote the decision [At.Br.19-20]; refusing to tell Haeg if there were any reservations about the decision & award [At.Br.20]; failing to address the issues presented – especially Cole’s perjury & affirmative misrepresentation [At.Br. 1, 15-63]; making false claims [At.Br.20-21, 59-62, 296, ABA decision & award]; & exceeding their powers. [At.Br.21-22, 61-62 *see also* #17 above].

41. Cole claims Haeg provided no support for the argument that the panel made false statements & that Haeg “abandoned this issue”. [Ap.Br.18].

Haeg presented specific arguments & evidence & very specifically cited the support in the transcripts. [At.Br.20-24, 59-66, & decision & award] Haeg, in his opening brief states, “The arbitrators make false statements in the decision & award. *False statements & where in the transcripts & exhibits they are proven false are as follows:*” Haeg then goes on for 3 pages to cite the specific pages of the transcript record & the specific pages of the transcript record & the specific exhibits that support the falsehood of each specific statement by the arbitrators in the decision & award. [At.Br.59-63].

42. Cole claims Haeg never sets out how he was prejudiced by the time limit set by the panel. [Ap.Br.18].

Haeg claimed “The arbitrators also placed strict time limits on David, which severely harmed his ability to put on his case.” [At.Br.62, Tr. 353].

43. Cole claims the panel did not exceed their powers. [Ap.Br.19].

Haeg presented irrefutable evidence the panel exceeded their powers [At.Br.18-24, 61-62, 73-76]. The panel awarded Cole money Haeg never had notice was at issue & since Haeg did not know to contest he was deprived of his constitutional due process right of notice & hearing. *Nowhere* is it claimed Haeg may be required to pay the money Cole 3 times testified under oath was “written off.” [See all record]. The panel even states, SHAW: “It just means the only subject here is the fee itself.” METZGER: “*The fee that you've already paid.*” [Tr.291].

44. Cole claims Haeg knew he still owed Cole money & “dutifully acknowledged” this at the hearing. [Ap.Br.19].

Cole testified 3 times he had “wrote the money off.” [Tr.13, 233, 273]. *How* did Haeg know money was still owed? *Nowhere* did Haeg “dutifully acknowledge” he still owed Cole money. [See all record].

45. Cole claims the arbitration was about “whether Haeg was required to pay the fees he contracted with Cole to pay.” [Ap.Br.20].

The arbitration was about whether Cole should be required to pay Haeg back for what was already paid to & cost by Cole. [See all record]. The panel stated, “It just means the only subject here is the fee itself ... the fee that you've already paid” [Tr.291].

46. Cole claims that Haeg failed to adequately brief issues & this constitutes waiver. [Ap.Br.20-21].

Haeg adequately briefed all issues [At.Br.1-86] & Cole failed to cite what the inadequately briefed issues were.

47. Cole claims Haeg failed to support his claim of bias, partiality, or corruption by Judge Brown. [Ap.Br.21].

Haeg cited specific instances in the record which support Judge Brown’s bias, partiality, & corruption. [At.Br.1-86 but especially 22-24, 62-75]. Most of this evidence proves Cole committed perjury & other affirmative misconduct to Judge Brown, in order to *maintain* the corrupt decision & award – and that this was positively shown to Judge Brown, who did nothing.

48. Cole claims Haeg failed to raise the issue or argue that the decision & award violated the U.S. & Alaska Constitutions & thus abandoned it. [Ap.Br.21].

Haeg irrefutably raised this issue before both the Superior Court & this Court & provided numerous arguments.

See all of the Superior Court record but especially iii, 2, 5-6, 9, 11-12, 19-20, 24, 26-29, 32-34, 48-50, 54-55; Superior Court points of appeal; & At.Br.1-86 but especially: ii, xvi-xx, 2-4, 7-14, 20-30, 36-69, 71-86.

COLE'S & FITZGERALD'S 4/12/06 – 7/12/06 PERJURY TO PANEL

ISSUE #1 - COLE'S SWORN TESTIMONY TO THE PANEL THAT HAEG HAD IMMUNITY FOR THE STATEMENT HE GAVE TO THE PROSECUTION FOR A PLEA AGREEMENT:

COLE: "He [Prosecutor Leaders] & I agreed before this [before Haeg gave a statement] that it [Haeg's statement] wasn't goanna be used. That it was just goanna be ... a 'king for a day' or a immunity statement." [Tr.283].

METZGER: "You had the deal where Mr. Haeg's statement couldn't be used against Mr. Haeg."

COLE: "Right." [Tr.285]. *See also* Tr.248-49, 252-53, 284-86.

ISSUE #1 – Haeg's Sworn Testimony to Panel:

SHAW: "Did you have any agreement when you made your statement to the authorities that they would not use that statement against you?"

HAEG: "Nope"

SHAW: "Did Mr. Cole ever tell you before you made the statement that there was an agreement or a guarantee that your statement wouldn't be used against you?"

HAEG: "Never not once." [Tr.65-66].

ISSUE #1 - Facts:

11/11/04 - Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

HAEG: "I don't know have you seen all the crap hitting the newspapers etc. etc. I assume?"

COLE: "Well yeah."

HAEG: "Um & is that you know at the time we gave our – our statements & 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." [Ex.475].

HAEG: "*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.*" [Ex.477].

HAEG: "You know I think that's a done deal because we *already have given them everything they need to persecute us.*" ...

COLE: "Ok." [Ex.491].

1/13/05 – Fitzgerald on record testimony at Zellers’s sentencing:

FITZGERALD: “[H]ad it not been for the cooperation, frankly of both Mr. Zellers & Mr. Haeg, there would have been additional holes in the case & my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he fact of the matter is he provided the information & frankly *the government was free to do whatever it was goanna do with that information & as is demonstrated they used it to charge additional charges against both Mr. Zellers & Mr. Haeg.*” [Ex.683].

The State *specifically* used Haeg’s statements as the only probable cause for most of the charges & as primary probable cause for the rest filed against him in *all* informations – including the one violating the PA & went to trial on. [Ex.433-464]. They also used to obtain evidence & their main witness against Haeg. [Tr.75-76, 83-84, 214, 247].

ISSUE #1 - Discussion:

It is absolutely irrefutable Haeg had no immunity for his statement & that it could be & was used against Haeg, & that Cole knew this – making his subsequent sworn testimony otherwise to the panel known & intentional perjury.

ISSUE #2 - KEVIN FITZGERALD'S PERJURY & CONSPIRACY AT THE ALASKA BAR ASSOCIATION TO COLLABORATE COLE'S TESTIMONY:

COLE: “Do you recall talking to me about you - *our understanding of our client going in – clients going in & giving statements to the officers in this case?*”

FITZGERALD: “Well I can tell you my clear understanding from having talked to Mr. Leaders & I will represent here as an officer of the Court & 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.*”[Tr.181-182].

