NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVID S. HAEG, Petitioner

V.

STATE OF ALASKA, Respondent

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

PETITIONER'S APPENDIX
VOLUME 2 OF 2 - (APPENDIXES GG-OO)

DAVID S. HAEG
Pro Se

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APPENDIX GG

STATE OF ALASKA
DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF BEHAVIORAL HEALTH
ALASKA PSYCHIATRIC INSTITUTE
ALASKA RECOVERY

FILED
In District Court
State of Alaska
at McGrath

August 24, 2006

Honorable David Woodmancy
District Magistrate
District Court for the State of Alaska
PO Box 147
Aniak, AK 99557

Date 8-31-06
"s/"
Magistrate/Clerk

RE: Haeg, David
DOB: 01/19/66
API #: 11111
CT REF #: 4MC-04-024 CR

Dear Magistrate Woodmancy:

Pursuant to your Order for Examination for Competency to Continue Legal Proceedings and capability of conducting a legal defense without counsel, the following report is prepared. Mr. Haeg was evaluated as an outpatient in the psychological testing area at API. The warnings concerning limited confidentiality, and the fact that copies of my report would be distributed by your chambers was explained to Mr. Haeg. The defendant consented to participate in the examination.

IDENTIFYING DATA: Mr. Haeg is a 40-year-old Caucasian male who lives near Soldotna. He has worked for

more than 20 years as a hunting guide. He is married, has children and completed high school.
PERTINENT HISTORY: Mr. Haeg has been charged with 11 counts of violating state game regulation, and is in the process of appealing the court's earlier decision regarding these charges.

CURRENT PSYCHIATRIC CONDITION: Mr. Haeg does not have a mental disease or defect, has not been prescribed medications to treat a mental health condition, and is not receiving mental health therapy at this time.

ISSUES RELATED TO COMPETENCY TO STAND TRIAL: Mr. Haeg was interviewed extensively regarding his knowledge of the charges against him, his perception of the seriousness of those charges, his understanding of possible legal alternatives available to him, and his understanding of the process involved with this court case. He was able to exhibit a very clear understanding of not only the charges against him, but of the various legal alternatives that he could select from. He is also able to present a logical argument for self representation, and is cognizant of the challenges that he may face in doing so. He did state that he has begun to look for legal consultation, and presented arguments in regards to pitfalls of utilizing a lawyer who actively practices in Alaska at this time. His mental status examination does not suggest any deficits in memory, comprehension or reasoning skills. His level of intellectual functioning falls in at least the average range, and may be somewhat higher than average based on his understanding of vocabulary, and ability to reason and comprehend abstract concepts.

It is, therefore, my professional opinion that Mr. Haeg may be found Competent to Continue Legal Proceedings at this time. He also demonstrates the mental capability to

conduct his own defense, and is clearly aware of the pros and cons of making such a choice.
If I may answer additional questions or be of further service, please contact me at 269-7100.

Respectfully,

"s/"
Tamara Russell, Psy.D., MHC IV
Licensed Psychologist (AK#538)
Forensic Evaluator
Alaska Psychiatric Institute

TR/pal/MEMOLTR/23119F
D: 8/24/06
T: 8/25/06

APPENDIX HH

September 18, 2006 – In the District Court for the State of Alaska Fourth Judicial District at McGrath. Haeg v. State, Case No. 4MC-S04-24 CR.

MEMORANDUM OF LAW

I. Factual and Procedural History

In 2004 the Alaska Department of Fish and Game (ADF&G) managed a Predator Control Program in the McGrath area. Permits were issued for certain game management subunits to allow wolves to be taken from the air with the use of an airplane. David Haeg applied for and received such a permit. In March 2004, David Haeg and Tony Zellers, both of whom were licensed under Title 8 as Alaska Big Game Hunting Guides, took a number of wolves with Zellers shooting the wolves they encountered from which Haeg piloted.

In early March 2004, Alaska State Trooper Brett Gibbens learned that Haeg and Zellers may have been taken wolves outside of their permitted area. Over the course of the next several months Gibbens investigation showed that Haeg and Zellers had taken a number of wolves outside of the legally permitted area and provided false information to ADF&G claiming the wolves were in a legal area. Eventually, search warrants were executed and the aircraft was seized. In June 2004 both hunters were interviewed by the troopers and admitted that they knew nine wolves were shot from the airplane outside the permit area. Both men were charged with various criminal counts. Zellers case resolved by way of a plea agreement, and Haeg proceeded to jury trial where he was convicted. On September 30, 2005, he was sentenced for five counts of

Unlawful Acts by a Guide: same day airborne in violation of AS 8.54.720(a)(15), two counts of Unlawful Possession of Game in violation of 5AAC 92.140(a), one count of Unsworn Falsification in violation of AS 11.56.210(a)(2), and one count of Trapping in a Closed Season in violation of 5AAC 84.270(14). He filed a timely Notice of Appeal in the Court of Appeals.

Appellant initially retained attorney Brent Cole to represent him. After a failed plea negotiation, but prior to trial, appellant fired Mr. Cole and obtained representation by attorney Arthur S. Robinson. Mr. Robinson represented appellant through trial and began working on the appeal. Appellant fired Mr. Robinson and retained the services of Mark Osterman to perfect the appeal. Once the brief was substantially completed and, appellant reviewed it, he fired Mr. Osterman. Appellant attempted to waive the assistance of counsel and to proceed pro se. The matter was remanded by the Court of Appeals for hearing which occurred in McGrath on August 15, 2006, to determine whether he and intelligently waive his right to counsel and whether he is competent to represent himself on appeal.

I. Legal Authority for Pro Se Status

A criminal defendant has a right to waive counsel and represent himself. *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944,79 L.Ed.2d 122 (1984); *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1 975); *McCracken v. State*, 518 P.2d 85, 90-9 1 (Alaska 1974); *Lampley v. State*, 33 P.3d 184, 189 (Alaska App. 2001) (trial court properly denied defendant's request to represent himself based in part, upon repeated threats to harm trial judge). In order to be granted pro se representation, a defendant must clearly and unequivocally express his desire to represent himself. *Faretta*, 42 U.S. at 835, 95

S.Ct. at 2541. This constitutional right applies at trial but not to appeals. *Martinez v. Court of Appeals of California Fourth Appellate Dist.*, 120 S.Ct. 684, 692, 528 U.S. 152 (2000) (a criminal defendant has no federal constitutional right to represent himself on appeal). As the *Faretta* court recognized, the right to self-representation is not absolute. The defendant must "voluntarily and intelligently" elect to conduct his own defense, 422 U.S., at 835, 95 S.Ct. 2525 (quoting *Johnson v. Zerbst*, 304 U.S. 458,464-465, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)), and most courts require him to so in a timely manner. He must first be "made aware of the dangers and disadvantages of self-representation." 422 U.S, at 835, 95 S.Ct. 2525. A trial judge may terminate self-representation or appoint "standby counsel" – even over the defendant's objection – if necessary. *Id.* 834 n. 46, 95 S.Ct. 2525. The Supreme Court has further held that standby counsel may participate in the trial proceedings, even without the express consent of the defendant, as long as that participation does not "seriously undermin[e]" the "appearance before the jury" that the defendant is representing himself. *McKaskle v. Wiggins*, 465 U.S. 168, 187, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984). Additionally, the trial judge is under no duty to provide instruction on courtroom procedure or to perform any legal "chores" for the defendant that counsel would normally carry out. *Id*. at 183-184, 104 S.Ct. 944. Therefore, the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer. 120 S.Ct. at 691.

Courts disfavor self-representation. Not even the *Faretta* majority attempted to argue that *pro se* representation is wise, desirable or efficient, and some waive his right to a fair trial. 120 S.Ct. 691 n.9. The Supreme Court has found, that although the right to defend oneself at trial is "fundamental," representation by counsel

is the standard, not the exception. *Patterson v. Illinois*, 487 U.S. 285, 307, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988) (noting the "strong presumption against" waiver of right to counsel). The Supreme Court recently noted that "a *pro se* defense is usually a bad defense, particularly when compared to a defense provided by an experienced criminal defense attorney." 120 S.Ct. at 691.