HAEG: “Did you ever ask Mr. Cole if Tony Zellers & David Haeg's test – or -uh- -um- interviews could be used against them if the negotiations

failed?”

FITZGERALD: “*I believe that there was a deal between Mr. Leaders & myself & Mr. Zellers that it wouldn't be used.*”

SHAW: “The question was about Mr. Cole's in questions with respect for Mr. Haeg. Can you answer that question?”

FITZGERALD: “*I – I can't believe that Mr. Cole believed anything different than I – I did.*” [Tr.219-220].

ISSUE #2 - Zeller's Sworn Testimony to Panel:

ZELLERS: “Um- as far as what I understand as far as between -uh- my attorney & -uh- Mr. Leaders -um- he wanted that more then – then anything because without that I don't think he had – there would be about 4 charges & wouldn't be able to substantiate at the trial. *But the whole thing is with us cooperating -uh- we were actually charged with what we said additional at that -uh- that meeting...*” [Tr.84].

ISSUE #2 – Facts:

At Tony Zellers's sentencing on 1/13/05, prior to his sworn testimony to the panel, Kevin Fitzgerald made the following on record testimony to Judge Murphy:

FITZGERALD: “*[H]ad it not been for the cooperation, frankly of both Mr. Zellers & Mr. Haeg, there would have been additional holes in the case & my understanding is that their cooperation provided information to the State concerning at least 5 of the 9 wolves at issue. [T]he fact of the matter is he provided the information & frankly the government was free to do whatever it was goanna do with that information & as is demonstrated they used it to charge additional charges against both Mr. Zellers & Mr. Haeg.*” [Ex.683].

ISSUE #2 – Discussion:

It is absolutely irrefutable that there was no immunity for either Zellers or Haeg's statement & that Fitzgerald knew this – making his subsequent sworn testimony otherwise to the panel known & intentional perjury &, as he did this to collaborate Cole's perjury, felony conspiracy.

ISSUE #3 - COLE'S SWORN TESTIMONY TO THE PANEL THAT WHILE HE WAS HAEG'S ATTORNEY HE HAD TOLD HAEG & WITNESSES HE COULD "FILE A MOTION" TO ENFORCE THE PA:

COLE: "I told them I was unhappy with what Leaders had done. I just didn't see number one the benefit of fighting a battle to get open sentencing on the original information & *I told David that. I said 'to do that you would have to file a motion to require the State to honor a deal that was never in writing.'*" [Tr.268].

COLE: "*We talked about filing a motion to require the State to bring the original charges. I talked about that with him & I said to him 'why – yes I could do that David but then I'm goanna have to say that I had a discussion with Scot Leaders & he said 'x' & he said 'x' so now if I'm right what's – where are we – where's this goanna get us? He's goanna oppose that & he's goanna say 'I didn't say that'. So now you're goanna have two attorneys fighting each other but even more important even if he says 'ok you can have open sentencing now there – all deals off' & I'm arguing for 5 years. What could I do?'*" [Tr.275].

COLE: "You could file – if you thought that you had an agreement in place, & *we discussed this, you could file a motion to enforce the agreement that was in place & submit an affidavit & I told you that you could do that in your case – that I would do in this case, if you wanted. It was goanna cost you a lot more money & where was it goanna get us?'*" [Tr.298].

HAEG: "What do you mean there - can you explain a little clearly – a little more clearly?"

COLE: "*Well like we talked about David if you file the motion & request to have open sentencing under the original information at the end the best that gets you is open sentencing at the – under the original information.*" [Tr.298-299]. See also [Tr. 268, 275-277, 298-301, 311, 313-320, 323-324].

ISSUE #3 - Haeg's Sworn Testimony to Panel:

HAEG: "When I asked Mr. Cole at this time how Assistant Attorney General Scot Leaders could break the deal only hours before we were supposed to conclude at McGrath he stated quote 'that's the way it is' & quote '*the only thing I can do is talk to Prosecutor Leaders boss, a women I used to work with*' & quote '*we can't go to McGrath tomorrow & get this over with*'. *Later that night Mr. Cole told me that Prosecutor Leaders would require me to first forfeit my plane to him to get the same Rule 11 Agreement I'd already paid for. Tom Stepnosky, Drew Hilterbrand, Jake*

Jedlicki, Tony Zellers were all present during this.” [Tr.28].

HAEG: “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*’.” [Tr.29].

See also [Tr.75 (Zellers); 87-88, 95, 102, 104–105, 106 (Stepnosky); 110-111 (Hilterbrand); 117, 125, 125-127(J. Haeg)].

HAEG: “*Mr. Cole's statements that he told me that we could file a motion to enforce the Rule 11 Agreement is absolutely fantastic. The evidence against him is stunning. Himself on tape, himself in signed letters, & multiple witnesses who have testified before you under oath, he has not one single leg to stand upon. The same exact thing is true about him telling me the deal was going to be broke before we all arrived from around the U.S. on November 8th, 2004. The evidence again is overwhelming. Mr. Cole is lying to you, under oath, to cover his unbelievably malicious actions against me while I was paying him.*” [Tr.353]. See also [Tr.379-380].

ISSUE #3 – Facts:

11/11/04 – Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

HAEG: “What I guess what I was getting at is – um - why uh & 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 & I come up there get hotels all this stuff & *it really gripes me that we didn't get to pursue what we had to pursue & 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 & 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 & everything else & 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 & 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 & be sentenced on Tuesday.” [Ex.479].

HAEG: “*If I wanted 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.*” [Ex.484]. See also [Ex.513-14].

ISSUE #3 – Discussion:

It is absolutely irrefutable Cole had told Haeg, *at the very time in question, the only thing Haeg could do to enforce the PA was “complain to Leaders’s boss.”* – making Cole’s testimony to the panel that while he was Haeg’s attorney he told Haeg that a “motion” could be filed to enforce the PA to be known & intentional perjury.

ISSUE #4 - COLE’S SWORN TESTIMONY TO PANEL THERE NEVER WAS AN “OPEN SENTENCE” “RULE 11” PA THAT WAS TO BE FINALIZED ON 11/9/04:

HAEG: “Would Leaders have been recommending over 3 years at my sentencing...”

COLE: “I don't know.”

HAEG: “...open sentencing?”

COLE: “When? In what – under what scenario?”

HAEG: “The only deal that I ever accepted, ever.”

COLE: “*You – you never got a deal...*”

SHAW: “Mr. Cole...”

COLE: “...there were options on the table.” [Tr.322].

COLE: “*Dave there was no Rule 11 Agreement, David.*” [Tr.327].

HAEG: “Ok do you agree that on November 8th indeed myself & 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 & 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.*” [Tr.342].

ISSUE #4 - Haeg’s Sworn Testimony to Panel:

COLE: “So -um- do you remember me telling you about my concerns about *going forward on open sentencing* in your case?”

HAEG: “Yeah you – you said that's you know –uh- you never like to see your clients do that, all of your other clients wanted to know what they were goanna get ahead of time. And I said ‘well I'm not all other clients.’ I've looked at the – I've looked at what we're – what we were doing, I've looked at the law, & said ‘*I'm not goanna be like other clients*’.” [Tr.55].

See also [Tr. 23-24, 69; Tr.101-102, 104-106 (Stepnosky); 110, 114 (Hilterbrand); 117, 128-131 (J. Haeg)].

HAEG: *Mr. Cole told me it was ethical & legal for the prosecution to break the open sentencing deal & then ask for my plane upfront to get the very same deal back. He said that was –uh- ethical & legal. Well the case law that I'm seeking to admit to you proves that it is not legal & ethical. I told Cole on August 18th, after Mr. Leaders sent his first offer, I did not want that deal & I wanted open sentencing. Mr. Cole's own billing statements prove me out. This is not my imagination. We made an open sentencing agreement – I would plead to everything. I'd plead guilty no contest, whatever, I just wanted a judge to listen to my side of my story.* [Tr.352].

ISSUE #4 – Facts:

11/11/04 - Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

HAEG: “*Didn't before we came up there didn't I say that I would like to go open sentencing?*”

COLE: “And I told you - you should think about.”

HAEG: “*And that's when you contacted Leaders & said you told him...*”

COLE: “*You wanted to go open sentencing.*”

HAEG: “Yep & that's when everything got changed?”

COLE: “And I – & I - & I was shaking my head at that time.” [Ex.481].

HAEG: “And after we had invested a lot of time, effort, & money, committed to that venture to settle it because my life is getting eaten up by worry among other things & I had great expectations *to leave McGrath* either without a license for 5 years, & no airplane, & going to jail for 6 months & 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 & saved all the money in hotel & airfares & 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 & – & is that – is that ethical for them to do say, "yep you give us the plane & 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.” [Ex.481-482]. *See also* [Ex.479-80].

11/22/04 – Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

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’.” [Ex.524-525].

1/4/05 – Tape-recorded conversation between Malatesta & Cole just 1 month after Cole was still representing Haeg:

MALATESTA: “Did you have any agreements with the State where you know sentencing was open? That you folks agreed to & 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 & 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 & then they - the State backed out. *He was telling me something about he had to bring witnesses in & all & 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: "Well..." [Ex.531].

COLE: "So then I went out to Dillingham on Thursday & on Friday – no *the following Monday David was coming in to do the sentencing.* Was it Thursday – yeah it was Thurs – was it Friday – Friday morning I went out to Dillingham. Thursday they filed the complaint against him, Friday morning – maybe it was Thursday he called me & said – we were talking & he said, 'If David is – is not – *he goes I'm not willing to do totally open sentencing with those deals*'."

MALATESTA: "So he changed his mind? "

COLE: "Right."

MALATESTA: "Ok that's a problem for him is what I'm driving at."

COLE: "Well." ...

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 & 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."

Brent - 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 & we were scheduled to go to McGrath on Tuesday morning. So we worked & 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." [Ex.533].

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." [Ex.534]. See also [Ex.535].

ISSUE #4 – Discussion:

Over & over in the recordings of Cole while he was still Haeg’s attorney Cole talks about the “open sentence” PA that was to be finalized in McGrath on November 9, 2004. This is even more unbelievably clear in the recordings of Cole & Malatesta that were made just after Haeg fired Cole. It is absolutely irrefutable Cole knew there was an “open sentence” “Rule 11” PA that was to be finalized on November 9, 2004 in McGrath & that Leaders reneged at the last minute – making Cole’s sworn testimony otherwise to the panel known & intentional perjury.

ISSUE #5 - COLE’S SWORN TESTIMONY TO THE PANEL THAT HAEG DID NOT WANT TO ENFORCE THE “OPEN SENTENCE” PA BECAUSE OF THE RISK OF A 5-YEAR LICENSE SUSPENSION:

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 & 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?” [Tr.300-301].

HAEG: “Ok -um- *I'd asked you yesterday about why I didn't want the motion to enforce the agreement –uh- moved forward &, 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 & reviewed the tapes that you made without telling me, of the conversation on the 10th & 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'.*"

HAEG: "Can I direct the panel's attention to some evidence?" [Tr.311].

ISSUE #5 – Facts:

11/11/04 - Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

HAEG: "Yeah I agree – you know - that is – that's the absolute truth & I - you said I was crazy to do anything different."

COLE: "*That's because you are goanna lose your license for 5 years.*"

HAEG: "*Well I was willing to take that chance.*" [Ex.480-81].

HAEG: "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 & 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 & 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, & money, committed to that venture to settle it because my life is getting eaten up by worry among other things & *I had great expectations to leave McGrath either without a license for 5 years, & no airplane, & going to jail for 6 months & 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 & saved all the money in hotel & airfares & etc., etc., etc.*"

COLE: "*The thing that was taken away was the option to go open sentencing total.*" [Ex.482]. See also [Ex.484].

ISSUE #5 – Discussion:

Haeg *told* Cole, at the very time in question, while Cole was still representing Haeg, that he wanted the open sentencing PA at *any* cost – *even specifically at the risk of a 5-year license loss.*

It is absolutely irrefutable Cole knew Haeg wanted the open sentence PA enforced at *any* cost, *including risking a 5-year license loss* – making Cole’s sworn testimony otherwise to the panel known & intentional perjury.

ISSUE #6 - COLE’S SWORN TESTIMONY TO THE PANEL THAT HAEG HAD ACCEPTED AN “OPTION” OR PA OTHER THEN “OPEN SENTENCE”:

COLE: “...‘a minimum year – the plane is up for...’ ‘yes’ ‘the judge to decide. That is what I wanted at the time & 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 & 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.*” [Tr.321-322].

HAEG: “Ok. Well I guess that’s arguing. And you are while under oath & on record here before the Alaska Bar Association goanna tell me that when I tell you ‘that is what I wanted at the time & 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 & go in & 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." [Tr.323-324].

HAEG: "Ok -um- ok what you're saying is that the deal that we were supposed to go out to McGrath [for] was not for open sentencing?"

COLE: "*No it was not.*" [Tr.332].

HAEG: Ok do you agree that on November 8th indeed myself & 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 & 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.* [Tr.342]. *See also* [Tr.263, 270, 317-318, 328-330].

ISSUE #6 - Haeg's Sworn Testimony to Panel:

COLE: Do you remember talking to me & telling me in the evening of November 8th that the de – deal that we had on the table was acceptable & there was no reason to go to McGrath for the sentencing in the morning?

HAEG: I never told you that & I have a bunch of people wandering around here somewhere that was present & they said you never – because *all of those deals entitled giving up my PA12 airplane & I never ever - ever said I was giving that up.* So if you're telling me I did you're - you're sorely mistaken. [Tr.57-48].