Given this strong bias against *pro se* representation, the waiver of the right to counsel is not unlike a change of plea. In making these determinations, a trial court must also advise a defendant of his right to counsel, the importance of having counsel, and damages of proceeding without counsel. *Evans v. State*, 822 P.2d 1370, 1374 (Alaska App. 1991). Not only must the trial court explain in detail the advantages of legal representation, but it must be satisfied that the defendant understands those knowing and intelligent waiver, the Court of Appeals will reverse a conviction of a *pro se* defendant. *McIntire v. State*, 42 P.3d 558, 562-63 (Alaska App. 2002) (reversing conviction for inadequate inquiry). [1]

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[1] In *Gladden v. State*, 110 P.3d 1006, 1009-11 (Alaska App. 2005). Gladden was charged with the fairly uncomplicated charge of driving on a suspended license. He watched the court system video which "explained the benefits of counsel in general terms" and the trial judge actually gave him copies of United States Supreme Court opinions, including the landmark opinion of *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) ("the obvious truth that the average defendant does not have the professional legal skill to protect himself when [ ] the prosecution is presented by experienced and learned counsel.") The court of appeals concluded that, "[tlhe record suggests that Gladden understood the value of an attorney, at least in general terms." 110 P.3d at 1010. In fact, Gladden insisted on representing himself-arguing that Alaska-licensed "attorneys" were not the same as "counsel" guaranteed to him by the Sixth Amendment. This argument itself certainly suggested that Gladden had a grasp of the significance of the right he was waiving. The case was not complex, and the

These advisements are critical to establishing a valid waiver. They must include an explanation of the function of defense counsel, e.g., conduct *voir dire* to ensure selection of impartial jury, cross-examine state witnesses, object to inadmissible-evidence, call and examine defense witnesses, and argue the case to the jury. And they must also include an explanation of the dangers of self-representation; it is not sufficient for the trial court to simply advise a defendant that it would be foolhardy to proceed without counsel. The purpose of this inquiry is "so that the record will establish that '[the defendant] knows what he is doing and his choice is made with eyes open.'" James, 730 p.2d at 814 n.l (quoting, I ABA Standards for Criminal Justice § 3-3.6 commentary at 6.39-40 (2nd ed. 1982)), *modified on reh'g*, 739 P.2d 13 14 (Alaska App. the criminal justice system, although a factor is not an adequate substitute for these explanations. *McIntire*, 42 P.3d at 562 (pro se defendant had been previously been convicted of seven misdemeanors and a felony, had viewed the court system video many times; and was assisted by two paralegals at trial; his experience with criminal justice system did not cure judge's inadequate inquiry).

The proper standard of review of a trial court's findings regarding waiver of a constitutional right is whether the trial court's finding of waiver is supported by substantial evidence. *Walunga v. State*, 630 P d 527, 528 (Alaska 1980). Whether a defendant has knowingly, intelligently, and voluntarily waived his right to counsel is a question of fact to be determined in light of the totality of

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prosecution's entire case consisted of a certified copy of his DMV record and the testimony of the officer who saw him driving. Yet, the court of appeals reversed, holding that the trial court's inquiry was inadequate, and too general. *Gladden*, 110 P.3d at 1010.

the circumstances. *James v. State*, 730 P.2d 811, 817 (Alaska App. 1987), (Singleton, dissenting), *modified on reh'g*, 739 P.2d 1314 (Alaska App. 1987) (*citing Maynard v. Meachum*, 545 F.2d 273,277-79 (1st Cir. 1976)). The Alaska Supreme Court requires that the trial court first establish that the defendant can represent himself in a "rational and coherent manner" and then determine whether "the prisoner understands precisely what he is giving up by declining the assistance of counsel" before allowing the defendant to appear pro se. Evans, 822 P.2d at 1373 (*citing McCracken*, 5 18 P.2d at 9 1). The trial judge must explain the advantages of legal representation in "some detail." Evans, 822 P.2d at 1373 (citing McCracken, 51 8 P.2d at 92). The record must reflect a clear waiver of the right to counsel. Evans, 822 P.2d at 1373 (citing, *O'Dell v. Anchorage*, 576 P.2d 104, 108 (Alaska 1978); *Smith v. State*, 65 1 P.2d 1 19 1, 1 194 (Alaska App. 1982)).

The court must hold a hearing to determine if a defendant is competent to represent himself and whether he waives his right to counsel. Burks v. State, 748 P.2d 1178, 1180 (Alaska App. 1988). Even if the court finds that a defendant is competent to represent one's self and makes a knowing, intelligent, and voluntary waiver of the right to be represented by counsel, the court can still deny the defendant's request to proceed pro se. If it appears that the defendant would be unable to obey the court's orders or if the court finds it would be necessary to require the defendant to be represented by counsel in order to regulate courtroom decorum, the motion should be denied.

Before a trial court allows a defendant to represent himself, it must determine whether, (1) the defendant is competent to waive his right to counsel, (2) he does in fact knowingly and intelligently waive that right, and (3) the person is minimally competent to represent himself.

Ramsey v. State, 834 P.2d 81 1, 814 (Alaska App. 1992). The court must be satisfied with two things: that the defendant can represent himself in a "rational and coherent manner," McCracken, 5 18 P.2d at 9 1, and that he "can conduct his defense without being unusually 829 P.2d 1201, 1205 (Alaska App. 1992). Self-representation may be defined if the defendant clearly demonstrates an unwillingness to comply with rules and regulations. *Burks v. State*, 748 P.2d 1178, 1181 n. 1 (Alaska App. 1988).

In Gargan v. State, 805 P.2d 998, 1000 (Alaska App.), cert. denied, 111 S.Ct. 2808 (1991), the court noted that the defendant may be required to be represented by counsel. In Gargan, the court found that where a defendant was unable to obey court orders, or unable to manage his own case within the rules of evidence and the general procedure of an orderly courtroom, co-counsel status may be denied. Gargan, 805 P.2d at 1001. Gargan was charged with solicitation to commit perjury and tampering with evidence when he attempted to manufacture evidence to exculpate his son who had been charged with burglary. At the joint trial Gargan represented himself while his son was represented by the public defender. Gargan included objectionable statements and violated a protective order in his opening statement. The public defender representing his son moved to sever the trial and for a mistrial as to the son. The motions were granted and the court required Gargan to be represented by a counsel at a new trial before a new jury because of his inability to focus his arguments or obey court orders. The Court of Appeals found that the trial court did not abuse its discretion. *Id.*

Therefore, there is clear authority to permit this court to exercise it discretion and deny *pro se* status for appellant if the court determines he is unable to obey court orders or present his defense in coherent manner. *Id.*

III. Legal Argument

At hearing on August 15, 2006, it quickly became apparent that Mr. Haeg is not competent to undertake pro se status. While he may be able to knowingly and intelligently waive his right to an attorney, he cannot control his conduct, nor can he provide a coherent strategy for his defense. He repeatedly failed to comply with clear directions from the court.

The hearing began at 11 :00 a.m. and ended at 10:00 p.m. With a number of short breaks, a short lunch break, and a one and a half hour dinner break, it is estimated that more than eight hours of testimony was taken. During this lengthy testimony it was apparent that the appellant could not stick to the issues before the magistrate. His inability to focus on a single issue without getting sidetracked into collateral matters is a clear indication he will not be able to address proper points on appeal. He could not describe what points he would brief on appeal, if any.

On a number of occasions the appellant became argumentative with the judicial officer. Throughout the hearing, when objections were sustained, he continued to argue for a different outcome. While his persistence may be appropriate in a different forum, his conduct showed that he could not accept the authority of the court, even when given a clear directive.

He does not understand legal strategy, legal argument, and basic legal principles and procedures. For example, he said during the hearing that he did not understand that he could make objections, or that he could be a witness for himself at a hearing that was brought by his own motion. He claimed he could read the entire book

of court rules in a matter of days and understand it well enough to proceed without assistance of counsel. He was confused by the distinction between direct examination and cross examination, and could not distinguish import procedural differences between the two. He does not know when to proceed with a direct appeal post conviction relief. He thought the hearing on whether he was competent to represent himself was a post conviction relief proceeding. Any legal argument he furthers in the Court of Appeals is highly likely not to be presented coherently.