SHAW: "One of the things he says is that on November 8th he informed you of Mr. Leaders decision to change the terms of the deal and that Mr. Cole says in his letter 'later that night I spoke with Mr. Leaders and we further negotiated the terms of a change of plea including limits on the nature & extent of a sixteen month license suspension that would allow you...'"

HAEG: "Yeah."

SHAW: "...you Mr. Haeg...'to begin guiding on July 1, 2005. Both parties agreed that in light of the new agreement, it was not necessary to fly any of the parties out to McGrath.' What do you remember about that?"

HAEG: “I never agreed to it. That's where Brent Cole & Scot Leaders –uh- make decisions about deals that they think I'm goanna agree but a lot of these people were there.” [Tr.72].

See also [Tr.55, 69, 72; Tr.101-102, 105-106 (Stepnosky); 114 (Hilterbrand); 124-126, 128-129 (J. Haeg)].

ISSUE #6 – Facts:

11/11/04 - Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

HAEG: “And in my perspective we had an agreement like for 2 weeks & 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, & money, committed to that venture to settle it because my life is getting eaten up by worry among other things & I had great expectations to leave McGrath either without a license for 5 years, & no airplane, & going to jail for 6 months & 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 & saved all the money in hotel & airfares & 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 – and is that – is that ethical for them to do say, "yep you give us the plane & 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.” [Ex.482].

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 & 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 & 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 & 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: "Ok." [Ex.484]. See also [Ex.479, 488].

11/22/04 – Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

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*'." [Ex.524-525]. See also [Ex.511, 513-514 & 534].

ISSUE #6 – Discussion:

It is absolutely irrefutable Haeg never accepted any other PA option then open sentencing & that Cole knew this – making Cole's sworn testimony otherwise to the panel known & intentional perjury.

ISSUE #7 - COLE'S SWORN TESTIMONY TO THE PANEL THAT HE HAD TOLD HAEG PRIOR TO NOVEMBER 8, 2004 THAT PROSECUTOR LEADERS WAS GOING TO CHANGE, & THUS BREAK, THE OPEN SENTENCING PA, AND/OR THAT IT WAS "ABOUT A WEEK" FROM WHEN LEADERS ACCEPTED THE OPEN SENTENCING PA TO WHEN PROSECUTOR LEADERS DECIDED TO NOT HONOR THIS AGREEMENT:

COLE: "We didn't put that in writing. *A week later – about a week later* he

called me up, we were talking about something else, & he said ‘hey -um- if you want to do open sentencing I’m going to change the charges...’ & what you have to do is look at the difference between the information & the amended information & that is the unlawful acts by a guide -um- get changed from A8(a) to A15 & the difference is that if you plead to A15 the judge has to impose at least a 3 year license revocation - under A8 it's only 1 year. So what Scot Leaders was doing was saying ‘if I've got to go through a hearing on whether I'm goanna get your plane – totally open sentence – then your clients goanna do 3 – 3 years’ & I go ‘that's BS Scot I mean come on – now what are you doing here – what difference does it make to you – you're goanna get this plane – you know it – we were just - give us the opportunity to go argue for it’. He just said ‘that's what I'm goanna do’. *Now for David to stand in here & say that he – that I didn't tell him this before he got here is just wrong – I did tell him over the phone that that was the deal. -Um...*”

SHAW: “You're saying that you told him over the phone...”

COLE: “That if he wanted to go open sentencing they were goanna change the charges & that he would be facing a minimum of 3 years.”

HAEG: “What date was that?”

COLE: “I don't – I don't have a date. It was one of the conversations I had after September twenty or August – let's see – no this is August 27th – an opportunity for open sentencing.” [Tr.262-263].

COLE: “...but *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 & 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’.*” [Tr.265].

COLE: “He originally said ‘that's ok with me’ then he called me back & said, ‘I'm not goanna do that. If you do that – if you want that then I'm changing it to A15’ & I said...”

SHAW: “How long was it between when he said...”

COLE: “*A week – about a week.*”

SHAW: “... ‘yes’ & you said ‘no’?”

COLE: “*About a week.*”

SHAW: “*I will write down it was about a week then. -Um- after he said, ‘yes’ did you ever ace...*”

COLE: “Did we change position at all?”

SHAW: “...did he ever accept – did you ever accept it? *On Mr. Haeg's behalf did you say, ‘ok done’?*”

COLE: “*Umm hmm.*” [Tr.277-278]. *See* also [Tr.327].

HAEG: Ok. Do you ever remember Mr. Leaders saying that he was going to change the charges – file amended charges so that I could not go open sentencing unless I had a mandatory 3 years?

COLE: Yes I've already testified to that.

HAEG: Ok. And when did he tell you that?

COLE: I – I - I've told you like - like 3 times now *my best recollection is it happened about a week after I inquired about the possibility.* And my notes show that I inquired about the possibility around August 8th or August 27th or 28th. I will tell you my own recollection is that it happened longer – further along in events but for some reason...

SHAW: And *I take it that it is not your recollection that you told Mr. Haeg for the first time about the amended information on the night before the scheduled change of plea?*

COLE: I – I – I told him they had filed the amended information because they didn't file it until...

SHAW: But it – but it's – *it's not your recollection you told him for the first time about this open sentencing amended information on the eve of that change of plea?*

COLE: *No I - I recall telling David prior to that event.* It was not – in - in my recollection it was not an issue.

SHAW: I understand. I understand – I'm just trying to get the timing straight. [Tr.336-337]. *See* also [Tr.374].

ISSUE #7 – Haeg’s Cross-Examination of Cole:

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 & 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 & 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..." [Tr.342-343].

ISSUE #7 - Haeg's Sworn Testimony to Panel:

HAEG: "Ok. *On 11/8/04* I traveled to Anchorage with my wife Jackie, my daughter's Kayla & Cassie, Drew Hilterbrand, Jake Jedlicki, Tom Stepnosky so that we would be ready to fly out on the 8:00 a.m. flight the next morning from Anchorage to McGrath so we could attend the change of plea slash sentencing hearing that was scheduled at 10:00 a.m. the next morning. Tony Zellers was flying in from Illinois & arrived in Anchorage late that afternoon. When we arrived at Mr. Cole's office at 3:00 p.m. for a quote 'sentencing strategy meeting' unquote - *he greeted us at the door stating that he had quote 'just received very bad news from Scot Leaders' unquote. Mr. Cole then showed all of us a fax received by his office Marston & Cole dated 11/8/04 at 12:59 p.m. or just 2 hours earlier or before we had arrived at his office. -Um- & I guess I'd like to admit that.*" [Tr.25].

See also [Tr.27-28, 33-34] & [Tr. 87 lines 20-27 (Stepnosky); 109 line 28, 110 line 19 (Hilterbrand); 117 line 16 – 118 line 15 (J. Haeg)].

ISSUE #7 – Facts:

11/11/04 - Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

HAEG: "And after we had invested a lot of time, effort, & money, committed to that venture to settle it because my life is getting eaten up by worry among other things & I had great expectations to leave McGrath either without a license for 5 years, & no airplane, & going to jail for 6 months & 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 & saved all the money in hotel & airfares & 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 – and is that – is that ethical for them to do say, ‘yep you give us the plane & 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 & 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 & 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 & that would have been the end of it.” [Ex.481-482].

COLE: “Well I deal on my word – you're right.”

HAEG: “And you know & I appreciate that – because if you have a good relationship with them you can get probably more stuff done than if you don't have a good relationship but *what I feel when they pulled the rug out from under us when we all showed up in your office & you said, “uh Dave I got something to tell you” I feel they poked you in the eye.*”

COLE: “*They did & I'm still burning about it.*” [Ex.488].

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 & 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 & 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 & flown Tony up here.*”

COLE: “*Mm hmm.*” [Ex.490].

1/4/05 – Tape-recorded conversation between Malatesta & Cole just 1 month after

Cole was still representing Haeg:

COLE: And we said, 'Can he plead to the same counts & just do an open sentencing?' And Leaders was like 'I don't know why he'd want to do that but yeah ok.'

MALATESTA: Ok that's important to me.

COLE: Ok.

MALATESTA: That's what I needed to know.

COLE: But listen.

MALATESTA: I'm listening.

COLE: So then I went out to Dillingham on Thursday & on Friday – no *the following Monday David was coming in to do the sentencing*. Was it Thursday – yeah it was Thurs – was it Friday – Friday morning I went out to Dillingham. *Thursday they filed the complaint against him, Friday morning – maybe it was Thursday he called me & said – we were talking & he said, 'If David is – is not – he goes I'm not willing to do totally open sentencing with those deals'*.

MALATESTA: *So he changed his mind?*

COLE: *Right.*

MALATESTA: *Ok that's a problem for him is what I'm driving at. [Ex.532-533].*

7/6/05 Letter from Cole to Haeg:

“On August 18, 2004, the State sent over a written offer to resolve your case. This began a series of negotiations between the parties in which we discussed the charges that would be brought & the sentence you would receive. We ultimately reached an agreement about virtually all the terms of the proposed resolution except for the length of your big game guide license suspension, which we agreed to argue about at an arraignment/sentencing hearing with an understanding that there would be a minimum one year to a maximum three year suspension. This occurred sometime during the middle of October of 2004. I believe the first information was filed by the State right around that time.”

“Sometime after that, you inquired about whether you could simply plead ‘open sentence’ to the filed charges so that you could argue against the forfeiture of your aircraft. I indicated that I would make that inquiry of Mr. Leaders which I did. He initially did not have a problem with this. *About a week later, however, I received telephone call from him which indicated that he was amenable to allowing you to plead "open" sentencing but he was going to change the information to require the minimum three-year license revocation. I believe this happened on or about November 5, 2004. I traveled with Mr. Leaders to Dillingham on November 6, 2004, for two fish*

& game sentencing hearings involving guides & I was given the amended information at that time.”

“*On Monday, November 8, 2004, you, your family & several witnesses came to our office to meet in preparation for the arraignment & change of plea scheduled to occur in McGrath the next day. It was at that time I informed you of Mr. Leaders' decision & outlined your legal options.* Later that night, I spoke with Mr. Leaders & we further negotiated the terms of a change of plea including limits on the nature & extent of a sixteen month license suspension that would allow you to begin guiding on July 1,2005. Both parties agreed that in light of the new agreement, it was not necessary to fly any of the parties out to McGrath. We simply intended to get the Division of Occupational Licensing to agree to the deal & then set up a change of plea. It was during the next month that you decided that you were not agreeable to this arrangement & hired Mr. Robinson.” [Ex.465-466].

ISSUE #7 – Discussion:

It is absolutely irrefutable that it was either November 4, 2004 (Thursday) or November 5, 2004 (Friday) that Cole first learned the PA was going to be broken & it is absolutely irrefutable that Cole first told Haeg this on November 8, 2004 – making Cole’s sworn testimony to the panel that he had told Haeg weeks or months before November 8, 2004 that the open sentencing PA was going to be broken to be known & intentional perjury.

It is absolutely irrefutable that Prosecutor Leaders accepted the open sentencing PA on August 27, 2004 (Ex.424-Cole’s billing statement) & Haeg depended on it until Cole told him on November 8, 2004 the State was reneging (a period of 73 days – during which Haeg’s September & October \$1 million guide season was given up in reliance of it) & that Cole knew this – making Cole’s sworn testimony to the panel that this PA was only in place for “a week” to be known & intentional perjury.

ISSUE #8 - COLE SWORN TESTIMONY TO THE PANEL THAT “I NEVER HAD IT IN MY MIND [HAEG] WANTED OPEN SENTENCING” AND/OR THAT HAEG “MIGHT WANT A TRIAL”:

HAEG: “And did – do you think that before you talked to Mr. Leaders on November 5th that in my mind & 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 & 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: “I think – I think things are becoming a little clearer for me. I think – I think Mr. Cole here mislead me.” [Tr.341].

COLE: “When I came on board or no – when Mr. Robinson came on board...”

SHAW: “Umm hmm.”

COLE: “...one of the things he asked me was ‘hey –uh- Leaders is talking about using his sent – his statement’ & I said well he can't – we agreed – he & I agreed before this that it wasn't goanna be used. That it was just goanna be – I don't know whatever you want to call it – a king for a day or a immunity statement. So he said, ‘well will you write a letter to that affect?’ And I said, ‘sure I will’ because I remembered the conversation I had with Scot & that's why I wrote the letter I did in December & that's specifically why. It was at the direction of Mr. Robinson, it was what I understood to be the – the arrangement that we had -um- again when *I – I never had any idea that David would want a trial* but -um- and – and – I...” [Tr.283].

ISSUE #8 – Facts:

11/11/04 - Tape-recorded conversation between Cole & Haeg while Cole was still

representing Haeg.

HAEG: “Didn't before we came up there *didn't I say that I would like to go open sentencing?*”

COLE: “And I told you - you should think about.”

HAEG: “And that's when you contacted Leaders & said you told him...”

COLE: “*You wanted to go open sentencing.*” [Ex.481].

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 – and is that – is that ethical for them to do say, “yep you give us the plane & 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.” [Ex.481-482].

HAEG: “Ok & if & when we go to sentencing & 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.” [Ex.483]. See also [Ex.484].

11/22/04 – Tape-recorded conversation between Cole & Haeg while Cole was still representing Haeg.

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*’.” [Ex.524-525].