To complicate matters further, his lack of legal understanding combined with his efforts to learn sufficient substantive and procedural law to enable himself to proceed without assistance of counsel, has given him a distorted impression of which rules apply to a given situation. Frequently he would take a statement from a case or the rules out of context and try to apply it to a wholly inapplicable situation. For example, appellant recited a portion from Criminal Rule 35.1 (f) (1), which reads: "in considering a pro se application the court shall consider substance and disregard defects of form," but without considering the remainder of the sentence indicating the burden of proof and persuasion, he argued for the far broader principle that in any post conviction proceeding (including, in his mind, is direct appeal), form is totally unimportant and that only substance mattered. He stated that form "falls away." In another words, he is prepared to construe a part of a sentence outside of its context to enable him to represent himself in the Court of Appeals without being subject to the normal procedural requirements. This can only lead to a chaotic presentation which will be entirely disruptive to the legal process. As another example, under subsection (g) of the same rule, he understood that the "court may receive proof by affidavits, depositions, oral testimony, or other evidence." Because he

was confused by the distinction between post conviction relief and an appeal, he sought affidavits from approximately twenty or more persons, including opposing counsel. At least one of the affidavits he sought contained a list of 200 questions he wanted answered. He has inappropriately filed a number of motions in the Court of Appeals for 1) evidence and discovery, and 2) to compel a witness to testify on his behalf. He does not understand enough of the legal process to effectively present a coherent appeal.

The defendant is too emotionally involved in his case to represent himself, even at a minimal level. He admitted that he is extremely angry and he got emotional several times during the hearing. The criminal case against him has unquestionably affected his emotional state and it is clear that it is a paramount issue in his life. Whatever reasons for this may be, his emotional involvement prohibits him from sometimes acting in his own best interest. As indicated above, even when directed to do something or to not do something, he will persist because he is unable to control his emotions. But it also affects his reasoning. Because the case is so important to him, he is willing to bend the rules or not follow the rules to follow a particular course he believes is going to be more effective. The hazard posed by this disorganized course of action is that he will pull from the civil rules, rather than from the appellate rules, which he thinks it will give him an advantage or an argument that he couldn't otherwise have. He has filed motions while represented, even when told not to do so. He cites cases out of context when he feels the point he wants to establish can be found in that case, even when it is not. He does not appreciate the order in the law the rules are designed to maintain.

Unfortunately, because the defendant will rationalize or justify inappropriate conduct, he will put matters before the court that should never be there. For example, in his Motion for Reconsider of Stay of Guide License Suspension Pending Appeal he filed in the Court of Appeals, identified as Exhibit 8 in the August 15th hearing, he discussed a confidential proceeding he knew he was not to disclose. In his Motion to Proceed Pro Se, identified as Exhibit 3 in the August 15th hearing he again revealed confidential proceedings before the Alaska Bar Association, and included a partial transcript of conversations he had had with his attorney that were secretly recorded. Moreover, he included threats, said he didn't care if the Court of Appeals threw his case out, used inappropriate, vulgar language, and believed doing so was appropriate and effective.

Appellant's emotional involvement in this case impairs his judgment. In a motion he filed in the Court of Appeals titled Motion for Stay of Forfeiture, Judgment of Restitution and Licenses Suspension Pending Appeal, he attached an appraisal of the airplane forfeited by the judgment of conviction. The appraisal indicates the forfeited airplane has a value of $11, 290. However, he testified at the August 15th hearing that the appraisal was "ridiculously low" and that he knew it was not the "true value." He testified that there was some missing documentation which caused the appraisal to be substantially distorted. Nonetheless, he filed the document with the Court of Appeals knowing it to be extremely inaccurate and misleading. While this may be one significant example, the length of the hearing was at least in part attributed to cross of examination of the defendant and attempts to get him to be forthcoming in his testimony. The court must be able to rely on veracity and trustworthiness of a litigant standing before it.

Throughout the appellant was unable to focus his arguments on the issues properly before the court. He was unable to coherently present his case, he refused to follow the directions of the court, and he demonstrated his inability to understand the mechanics of the law necessary to coherently further his case.

IV. Conclusion

Based on the forgoing, it is respectfully submitted that the appellants should not be allowed to represent himself.

Dated September 18th, 2006 at Anchorage, Alaska.
DAVID W. MARQUEZ
ATTORNEY GENERAL

By: "s/"
Roger B. Rom
Assistant Attorney General
Alaska Bar No. 901 1128

APPENDIX II

July 25, 2008 - In the Court of Appeals of the State of Alaska, Haeg v. State, 7/25/08 Motion for Ruling, No. A-9455/ A-10015

7/25/08 MOTION FOR RULING

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case & respectfully asks this Court of Appeals for a ruling on return of property appeal #A-10015 prior to August 1, 2008.

Haeg first asked for the return of his property on July 25, 2006 – exactly 2 years ago. In the years since Haeg asked for and was granted 3 additional motions for expedited consideration & decision of this issue. [12/12/07, 2/6/08, & 5/21/08].

Every one of these motions made it clear that Haeg needed a decision made before summer – since the seized property, used in summer months, is the primary means by which Haeg puts food on the table for the entire year.

Haeg asked for permission to file an emergency motion for ruling and was told by Chief Deputy Clerk Lori Wade, "there was no emergency".

Attorney Andrew Peterson told Haeg that the State was in favor of a decision being made as soon as possible – as long as it was clear the State opposed a decision in Haeg's favor. Peterson stated he would file any response the State might have by the end of business on July 28, 2008 if Haeg would fax him a copy of the Motion for Ruling on July 25, 2008. Haeg will do so.

In the spring of 2004, using affidavits that falsified the location of the evidence (in order to justify guiding charges against Haeg) Alaska State Troopers applied to judicial officials for warrants, and, in a matter of minutes, received warrants to seize and deprive Haeg of his property, used as the primary means to provide a livelihood – all without notice to Haeg of an opportunity to contest either before or after the seizure.

Because Haeg was never told he had the opportunity to contest or bond, Haeg never contested the seizure based upon the Troopers false affidavits. If this would have been contested the property could not have been seized, deprived, and/or forfeited and there never would have been guide charges filed against Haeg.

It is 2 years since Haeg, after realizing the unlawful seizure and deprivation, first asked for his property back since the Troopers used false affidavits to take it and never informed Haeg of his right to contest – all which violated basic constitutional rights.

How can this be just, fair, or constitutional, especially when the Troopers took Haeg's property, that Haeg used to put food in his kids mouths, just hours after asking for authority to do this with false affidavits?

Does not fairness and constitutional due process require Haeg get a decision on getting his property back in an hour or 2 since he asked for authority for this with a truthful affidavit, which irrefutably justified the property's immediate return? How can Troopers obtain decisions and ex parte warrants to take the property in hours, and Haeg can't in over 2 years and counting – requests which the State was able to contest?

Because of this fundamental breakdown in justice Haeg respectfully asks this court for a decision deciding this matter by August 1, 2008.

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this 25th day of July 2008.

"s/"
David S. Haeg, Pro Se Appellant

May 21, 2008 - In the Court of Appeals of the State of Alaska, Haeg v. State, 5/21/08 Motion for Ruling, No. A-9455/ A-10015

5/21/08 MOTION FOR RULING

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case & respectfully asks this Court of Appeals for a ruling on appeal #A-10015.

On January 29, 2008 this court granted a request for expedited consideration of this appeal. [*See* supporting copy]. On March 6, 2008 this Court of Appeals granted a request for expedited oral argument and decision of this appeal. [*See* supporting copy].

It is now 4 months after this Court of Appeals first agreed to expedite this appeal.

As the motions indicate Haeg needs his property during the summer to provide for his family.

Summer is again upon us.

It has been over 4 years since Haeg was deprived of his property in violation of the Due Process Clause of both the Alaska and U.S. constitutions.

Since September 7, 2007 this court has had the briefing necessary to decide this appeal. [*See* December 3, 2007 order].

It is now *9 months* later.

In light of the above startling facts Haeg respectfully requests a ruling on this appeal before June 1, 2008.

This motion is supported by the accompanying affidavit, motions, & orders granting them, and a Sunday, May 18, 2008 Anchorage Daily News article.

RESPECTFULLY SUBMITTED this 21st day of May 2008.

"s/"
David S. Haeg, Pro Se Appellant

December 28, 2007 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455.

12/28/07 OPPOSITION TO STATE'S 12/21/07 MOTION FOR NON-ROUTINE EXTENSION OF TIME

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files an opposition to the State's motion for a 49 day non-routine extension of time in which to file appellee's brief.

FACTS

Appellate David Haeg was required to file his opening brief on or before January 22, 2007. David Haeg filed his brief on January 22, 2007 – utilizing the cassette recordings as required by *Appellate Rule 217(c)*. This rule further states that "written transcripts may not be prepared except by order of the court of appeals."

Appellate Rule 217(d) states the appellee's brief shall be served and filed within 20 days after service of the brief of the appellant.

On January 25, 2007 this Court of Appeals ordered the State to file it's brief of appellee by February 14, 2007 – or 23 days after David Haeg had filed his brief.

Instead the State asked that David Haeg's brief be rejected because it was over-length; because "Appellants brief does not comply with Ak Court Rules of Appellate Procedure 210(b)(1)(B)" (even though Appellate Rule 210 does not apply to appeals from district court – Rule 217 does) and because it did not contain victim's rights certificate (even though there was no victim).

On February 5, 2007 this Court of Appeals granted this motion and rejected David Haeg's brief – ordering a corrected brief on or before February 20, 2007.

David Haeg filed his corrected brief on February 20, 2007 and this Court of Appeals ordered the State file their appellees brief on or before April 3, 2007.

On March 30, 2007 the State requested a *non-routine* 45 day extension of time in which to file appellee's brief – a conclusory statement citing the press of business given as the reason the State needed this non-routine extension of time.

On April 14, 2007 this Court of Appeals granted the State's *non-routine* motion – ordering the State's brief on or before May 18, 2007.

The State filed its appellee's brief on May 18, 2007.

On May 24, 2007 this Court of Appeals ordered David Haeg's reply brief on or before May 31, 2007.

On May 30, 2007 David Haeg asked for a 30-day extension of time in which to file his reply brief.

On June 8, 2007 this Court of Appeals rejected the State's appellee brief because it failed to address any of David Haeg's claims of error. This Court of Appeals claimed this failure was a result of David Haeg's failure to properly cite to the record and to designate portions of the electronic record.

This Court of Appeals order also stayed the State's brief schedule and ordered David Haeg to designate the

portions of the electronic record which supported his claims of error.

On June 18, 2007 David Haeg filed his designation of the electronic record which supported his claims of error.

On June 27, 2007 the State moved to strike David Haeg's designation of the record that supported his case and to substitute their designation of the record.

On July 23, 2007 this Court of Appeals granted the State's motion to strike David Haeg's designation and to substitute it with their own designation. This Court of Appeals ordered Statewide Transcript Office to prepare and file transcripts on or before September 4, 2007.

On August 1, 2007 David Haeg asked for full-court reconsideration of this decision – resulting in a September 5, 2007 order allowing David Haeg to designate any additional portions of the electronic record he deemed necessary to make his case.

On September 10, 2007 David Haeg designated the additional portions of the record he deemed necessary to make his case.

On September 19, 2007 – the State moved to strike this designation of David Haeg's.

On October 1, 2007 David Haeg opposed this motion to strike.

On November 6, 2007 this Court of Appeals allowed David Haeg's designation to stand.

On December 3, 2007 this Court of Appeals ordered the State's appellee brief be filed on or before December 24, 2007.

On December 21, 2007 the State filed a *non-routine* motion for a 49-day extension of time in which to file their opening brief – giving a conclusory statement as to the press of business as justification.

In addition the motion did not indicate if David Haeg objected to the request or why the State was unable to determine David Haeg's position.

LAW

Appellate Rule 503.5(c) governs non-routine motions for extension of time for filing briefs. *Rule 503.5(c)(1)(F)* states that any such motion must include an affidavit stating,

> "A non-routine motion for an extension of time will be granted only upon a showing of diligence and substantial need. The motion must be filed before the expiration of the time prescribed for filing the brief, and must be accompanied by an affidavit stating: whether any other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position. A conclusory statement as to the press of business does not constitute a showing of diligence and substantial need. (2) A non-routine motion that would extend the time for filing a brief more than 60 days beyond the original due date will be granted only

upon a showing of extraordinary and compelling circumstances and may be conditioned on the payment of sanctions in a sum of not more than $500."

ARGUMENT

The State failed to inquire whether David Haeg opposed this extension, as they were required to do by *Rule 503.5(c)(1)(F).*

The State's justification for a *second* non-routine addition of time was a conclusory statement as to the press of business – violating *Rule 503.5(c)(1)(F).*

In addition in the affidavit supporting the State's request they claim they have received one prior extension of time of 30 days. This would be a routine extension of time according to *Appellate Rule 503.5.* Yet the State specifically asked for and specifically received a 45-day non-routine extension of time. In other words this is not the first time the State has asked for a non-routine extension of time. It is their second request for a non-routine extension of time. It appears the State is trying to mislead the Court of Appeals into believing that they have not previously asked for and received a non-routine extension of time in which to file their brief.

The State is asking for another 49-day non-routine extension of time in addition to the 45-day non-routine extension of time they have already received.

This is a total of 94 days extension of time – all requested because of "the press of business."

These extensions of time are *in addition* to the months and months and months of time the State received because this Court of Appeals rejected their first brief because it failed to oppose David Haeg's brief.

Look at the startling facts: David Haeg filed his opening brief on January 22, 2007 and the corrected version on February 20, 2007. *Appellate Rule 217*, which governs David Haeg's case, required the appellee's brief to be filed *20 days* after the appellants. It is now 311 days *and counting* from when David Haeg filed his corrected brief.

This is a gross and fundamental breakdown in justice. David Haeg has a wife and two daughters that are in grades 1 and 4 – he cannot afford to fight the State, which has unlimited time and funds, forever.

Due process and justice requires his claims of error be dealt with in a timely manner. This has gone far beyond any concept of timely.

CONCLUSION

In the interest of justice David Haeg very respectfully asks this Court of Appeals to deny the State's defective, misleading, and non-routine request for an additional 49 days in which to file their brief.

In the interest of justice David Haeg very respectfully asks this Court of Appeals to utilize the appellee brief already filed by the State on May 18, 2007.

In the interest of justice David Haeg very respectfully asks this Court of Appeals to issue him a date by which he must submit his reply brief.

This opposition is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this 28th day of December 2007.

"s/"
David S. Haeg, Pro Se Appellant

October 29, 2007 - In the Court of Appeals of the State of Alaska, Haeg v. State, No. A-9455.

MOTION FOR RULING ON PETITION FOR REVIEW AND THE MOTION FOR ITS EXPEDITED REVIEW AND TO SUPPLEMENT THE RECORD OF DAVID'S CRIMINAL APPEAL WITH OFFICIAL PROCEEDINGS BEFORE THE ALASKA BAR ASSOCIATION & THE ALASKA COMMISSION OF JUDICIAL CONDUCT

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files a motion for ruling and, in accordance with Criminal Rule 47, hereby files a motion to supplement the record with the official proceedings before the Alaska Bar Association and the Alaska Commission of Judicial Conduct.

MOTION FOR RULING

On 8/18/07 David filed a petition for review with this court of Magistrate Woodmancy's decision to not return all of David's property, used as the primary means to provide a livelihood, and to suppress it as evidence. David included a motion for expedited consideration of the petition for review – stating under oath that a delay would cause further expense, hardship, and deprivation of David's constitutional rights.

On 8/31/07 the State filed a motion for an extension of time in which to file the State's response to David's petition for review. This motion, although written in attorney of record Andrew Peterson's name, was signed by some unheard of attorney – directly violating Appellate Rule 514(e). This motion was supported by a two (2)-page affidavit in Andrew Peterson's name – yet signed by the

same unheard of attorney. Notary Sherry Gowan then certified this affidavit, with both her official seal and signature, that Andrew Peterson had been first duly sworn under oath before he stated and deposed the reasons David's motion should not be addressed in an expedited manner.

This is irrefutably the class B felony crime of perjury as defined by AS 11.56.200 and AS 11.56.240.

This fraudulent motion and fraudulent affidavit were then placed in the U.S. mail for delivery by same.

This is in violation of United States Code Title 18 Chapter 63 Section 1341, the federal felony of mail fraud, punishable by up to 20 years imprisonment. Since this fraud took both Gowan and the unheard of attorney to accomplish, it is also a conspiracy under United States Code Title 18 Chapter 18 Section 1341, also punishable by up to 20 years imprisonment. Since this fraud took both Gowan and the unheard of attorney to accomplish, it is also a conspiracy under United States Code Title 18 Chapter 18 Section 1341, also punishable by up to 20 years imprisonment.

On 9/7/07 David filed a motion to strike this motion and affidavit, citing perjury and conspiracy.

On 9/7/07, with no ruling from the Court of Appeals on the State's illegal motion for more time, the State filed an opposition to David's petition for review that was 10 days beyond the deadline in which to do so. This unauthorized opposition contained numerous intentional falsehoods and misrepresentations – including the following:

1. That David is asking for the very same relief already denied in his first petition for review by this Court of Appeals (when the Court of Appeals *never* even accepted that first petition for review, let alone ruled on David's requests in that petition for review – none of which included the return of his property and/or to suppress it as evidence.)