See also [Ex.507], Cole/Malatesta 1/4/05 interview (in Issue #4) which Cole states 8-times Haeg had an “open sentence” PA & states, Leaders “changed the deal”,

“renege”, and/or “backed out” of the open sentencing PA 9-times [Ex.531-535] & Cole’s 2/27/04 itemized billing statement to Haeg “Telephone conference with opposing counsel regarding plea agreement & *opportunity for open sentencing*”[Ex.424].

ISSUE #8 – Discussion:

It is absolutely irrefutable Cole knew Haeg wanted open sentencing and/or wanted to go to trial if open sentencing was being taken away – making Cole’s subsequent & sworn testimony otherwise to the panel known & intentional perjury.

ISSUE #9 - COLE’S SWORN TESTIMONY TO THE PANEL THAT ROBINSON TOLD HIM HE (COLE) DIDN’T HAVE TO APPEAR IN PERSON IN MCGRATH IN RESPONSE TO THE SUBPOENA & AIRLINE TICKET GIVEN TO HIM BY HAEG:

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 Mr. 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’ and I said ‘How about this? *What if I just sit*

at my office – at the sentencing – if you want to call me as a witness call me telephonically’ and he said ‘that’s fine’. I sat in my office all day that day – I never received a call to testify, telephonically, at David’s case. I told Mr. Robinson I would be available.” [Tr.286-287].

ISSUE #9 - Haeg’s Sworn Testimony to Panel:

HAEG: “Then I could have the same deal I’d already paid for. I end up going to trial and after I’m convicted of 9 of the 11 charges I demand Chuck Robinson, my new lawyer, subpoena Brent Cole to testify that I had fully cooperated with the State until they had broken the Rule 11 Agreement and Brent Cole had failed to even try to enforce it, that my wife and I had given up a whole years income for the Rule 11 Agreement that the State had broken, and that we’d spent \$6000 at getting witnesses to the Rule 11 Agreement the State had broken. *I paid for Brent Cole’s subpoena to my sentencing, his witness fees, his airfare to McGrath, his hotel room, and then he never showed up to answer the 56 questions my wife had typed up for him to answer under oath.* The most amazing thing is that when I received the itemized billing from Chuck Robinson after this date it showed he and Brent Cole had a telephone ‘confer’ just the day before Brent was supposed to travel to McGrath to testify. I now realize that if Brent Cole would have had to answer these questions, under oath, he would have been found ineffective, my sentence would have been reversed and I would have been able to sue him for gross malpractice. This gives motive, opportunity and evidence of Brent Cole asking Chuck Robinson to help him avoid a subpoena.” [Tr.34].

SHAW: “I take it that Mr. Robinson represented you through the time of your sentencing?”

HAEG: “Yes.”

SHAW: “Ok. –Uh- did Mr. Robinson raise the question before the court about the subpoena to Mr. Cole?”

HAEG: “I don’t know the moose thing went from 11:00 a.m. to 8 or 9:00 p.m. and *when it got time for that it was 2:00 in the morning* & I was – and I’d been up for almost 30 hours straight. I might have been there in person but I wasn’t there in my brain. I don’t really know what happened.”

SHAW: “So you don’t know whether Mr. Robinson tried to enforce the subpoena against Mr. Cole?”

HAEG: “I have no idea.” [Tr.36].

See also [Tr.37; 76 (Zellers); 94 (Stepnosky); 111(Hilterbrand); 118-119 (J. Haeg); & 149-154 (Jones)].

ISSUE #9 – Facts:

2/1/06 taped conversation between Haeg & Arthur Robinson (Robinson):

HAEG: “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 bare law 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 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’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.” [Ex.707-709].

See also Cole’s August 25, 2005 letter to Robinson stating he (Cole) was not intending on being available to testify [Ex.740]; Cole’s airline ticket [Ex.739]; & Cole’s subpoena [Ex.733-734].

ISSUE #9 – Discussion:

It is absolutely irrefutable Haeg demanded Cole testify in McGrath in *person*, that Robinson never told Cole he didn’t have to appear, & that Cole knew this – making Cole’s subsequent sworn testimony otherwise to the panel known & intentional perjury.

CONCLUSION

It is irrefutable a finalized “open sentence” PA was made & accepted by both Haeg & Prosecutor Leaders on August 27, 2004. [Ex.424 – Cole’s August 27, 2004 itemized billing “conference with opposing counsel regarding plea agreement & *opportunity for open sentencing*].

It is irrefutable Haeg relied upon this “open sentence” PA until November 8, 2004 or for 2 ½ months. It is irrefutable that it was on this day (just the day before this PA was

to be finalized in McGrath on November 9, 2004) that Cole first told Haeg of Prosecutor Leaders decision to change the charges that had already been filed on November 4, 2004 (in accordance with the “open sentencing” PA) to charges that would violate the “open sentencing” PA. [Ex.465 & 533].

It is irrefutable that in the 2 ½ months Haeg relied upon the PA he cancelled an entire years guiding (almost all of which would have occurred in September & October of 2004) at Cole’s suggestion & Prosecutor Leaders approval.

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.*” [Ex.508].

See also [Tr. 251-252 & 254-255].

It is irrefutable that Prosecutor Leaders required a statement from Haeg for the PA.” The client had to agree to cooperate & give a truthful statement. That was a condition in discussing this.” [Tr.245, see also 247 & 285].

It is irrefutable Haeg, on November 8, 2004, flew in witnesses from as far away as Illinois for the same PA.

COLE: “I don't think he [Leaders] 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 & *flown Tony up here.*”

COLE: “Mm hmm.” [Ex.490].

It is irrefutable Prosecutor Leaders used Haeg’s statements, made for the PA, as the only probable cause for most of the charges filed against Haeg and as primary probable cause for the rest – including those he went to trial on. [Ex.433-464].

All ruling caselaw & principles hold that if a defendant relies on a PA to his

detriment the government cannot break, change, or renege on it.

Smith v. State, 717 P.2d 402 (Alaska 1986) Court of Appeals: “*The fact that Smith was legally entitled to persist in his plea of innocence is, in our view, determinative of his claim of ineffective assistance of counsel.* Prior to his change of plea, Smith specifically asked his counsel if he was obligated to change his plea. Smith's question obviously related to his legal rights, not to his ethical duties. Smith's attorney replied that he considered Smith to be bound by the agreement. Both parties agree--and, indeed, the trial court expressly found--that Smith proceeded to enter a plea of no contest in the belief that he was, in fact, obligated to do so. ... *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. See, e.g., Arnold v. State*, 685 P.2d 1261, 1267 (Alaska App.1984). ... *We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court during Smith's change of plea hearing. Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement.* Even in the absence of withdrawal by defense counsel, such disclosures would at least have enabled the trial court to inquire on the record into Smith's understanding of the agreement and to give appropriate advice concerning the extent to which the agreement limited Smith's procedural options”