2. That Magistrate Woodmancy denied the forfeiture statutes were unconstitutional (when Magistrate Woodmancy had ruled he had no authority to determine whether or not they were unconstitutional.)

3. That David did not support his petition for review (when David supported it not only with facts, sworn to under penalty of perjury, but also with overwhelming and controlling caselaw and principles.)

4. That David failed to justify a petition for review under Appellate Rule 402(b)(1)-(4) (when David justified his petition with each and *every* one of the four (4) justifications, any one of which justifies review.)

5. That David failed to support his claim of enormous economic consequences, hardship, and injustice (when David supported this claim with a sworn affidavit that the property he is trying to recover with this petition for review, which includes his airplane, is the *primary* means with which *both* he and his wife Jackie provide a livelihood for their family of four (4) – and that this means has been kept from them for nearly four (4) years at present – all in violation of the constitutional and procedural due process that had to be provided "within days if not hours" of seizure).

6. That the District Court had no authority to find the statutes unconstitutional (when the very essence of a court's duty is to determine if laws and actions are in compliance with constitution).

7. That "This courts order (to the District Court) did not authorize Haeg to file a motion for the return of his property". This was the *exact* reason for this Court of Appeals remand. See Court of Appeals Order of 2/5/07:

> "Jurisdiction in this case is remanded to the District Court for the limited purpose of allowing Haeg *to file a motion for the return of his property* which the State seized in connection with this case. The District Court has the jurisdiction to conduct any proceedings necessary to decide this motion. We express no opinion on the merits of Haeg's motion. This limited remand does not alter the briefing deadline in this case."

8. That David cited no authority that would authorize Magistrate Woodmancy to find the forfeiture statutes unconstitutional or to suppress evidence (when David cited the constitutional rights of due process, equal protection under law, and against unreasonable searches and seizures, any one of which would authorize this – along with citing the specific U.S. and Alaska Supreme Court controlling caselaw and principles that also support Magistrate Woodmancy's authority to do this.)

9. That David had no right to the constitutional prompt notice of an opportunity to contest after the State seized and deprived him of his property that was his primary means to provide

a livelihood; that David had no right to the constitutional prompt notice of the intent to forfeit his property, used as his primary means to provide a livelihood; that David had no right to the constitutional prompt notice of the case for forfeiture of his property, used as his primary means to provide a livelihood, and that David had no right to the constitutional prompt notice of an opportunity to bond out his property, used as his primary means to provide a livelihood. (This is proven perjury by Peterson – proven by a literal mountain of U.S. and Alaska Supreme Court controlling caselaw and U.S. and Alaska Supreme Court controlling principles – all of which were presented to Magistrate Woodmancy in David's motion for the return of property and to suppress as evidence and to this Court of Appeals in David's petition for review.)

10. That Magistrate Woodmancy did not have to hold an evidentiary hearing because Criminal Rule 42(e)(3) provides "[i]f material issues of fact are *not* presented in the pleadings, the court need not hold an evidentiary hearing". Peterson fails to acknowledge *numerous* material issues of fact *were* presented in the pleadings: i.e. the affidavits used to obtain the property seizure warrants were based upon intentional perjury; the property taken was David's primary means to provide a livelihood; no notice of opportunity to contest was given "within days if not hours"; no notice of the case for forfeiture was given "within days if not hours"; no notice of the opportunity to bond was given "within days if not hours"; and that Fish and Game forfeiture statutes AS 16.05.190-195 provide no standards to comply with the preceding due process requirements – both as written and as applied to David – and are thus unconstitutional.

This fraudulent motion was then placed in the U.S. mail for delivery by same. Again this is in violation of United States Code Title 18 Chapter 63 Section 1341, the federal felony of mail fraud, punishable by up to 20 years imprisonment.

It is chilling the level of corruption and conspiracy that must exist in the Alaska Department of Law for them to be able to think they can lie like this in official documents, sent through the U.S. mail, with immunity. It really is not surprising at all they have never lifted a finger to prosecute the corruption in our State and Federal legislatures – the lawyers in the Department of Law are far more corrupt than the legislators.

On 9/17/07 David filed a motion to strike the State's opposition, citing all the above facts, citing the illegal motion and affidavit, citing the fact the State filed the opposition a week after the time to do so had expired, and that all this was done using the color of the law to continue illegally depriving David of the property he used as the primary means to provide a livelihood.

On or about 10/4/07, or 47 days after it was filed David called the Court of Appeals to express his concerns of having no ruling or acknowledgement whatsoever on his petition for review or on his motion for expedited consideration of his petition for review. Shannon Brown, the Court of Appeals clerk assigned to David's case, said they would have it out in 2 days.

On 10/11/07, or a week later, Brown called and informed David that the Court of Appeals would get a decision out the next day.

It is now 10/29/07, over two weeks after this last call, and *seventy two (72) days* since David filed his petition for review of his motion for return of his property and to suppress as evidence and his motion for expedited review – *still with no response whatsoever from this Court of Appeals.*

This is frightening when you carefully consider this with the *fact* that David filed *sixteen (16)* different motions *over nearly a year* in the *futile* attempt to have any court, including this Court of Appeals, decide this same motion – with this Court of Appeals only ordering the district court to decide it *after* David, having become so frustrated he was willing to die for this constitutionally guaranteed opportunity, told this Court of Appeals he would just go to the Trooper impound yard and physically take his property back that he used as the primary means to put food in his two (2) daughters mouths.

What an incredible saga to obtain the simple return of property taken in violation of constitutional rights that had to be provided "within days if not hours" – with Alaska's justice system *still* intentionally denying the return after almost four (4) years. *No one* would have come as far as David has – in other words this is now an intentional and provable conspiracy within Alaska's justice system to deprive citizens of their property by violating their constitutional rights – by forcing them to first have to bet their very life to just get the ball started and then by costing them so much money and time they must give up before ever getting to the end. It is a cruel, effective, deceptive, unjust, and unconstitutional conspiracy that uses concepts not understood by the great majority of the public – and is thus able to be kept hidden from them. The public may realize they are somehow being unfairly deprived of property by the justice system but would never

realize how or who is to blame or how to possibly begin to address it.

David files this motion with absolutely no expectation or hope of it ever being effectively addressed. Alaska's justice system has removed all hope of ever obtaining justice in this State. If it is address at all it will no doubt be remanded to some corrupt judge who, as Magistrate Woodmancy already has, will refuse to allow the constitutionally guaranteed cross examination of the adverse witnesses whom David could prove are committing perjury, refuse to allow the constitutionally guaranteed presentation of the overwhelming evidence in David's favor, refuse to allow the constitutionally guaranteed witness testimony that is also overwhelming in David's favor, and refuse to allow the constitutionally guaranteed oral argument so David could prove, point by point, the State has illegally taken and deprived him of his property he uses as the primary means of providing a livelihood for his family.

David will no longer wait patiently by as his life and the life of his family continues to be destroyed by this State's corrupt justice system. David is 41 years old, his wife Jackie is 42 years old, their daughter Kayla is 9 years old, and their daughter Cassie is 6 years old – *four (4) years* of their lives is too much to have allowed the State to have taken illegally and unchallenged. S*eventy two (72) days* is too long for a family to have to wait for a response to a motion for *expedited* consideration of a petition to get property back that is used as the *primary* means to put food in the families mouth – especially when this due process was first *required* to happen "within days if not hours" *four (4) years ago*. David's family is lucky they are not on death row with this Court of Appeals.

David will immediately file in federal court for relief from the never-ending injustice placed upon him and his family by this State – citing the massive and intentional deprivation of the equal protection of the laws in his entire criminal case. David demands this Court of Appeals continue to decide his motions, as is his constitutional right – no matter how untimely and unconstitutional these decisions are – until a federal court removes this responsibility from them.

MOTION TO SUPPLEMENT RECORD

While perfecting his federal civil rights complaint David has realized further plain error in his prosecution.

During the Fee Arbitration proceedings of 4/12 thru 4/13/06 and 7/11 thru 7/12/06 that David filed against attorney Brent Cole, both David's codefendant Tony Zellers and Zellers attorney Kevin Fitzgerald (Cole's one witness against David) testified under oath that the reason Zellers cooperated with the prosecution was because of David's cooperation in giving a plea negotiation interview implicating Zellers. In addition, at the Fee Arbitration proceeding both Cole and Fitzgerald testified under oath that both David and Zellers had immunity agreements for their cooperation. In other words, since Zellers cooperation was a direct result of David's cooperation, both David's immunity agreement and Evidence Rule 410 would keep Zellers from participating in any prosecution of David.

Yet Zellers was the prosecutions primary witness against David at David's trial and his testimony was the primary evidence against David.

This is a direct violation of David's constitutional rights against self-incrimination, equal protection of law, and due process; is a direct violation of Evidence Rule 410;

is incredibly prejudicial; and is thus *plain error*. As such it is David's constitutional right to have this issue included in his appeal.

Also uncovered during the perfection of David's federal civil rights complaint is that during the investigation by the Alaska Commission of Judicial Conduct into Judge Margaret Murphy's conduct, both Judge Murphy and Trooper Brett Gibbens perjured themselves. This perjury was in response to Executive Director Marla Greenstein's question of whether or not Judge Murphy had an unacceptable level of personal contact with Trooper Gibbens outside the courtroom – specifically whether Trooper Gibbens had given Judge Murphy rides to and from court during David's trial and sentencing. Both Judge Murphy and Trooper Gibbens testified that Trooper Gibbens had never given

Judge Murphy any rides until after David was sentenced. Trooper Gibbens had in fact given Judge Murphy every single ride to and from court during both David's 6-day trial and 2-day sentencing – every morning, noon, and night.

In *Napue v. Illinois*, 360 U.S. 264 (1959) the U.S. Supreme Court held that perjury that went only to a witness's credibility was cause for reversal of a conviction. In David's case both David's pretrial, trial, and sentencing judge (Murphy) and the main Trooper witness against David at trial (Gibbens, who was also the primary investigator in David's case) have now committed perjury in a conspiracy to cover up their prejudicial conduct in front of David's jury during David's trial and sentencing. This is thus *plain error* and as such it is David's constitutional right to have this issue included in his appeal.

David hereby formally requests effective evidentiary hearings, including cross-examination of adverse witnesses, evidence presentation, witness testimony, and oral argument, to fully expose the above *plain error* in his prosecution. After the evidentiary value of these issues are fully developed David formally requests they be added to the record of his appeal.

Further, because of the following, David formally requests this Court of Appeals conduct these evidentiary hearings themselves.

During the perfection of his federal civil lawsuit it has come to David's attention that his timely motion, supported by affidavit, to recuse Magistrate David Woodmancy (because of evident bias) was not honored in direct violation of *AS 22.20.022*. This remained unaddressed even after sitting judge Mark Wood (Woodmancy's superior) was apprised of this violation of the law and of David's constitutional rights.

Since he has remained assigned to David's case in violation of the law and David's rights Magistrate Woodmancy has made numerous decisions that are in direct conflict with all controlling law and principles so as to intentionally harm David – including his incomprehensible decisions refusing to allow David an effective hearing; refusing to return David's property, used as the primary means to provide his livelihood; refusing to suppress its use as evidence; and refusing to make decisions David must have for justice to prevail. Because of this *plain error* David requests this Court of Appeals conduct the evidentiary hearings necessary to develop the other plain error in his case.

In consideration of the ever-expanding plain error, constitutional violations, and fundamental breakdown in

justice above, David respectfully asks this Court of Appeals immediately grant all his motions.

This motion is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this 29th day of October 2007.

"s/"

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David S. Haeg, Pro Se Appellant

August 1, 2007 - In the District Court for the State of Alaska Fourth Judicial District at Aniak, Haeg v. State, No. A-9455.

MOTION FOR RECONSIDERATION AND CLARIFICATION

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case, in accordance with *Alaska Rules of Criminal Procedure Rule No. 42(k)*, and hereby files this motion for reconsideration and clarification of this court's 7/23/07 ruling of David's motion for Return of Property and to Suppress as Evidence.

INTRODUCTION

This court has overlooked, misapplied or failed to consider the numerous decisions and principles directly controlling (cited in David's brief), which all hold that if an opportunity for a hearing to contest is not promptly given after seizure and deprivation of property, or if notice of the case for deprivation or intent to forfeit is not promptly given after seizure and deprivation, *all* property seized must be returned and suppressed as evidence. These decisions and principles directly controlling hold that if the statutes lack standards and allow the seizure, deprivation and/or forfeiture without requiring this procedural due process they are unconstitutional. These decisions and principles directly controlling hold that when evidence seized is also property, especially property used to provide a livelihood, it is subject to vastly different due process requirements than evidence alone. These decisions and principles directly controlling hold that the opportunity to contest property deprivations, to be effective, must include confrontation of adverse witnesses, presentation of evidence and witness testimony, and oral argument.

This court has overlooked or misconceived the material fact that no hearing was promptly given, no notice of the opportunity for a prompt hearing was given, and no notice of the case or intent to forfeit was promptly given. This court has overlooked the material fact that *AS 16.05.190* and *AS 16.05.195* allowed the seizure, deprivation, and forfeiture of property without the required procedural due process. This court has also overlooked or misconceived the material fact that the evidence seized was also property, which was the primary means to provide a livelihood. This court has also overlooked or misconceived the material fact that in deciding this motion, which is occurring over three years after the time of property deprivation, no confrontation of witnesses was allowed, no presentation of evidence or witness testimony was allowed, and no oral argument was allowed – even though all this was asked for numerous times.

In its decision this court has also failed to give any explanation or justification or to cite any decisions and/or principles directly controlling or even persuasive.

FACTS

During a criminal prosecution of David for misdemeanor Fish and Game crimes the State of Alaska, using warrants based upon perjury, seized and deprived David and Jackie Haeg of property used as the primary means to provide a livelihood. No hearing to protest was provided, no notice of a hearing or opportunity for a hearing to contest was provided, no notice of the case against their property was provided, no opportunity to bond the property out was provided, and no authority or intent to seek forfeiture of the property was ever provided in any warrant, charge or information filed. In addition, the statutes which authorized forfeitures in Fish and Game cases, *AS*

16.05.190 and *AS 16.05.195*, lack standards to require this constitutional due process during forfeiture actions.

Much of the property was forfeited after David's conviction.

David and Jackie, after they realized the State's violation of the procedural due process required by constitution, filed motions in both this district court and the Court of Appeals for the return of their property and to suppress it as evidence in accordance with Criminal Rule 37(c). After nearly a year of having both courts refusing to rule on 16 different motions, by saying the other court had jurisdiction, David finally stated he would physically go get he and Jackie's property from the Trooper impound yard. It was only after this that the Court of Appeals ordered the district court to conduct any proceedings necessary to determine the merits of David's motion.

This district court then denied David's multiple requests for the district court in which the property was seized to rule on the motion and for an evidentiary hearing so he could confront the witnesses against him, to present witness testimony and evidence, and to conduct oral argument – stating David could only provide a written request and that "this court can't turn back time to change what happened".

David filed his motion on 6/2/07 – supporting his arguments with numerous decisions and principles directly controlling. The State filed an opposition on 6/22/07 – without citing a single decision or principle directly controlling - and not contesting the fact they never gave David or Jackie notice of an opportunity to contest or of the case for forfeiture – and falsely claiming that David tried to "impermissibly shift the burden for seeking a post seizure

hearing from himself to the State." David filed a reply on 7/3/07. This district court's order failed to address almost every request David made in his motion – and failed to give authority, justification, explanation, or to place its essential findings on the record so if and/or when David appeals the decision the reviewing court would know this courts rational for its decision. David specifically asked the following from this court: (1) That the procedural due process violations by the State entitled David and Jackie to the return of *all* their property and to suppress it as evidence; (2) That *AS 16.05.190 and AS 16.05.195* are unconstitutional and that because of this the seizure, deprivation, and/or forfeiture of David and Jackie Haeg's property, without the constitutionally required notice and/or hearing, was and is void; (3) That because the seizure, deprivation, and/or forfeiture of David and Jackie Haeg's property was and is void everything seized, deprived, and/or forfeited must be immediately returned and suppressed as evidence; (4) That Trooper Gibbens search warrant affidavits, upon which all search warrants were authorized, contained intentional, misleading, and highly prejudicial perjury – and thus all evidence gathered as a result of these search warrants affidavits must be suppressed; (5) That because of the material issues of fact presented David and Jackie Haeg are allowed to testify, present evidence and oral argument, and subpoena witnesses so they may cross-examine them under oath. See *Criminal Rule 42(e)(3)*, "If material issues of fact are not presented in the pleadings, the court need not hold an evidentiary hearing." This means that if material issues of fact *are* presented, *as have been,* there must be an evidentiary hearing held; (6) That because of the obstructions and delays in getting this motion timely ruled on this court rule on *all* above requests – including the one declaring *AS 16.05.190 and AS 16.05.195* unconstitutional. (7) That this court to include its essential findings on the