Closson v. State, 812 P.2d 966 (Ak. 1991): Where State breached promise of confidentiality contained in immunity agreement, defendant was entitled to specific performance; fundamental fairness dictated that State be held to strict compliance.” “[A] definite and unconditional repudiation of the contract by a party thereto, communicated to the other, is a breach of the contract, creating an immediate right of action and other legal effects, even though it takes place long before the time prescribed for the promised performance....” *Holiday Inns of America, Inc. v. Peck*, 520 P.2d 87, 89 n. 3 (Alaska 1974) (quoting Corbin on Contracts, § 959 (1951)). ... In *Surina v. Buckalew*, 629 P.2d 969 (Alaska 1981), we confronted the situation where a witness made a self-incriminating statement in reliance on the prosecution's promise of immunity. We stated that when the prosecution breaches an immunity agreement, the promisee is entitled to rescission, which “should have the effect of placing the individual in the same position he would have been in had he not engaged in the agreement.” *Id.* at 975 n. 14. However, because of the inherent impossibility of rescinding an incriminating

statement, we noted that "the alternative remedies of 'rescission' and 'specific performance' will collapse into one, in most cases." *Id.* Where an accused relies on a promise of immunity to perform an action that benefits the state, this individual too 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. ... Many 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. See Annotation, Right of Prosecutor to Withdraw From Plea Bargain Prior to Entry of Plea, 16 A.L.R.4th 1089, 1094-1100 (1982).*

Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999). Counsel further testified that, when petitioner pled guilty, *she did not believe he had the ability to force the State to honor the original plea agreement.* Counsel testified she was unaware of the existence of *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999), when she represented petitioner. She stated, at the time she represented petitioner, she believed the only remedy would be to vacate the plea and proceed to trial. She testified that, had she been aware of *Reed*, she would have raised it to the solicitor and the plea judge. Did the PCR court err by finding defense counsel was not ineffective for failing to attempt to specifically enforce his plea agreement? ... The Court of Appeals properly adopted the detrimental reliance exception. *The State may withdraw from a plea bargain arrangement at any time prior to, but not after, the actual entry of the guilty plea by defendant or any other change of position by him constituting detrimental reliance upon the arrangement. 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. ... See Reed, supra (defendant who provides beneficial information to law enforcement can be said to have relied to his detriment).* Petitioner relied on the plea offer to his detriment by taking the substantial step of cooperating with law enforcement, *i.e.* by performing some part of the bargain, before the Solicitor withdrew the plea offer. Accordingly, petitioner could have enforced the oral plea agreement. Petitioner claims counsel rendered ineffective assistance by not having his plea agreement enforced. To prove counsel ineffective when a guilty plea is challenged, petitioner must show that counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability a guilty plea would not have been entered. *Hill v. Lockhart*, 474 U.S. 52 (1985); *Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988). A defendant who pleads guilty upon the advice of counsel may attack the voluntary and intelligent character of the guilty plea only by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998). ... *Because petitioner could*

have enforced the plea agreement under the detrimental reliance exception and counsel failed to take this action, counsel failed to render reasonably effective assistance. Accordingly, counsel was ineffective in failing to have the plea agreement enforced based on the detrimental reliance exception. Cf. Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988) (counsel's conduct fell below professional norms for not protecting Jordan's right to enforce the plea agreement, which had not been withdrawn, with the solicitor's office). ... Further, counsel's defective performance prejudiced petitioner. Petitioner testified he felt as if he had to plead, even though the agreement had been withdrawn, because if he did not, then he would receive a life sentence if he went to trial. He stated he would not have pled had he realized he had a binding plea agreement. Accordingly, petitioner was prejudiced by counsel's failure to have the plea agreement enforced. REVERSED AND REMANDED.

Stolt-Nielsen, 442 F.3d 177: "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements—to the extent the agreements require defendants to sacrifice constitutional rights. See, e.g., Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971); United States v. Hodge, 412 F.3d 479, 485 (3d Cir.2005) ... Because a party surrenders valuable constitutional rights when entering into an immunity agreement, 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.

Surina v. Buckalew, 629 P.2d 969 (Alaska 1981): "Use and derivative use immunity prohibits only the use of the compelled testimony and its fruits against the defendant; thus, the witness may still be prosecuted for crimes referred to in the compelled testimony, as long as the subsequent prosecution is based entirely on independently obtained evidence. ... For we are of the view that, as a matter of both federal and state due process, a prosecutor's promise of immunity made in return for a surrender of the privilege against self-incrimination is binding on the prosecution. ... 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. In Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). ... Even if this principle should eventually prove not to be the rule under federal law, we hold it to be the rule as a matter of due process under the Alaska Constitution art. I, s 7. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor; our courts stand ready to recognize and give effect to a prosecutorial

promise of immunity made part of an agreement where proven, whether authorized by statute or not, and to allow the defendant some redress for prosecutorial renegeing.”

U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975): “Accused individuals who enter into plea bargaining agreements surrender several valuable Constitutional rights. See *Santobello v. New York*, 404 U.S. 257, 264, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) (Douglas, J., concurring). Similarly, by entering into the deferred prosecution agreement, Garcia waived his valuable right to a speedy trial. More broadly, our court has written that “... 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). Here, these principles are fully applicable to the deferred prosecution agreement between the Government and Garcia. *The indictment upon which Garcia’s convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government’s integrity allows for no other conclusion.”*

U.S. v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974) (emphasis added) “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.”

See also [*Atchak v. State*; *Counselman v. Hitchcock*; *Daly v. Superior Court*; *In re Kenneth H.*; *Stolt-Nielsen*; *U.S. v. Cantu*; *U.S. v. Castaneda*; *U.S. v. Lyons*; *U.S. v. Salemme*; *U.S. v. Tarrant* supra].

In other words Haeg had a binding PA many times over, the State maliciously broke it at the last minute, & Cole lied to Haeg to deprive him of it – costing Haeg millions of dollars damage, and then Cole committed perjury & felony conspiracy to the panel to conceal this. What is the damage when combined with Cole’s “failure” to inform Haeg that all evidence seized could have been suppressed because of the perjury on all the search warrants (which claimed all evidence was found in the GMU where Haeg was licensed to be a hunting guide – when it was in reality found to be the WCP GMU) [Tr.274]; Cole’s failure to “find out” the WCP intentionally isolated a participant from

hunting, game, and/or guiding charges [Ex. 741-46]; Cole’s claim Haeg did not have to be given notice of an opportunity to contest or even bond when Haeg’s property, used as the primary means to provide his livelihood, was seized [Tr.347-51] (which would have required its return & its suppression as evidence); Cole & Fitzgerald's belief they could not do anything that would jeopardize their relationship with the State prosecution [Tr.29, 33, 95, 104, 117, 200-208, 223-225, 273, 275, 351]; and Cole & Fitzgerald's belief the State was going to “make a huge example” out of Haeg? [Tr.12, 99, 119-120, 179, 185, 192, 237, 276, 294-295, 297, & 373].