record, including caselaw to support it, for the decision on each and every above request – especially the rational to differentiate between items that are returned and those not returned; (8) Also how the seizure, deprivation, and/or forfeiture of their property complied with U.S. and Alaska constitutional due process guarantees; (9) That this court place a very clear and detailed finding for dispensing with any and/or all evidentiary hearings in order to decide this motion which turns on issues of material fact - i.e. whether David and/or Jackie received a hearing or notice of their right to a hearing "within days if not hours" to contest the seizure of the property they used to provide a livelihood or even bond it out, notice of the case to forfeit before the hearing, notice of the statute authorizing this in the charging documents, whether the property was used to provide a livelihood, etc, etc, etc. (10) How not receiving an evidentiary hearing in which adverse witnesses could be cross examined, witness testimony and evidence be presented, and oral arguments does not deprive David and Jackie of their constitutional right to an *effective* opportunity to present their case; and (11) That the State affirmatively mislead the court in order to keep property they seized, deprived, and forfeited in violation of constitutional due process.

CONCLUSION

The decision and order from this court is defective in nearly every respect. It completely fails to address any of the concerns that David had to literally lay his life on the line to have addressed. It completely fails to apply law to the facts. It completely fails to cite any decisions or principles directly controlling to justify its decision to not return all the property or to suppress it as evidence – and completely fails to show how the numerous decisions and principles David cited, which entitle him to the return of *all*

property and to suppress it as evidence, did not control. It completely fails to consider or admit the fact that no post property seizure hearing or opportunity for a hearing was ever provided – and fails to consider or admit all law holds that if this is not done promptly *all* property seized must be returned and suppressed as evidence even if it has already been used as evidence or forfeited. It completely fails to consider the fact that no notice of the intent to forfeit, case for forfeiture, or statute authorizing forfeiture was ever given in any warrant, charge or information filed – and fails to consider or admit all law holds this deprives a defendant of a fair opportunity to prepare a defense, requiring *all* property forfeited to be returned. It completely fails to consider that property seizures are subject to vastly different rules than just evidence seizures. The decision fails to consider the fact all decisions and principles directly controlling hold forfeiture statutes are unconstitutional if they lack of standards and this results in a deprivation of due process. The decision fails to consider the fact the State affirmatively mislead the court to keep the property they seized, deprived, and forfeited in violation of constitutional due process – and claims that David involuntarily, unintelligently, and unknowingly "waived" his constitutional rights, which cannot be waived unless it is a voluntary, intelligent and knowing waiver. It completely fails to consider David's claim this is all "plain error" – requiring *all* property to be returned.

This court rubber-stamped, verbatim, without any explanation, authority cited, evidentiary hearing, or without any support or justification whatsoever, exactly what the State *wanted* - that David was entitled to only the property not forfeited or that could be returned to David without upsetting their conviction of David – when all the property was seized, deprived, and forfeited in violation of constitutional due process. It appears the court failed to

read David's brief proving the constitutional violations. It appears as if it is the policy of both the State and this court to ignore constitutional violations if they are detrimental to the State - and that this policy is somehow acceptable to the public who would bear the devastating price of this corruption. This is would be a gross violation of the publics trust. To ensure this is not policy this court needs to address the constitutional violations presented, render a decision that is in agreement with the numerous decisions and principles directly controlling, and then justify and explain the decision to show how it complies with both the U.S. and Alaska constitutions.

Because of the above defects, plain error, and fundamental breakdown in justice David respectfully asks this court to reconsider and clarify its decision of 7/23/07.

This motion is supported by the accompanying affidavit from David Haeg.

RESPECTFULLY SUBMITTED this 1ST day of August, 2007.

"s/"

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David S. Haeg, Pro Se

November 27, 2006 - In the Court of Appeals of the State of Alaska, Haeg v. State, No. A-9455, Motion for Clarification.

MOTION FOR CLARIFICATION & RECONSIDERATION OF DENIAL OF ALL MOTIONS FILED ON NOVEMBER 6, 2006, INCLUDING ORAL ARGUMENTS, REQUEST TO KNOW HOW TO APPEAL DENIAL TO THE ALASKA SUPREME COURT, ORDER THAT DISTRICT COURT ACCEPT APPLICATION FOR POST-CONVICTION RELIEF AND CHANGE VENUE FOR THIS TO KENAI, ALASKA

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case, hereby moves this court, in accordance with *Appellate Rule 503(h),* for clarification & reconsideration of motions filed on November 6, 2006, by appellant. On November 16, 2006 this court issued an order denying all Haeg's motions. Motions denied included Emergency Motion for Return of Property and to Suppress Evidence, Motion to Correct and Stay Guide License Suspension, Motion for Summary Judgment Reversing Conviction with Prejudice, Motion to Supplement the Record, and Motion to Stay Appeal Pending Post-Conviction Relief Procedure. Current motion includes request for oral arguments and request on the proper procedure for Haeg to appeal these denials to the Alaska Supreme Court. See *Breck v. Ulmer*, 745 P.2d 66 (1987) "[a] judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish..." In addition Haeg asks this Court of Appeals for an order requiring the district court to accept a petition for postconviction relief – as they have ruled they will not do so. Haeg further asks this Court of Appeals to change the venue for this procedure to Kenai, Alaska

because of the immense bias in the trial court and the cost prejudice to Haeg and everyone else to conduct this in McGrath, Alaska.

I. Emergency Motion for Return of Property and to Suppress Evidence

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Emergency Motion for Return of Property and to Suppress Evidence. To deny ruling on Haeg's motion for return of property seized by the State the Court of Appeals states, "Apparently Haeg has not filed a motion under Criminal Rule 37(c)." The Court of Appeals is gravely mistaken in this. Haeg's motion of November 6, 2006 and supporting documents and the Court of Appeals own record in Haeg's case in no uncertain terms establishes that Haeg has made numerous and repeated attempts in both the district courts in which his property was seized for the return of his property, citing both Criminal Rule 37 (c) and Return of Property and Suppress Evidence - with the first of *fifteen (15)* separate motions being filed on 7/18/06.[1] Approximately every two (2) weeks Haeg and/or his wife filed new, amended, and/or expedited Criminal Rule 37(c) motions firmly telling the district courts that this motion was to be ruled on by them because it had to do with urgent and established constitutional due process concerns in protecting the livelihood of a family – and the jurisdiction to rule on these motions was clearly with the district courts. In addition Haeg pointed out he was in exact compliance with the specific rule that said these motions were to be filed in the court in the district in which the property was seized or in which the property may be used. At all times the district courts remained unpersuaded and in fact on 9/26/06 Judge David Landry

[1] See enclosed motions included in attached appendix.

issued a widely distributed memorandum, including to this court, explaining the situation, asking for advice, and trying to sidestep the issue by again claiming the case had gone to judgment and is currently on appeal. Judge Landry further tried to sidestep and confuse the issue by claiming that Haeg was apparently only concerned with a search warrant issued by him when in fact almost all of the property seized and illegally held in his district was though perjured search warrants issued in McGrath[2]. Both district courts (Aniak and Kenai) have refused to rule on Haeg's motions – telling Haeg that they had no jurisdiction to do so as Haeg's appeal of his criminal conviction was the jurisdiction of the Court of Appeals. Haeg went so far as to several times inform both Morgan Christen and Mark Wood, the sitting judges for the third and forth districts, of the absolute refusal for anyone to rule on Haeg's motion, still all to no avail and with no response from any judge – even judges Christen and Wood.

More recently Judge Landry issued the only order in response to these numerous motions – denying Haeg's motion because "Subject matter and issues raised are the jurisdiction of the Court of Appeals" and "Believe this matter remains under the jurisdiction of the Court of Appeals".

Haeg and his wife have been illegally deprived of their property, used to provide the primary livelihood for their family, for nearly *three (3) years* at present. After Haeg and his wife realized this and said something they have been denied their property for an additional five (5) months after repeatedly telling the court of this injustice

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[2] See enclosed memorandum by Judge Landry dated 9/26/06.

and asking, in exact accordance with rule and established case law, that something be done.