Cole never told Haeg the State could not, without justification, file more severe charges having first filed less severe ones – even if there was no detrimental reliance.

Atchak v. State, 640 P.2d 135 (Ak 1981): *(O)nce a prosecutor exercises his discretion to bring certain charges against the defendant, neither he nor his successor may, without explanation, increase the number of or severity of those charges in circumstances which suggest that the increase is retaliation for the defendant's assertion of statutory or constitutional rights. ... The Alaska Supreme Court has consistently held that courts 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. Keith v. State*, 612 P.2d 977, 980-81 (Alaska 1980); *Adams v. State*, 598 P.2d 503, 510 (Ak 1979).”

Very nearly every constitutional right that guarantees fair criminal prosecutions was violated in Haeg’s case. This happened by the prosecutor first maliciously violating the constitutional right to affirmatively prejudice Haeg & then by Cole lying to & misleading Haeg so he would not realize it.

The exposure of this “sell out” by an attorney of his own client would result in disbarment & a gross malpractice lawsuit – a compelling reason for Cole to commit

perjury & conspire to mislead the panel.

The following statements by Cole, Fitzgerald & Robinson also support this conclusion:

COLE: “When Governor Murkowski came back in he reinstated it [WCP]. He took a tremendous amount of grief for that. The governor did, the governor's office, the State of Alaska, tourist, & *I just saw this as just terrible publicity toward the governor...*” [Tr.237].

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 falling on our sword.*” [Tr.252].

COLE: “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.*” [Tr.275].

COLE: “I told you what your options were but I told you fighting the State, getting that thing [airplane] back was going to preclude you in my opinion from getting any benefit of helping the State, giving a statement to them, getting beneficial treatment later on, getting a deal other wise I saw you losing your license for 5 years. The time to make those decisions were at the beginning. We looked at those things and we made the decision that it was in the best interest of *everybody* to cooperate.” [Tr.351].

See also [Tr.346, 373-374].

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.*”

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.*” [Tr.199-200].

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: “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?*”

COLE: “*Objection.*”

METZGER: “Its argumentative.”

HAEG: “Ok.” [Tr.201-202].

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.*” [Ex.542-543].

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: "I don't know but..."

HAEG: "I will find out." [Ex.543].

ROBINSON: "*So in the 'good boy network' you have not only the prosecutors, & the cops, but you also have the judges & the magistrates.*" [Ex.545].

HAEG: "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. And then when she makes a decision then I can appeal, correct?"

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." [Ex.545-546].

ROBINSON: "I don't see where you gained a damn thing by not going hunting that fall."

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. He signs it over lets ask for the other one. Wouldn't you? I would. I know how to - I know how to fight a battle Mr. Robinson..."

ROBINSON: "Mm hmm."

HAEG: "I get angry I start at freaking the beginning and I don't quit until I am at the end. I don't give up in the middle. If I realize that I can take your

airplane, Mr. Robinson, and lie about it and keep it and then ask for the other one and you're stupid enough to give it to me..."

ROBINSON: "To give it to me. Yeah."

HAEG: "Goddamn right I'm taking it. And then I'll go after your house, and your condo, and your villa, and your fish site and your permit."

ROBINSON: "And your second born child or whatever your first born child."

HAEG: "Why wouldn't you when it's been proven you can do it the first time, Mr. Robinson?"

ROBINSON: "Well when Scot said that there was an agreement that the moose stuff was coming (indecipherable) out it's particularly evident that you didn't have an agreement it was evident at trial I can understand why we didn't deal with the moose issue..."

HAEG: "We had an agreement. My attorney didn't stick up for it, Mr. Robinson."

ROBINSON: "No but I'm just saying but by the time..."

HAEG: "I had an agreement."

ROBINSON: "I understand but by the time we got to trial and sentencing it was obvious that whatever deal you guys had..."

HAEG: "He said that I broke it."

ROBINSON: "Regardless."

HAEG: (laughs)

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.*"

HAEG: "Ok."

ROBINSON: "*They take care of their own.*" [Ex.533-555].

FINAL THOUGHTS BY DAVID HAEG

I had an irrefutable & constitutional right to have Cole tell me of my rights & their violations so I could choose the path I wished to follow. I was the one with the right to decide how to protect my wife, our two beautiful daughters, our livelihood, & myself. The many rights that would allow me to do so were intentionally & systematically stripped away by Cole working with a malicious prosecution, plunging my family & I into a downward spiral that has consumed nearly everything we had, including 4 years of our lives already. I hope you understand the determination and resolve for justice created when the ignorant defendant starts reading the law & sees exactly what happened. *See U.S. v. Marshank*, 777 F. Supp. 1507 (N.D. Cal. 1991), *State v. Scott*, & *State v. Sexton*, supra: “*Court found both prosecutorial misconduct and ineffective assistance which created the ‘real potential for an unjust result’.*”

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

The most effective part of this perversion is yet to come, when the defendant, now on his own, is denied an effective opportunity to prove the truth – no staying punishment, no PCR proceedings, no cross-examination of adverse witnesses, no evidence presentation, no witness testimony, no oral argument, no recusing biased judges, no

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

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

Not to put too fine a point on it but I will have justice. At any & all cost. If I have to go all the way to the U.S. Supreme Court & petition them for justice on bended knee in person, as of old, I shall do so. I will not be alone. No attorney, prosecutor, and/or Trooper is going to take away the wonderful life my wife & I built for our daughters with years of blood, sweat, & tears by maliciously sabotaging nearly every constitutional right we possess. My prosecution was so unfair & prejudicial it is unbelievable.

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

You five judges of the Alaska Supreme Court have the power to grant my family and I justice and relief. I beg you carefully read the secret recordings of Brent Cole, carefully read the transcript of Zeller’s sentencing hearing, carefully read the entire transcript of the fee arbitration proceedings, carefully read all briefs filed in Superior Court, and then, giving careful consideration to my stated desire to know and exercise my rights in spite of my ignorance of them when Brent Cole was representing me, why Brent Cole should not be required to pay us back for what we paid him, why Brent Cole should not pay for the damages he caused, why Brent Cole should not be recommended to discipline counsel to be disbarred from the practice of law forever, why Brent Cole should not stand trial for crimes ranging from perjury to conspiracy to obstruction of justice reverse the current decision & award, require Brent Cole to pay us back for what we paid him, require Brent Cole to pay for the damages he caused, disbar Brent Cole from the practice of law forever, & recommend Brent Cole stand trial for crimes ranging from conspiracy to obstruction of justice.

This reply brief is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED on this _____ day of _____ 2008.

David S. Haeg, Pro Se Appellant

CERTIFICATE OF SERVICE

I certify that on the ____ day of _____ 2008,
a copy of the forgoing document by ____ mail, ____ fax,
or ____ hand-delivered, to the following parties:
Brent Cole & U.S. Department of Justice

By: _____