The limited response so far to Haeg's motions only arrived after Haeg and his wife told numerous judges, including all those in the Court of Appeals and Supreme Court, they were traveling to the Alaska State Troopers in Anchorage to recover their property – citing all they had done in the courts according to the Rule of Law – all with absolutely no response. The forced responses finally received were absurd and complete nonsense. This Court of Appeals, in refusing to rule, claims Haeg "hasn't filed anything with the district court" and the district courts, in refusing to rule, claim, "We don't have any jurisdiction because jurisdiction is held by the Court of Appeals." Because Haeg and his wife are absolutely and irrefutably entitled to the return of their property, each court can only deny them this through the childish and corrupt ploy of saying "we can't rule because it's not our jurisdiction – it's the other courts jurisdiction". Yet in *five (5) months,* even *after* communicating about the issue with each other, they refuse to do anything. It should be clear that the courts are actively, intentionally, maliciously and corruptly denying Haeg and his wife their clear rights according to Rule, Law, and constitution. The courts know if they continue this long enough a pro se defendant will eventually have to give up fighting for his constitutional rights to his property, used to provide a livelihood, and have to find another way to make a living for his family. It is an unbelievably effective, ruthless, and chilling way to deny someone their constitutional rights – even more so when it is proven that it is being actively and aggressively utilized by multiple levels of courts.

In addition if Haeg had been afforded firmly established due process in the first place it would have been

proven that all the search warrants used to seize the property were based on unbelievably intentional, knowing, and prejudicial perjury – again ending, before it ever started, the prosecution that has devastated and continues, unabated, to devastate Haeg and his family.

When Haeg, his wife and approximately twenty (20) other concerned people drove up from Soldotna to ask the troopers for the return of their property and, after they were again denied, continued onto the Court of Appeals to express their disbelief with the Court of Appeals ruling, the clerks of the Court of Appeals advised Haeg, his wife, and the assembled citizens that the Court of Appeals record contained the numerous motions Haeg filed in the district courts for return of property and to suppress evidence in accordance with *Criminal Rule 37(c).* The record of these motions was in addition to the multiple times Haeg clearly stated this fact in the very motion the Court of Appeals denied by claiming he had not filed these motions. How is it possible then for the Court of Appeals to deny ruling on Haeg's motion by claiming he has never filed a Criminal Rule 37 (c) motion requesting return of property and suppress as evidence? Did the Court of Appeals read Haeg's motion? If not why not? Did the Court of Appeals read the record in Haeg's case? If not why not? If they did read either of these how and why did they claim Haeg had "Apparently not filed a motion under Criminal Rule 37(c)"?

Haeg is confused that the Court of Appeals claims he "**still** has the opportunity to ask the trial court for the return of the property." How many times must someone ask for return of his or her property - more than the *fifteen (15)* times he has already asked over the last *five (5) months?* What is the magic number? Does the Court of Appeals mean David and Jackie Haeg have the right to ask the court for the return of their property but the court has no

obligation to answer? Exactly what is the job of the court? What good is the to right to ask if the courts have no obligation to respond?

Next the Court of Appeals states that the trial court must decide these issues before Haeg can ask for appellate review. If the district courts refuse to decide on these motions as they have done now for *five (5) months* after receiving *fifteen (15)* separate motions what is Haeg supposed to do – give up? Haeg will never do so and in fact cannot wait until he gets to explain this blatant corruption to the U.S. Supreme Court. It is obvious both the Court of Appeals and the district courts realize Haeg and his wife are entitled, by irrefutable and established constitutional due process, to their property back and are illegally refusing Haeg this in order to bankrupt Haeg and keep the corruption of the lawyers, Troopers, and judges in Haeg's case covered up.

Of special interest to Haeg is where this Court of Appeals states, "alternatively the State may seek to forfeit the property." Exactly how and why are they allowed to do this? The prosecution has illegally seized and illegally held Haeg's property, used to provide a livelihood, for nearly three years, and, even though they never gave Haeg or his wife the required notice they would seek to forfeit it, convinced the court to forfeit most of it after this. The State never obeyed *any* of the "ensemble of procedural rules that bounds the states discretion Motion for Reconsideration Page 8 of 47 to seize [property] and limits the risk and duration of harmful errors" that the Alaska Supreme Court requires the prosecution *must* follow. What happens to the State when they blatantly break this "ensemble" of constitutional protections to illegally and irreparably harm someone and put the resulting money in their pocket? Absolutely nothing as this Court of Appeals has ruled? Why

would they *ever* obey this "ensemble" when it is so lucrative and there is no punishment?

Did this court read Haeg's motions, memorandum, affidavits and supporting documents? If they did they should know that the Alaska Supreme Court has ruled, "as a general rule, forfeitures are disfavored by the law, and thus forfeiture statutes should be strictly construed against the government." To Haeg this means if the State breaks this "ensemble" of protections they have to return the property and cannot use it as evidence – exactly as Criminal Rule 37(c) reads and the Supreme Court ruled. How then can the Court of Appeals, unless they are corrupt, rule that the State may *still* seek to forfeit David and Jackie Haeg's property that was seized, held, and forfeited in clear violation of this "ensemble" of established constitutional due process?

The State never provided Haeg or his wife anything in writing whatsoever to inform him they were going to seek forfeiture of their property. In none of the search warrants or three informations charging Haeg is there a single reference to the State's desire or intention to forfeit Haeg's property – or even a reference to the rule allowing this. Rom even admits this, Motion for Reconsideration Page 9 of 47 stating, "Although the judgments do not reflect the statutory authorization for forfeiture of the aircraft, and appellant does not directly raise this in his brief, AS 16.05.190-.195 and AS 08.54.720(f)(4) authorize forfeiture upon conviction. See Waiste, 10 P.3d at 1152-53." In other words the court forfeited Haeg's property without giving Haeg or his wife any chance whatsoever to prepare a defense against this. This is against the law. In fact Federal Rule of Criminal Procedures 7 and 32.2 prohibit anything being forfeited if the intent to forfeit property is not specifically articulated in the charging documents. This

is to ensure that the person to be deprived has the constitutionally guaranteed "notice" of the case against his property and an opportunity to prepare to meet it. Neither Haeg nor his wife ever received this guaranteed "notice" of a case against their property.

Is the Court of Appeals trying to convince Haeg that it doesn't matter the State has illegally deprived him and his wife of their livelihood since the very beginning, effectively bankrupting him and his wife, and now the State gets to start over with a clean slate and seek forfeiture once again? So the State gets a clean slate but Haeg is required to keep his dirty, shattered, and bankrupt one? What, exactly, is the reasoning for this ruling? Would not constitutionally guaranteed fundamental fairness, clearly expressed in the due process clause, require a ruling exactly opposite? That Haeg gets a new, clean, and unbankrupt slate and the State gets the dirty, broken, and bankrupt one? Haeg thinks the following courts have already ruled this upon this grave issue:

> U.S. Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Only 'wip[ing] the slate clean ... would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."
>
> U.S. Supreme Court in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim

> against the alleged [defendant] before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court [U.S. Supreme Court]."
>
> U.S. Supreme Court in *Wiren v Eide*, 542 F2d 757 (9th Cir. 1976)."Where the property was forfeited without constitutionally adequate notice to the claimant, the courts must provide relief, either by vacating the default judgment, or by allowing a collateral suit."
>
> Alaska Supreme Court in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972. "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing ... this procedure violates the fundamental principles of due process."

Neither Haeg nor his wife ever received any of these constitutional guarantees - above-required notice, hearings, or opportunity to bond (part of the "ensemble"). The prosecution came, seized most of the property Haeg and his wife used to provide the entire livelihood for their two daughters, used perjured search warrant affidavits from a single Trooper to do so, and, when Haeg asked when he could get his property back because he had clients coming in the next day, answered "never". When, after being illegally deprived for over a year Haeg asked if at least he could bond his property out the judge refused to make a ruling – and refused to rule even after Haeg filed second motion asking her to rule on the first motion. The State's argument, used to blackmail Judge Murphy not to rule, is

very enlightening; "The court will be *usurping executive authority* if it allows Haeg to bond his [property]". This democracy called the United States is dependent upon the checks and balances between the executive, judicial and legislative. It is very chilling indeed when it is so corrupt the executive is using the judiciary's checks **against** the judiciary to deny someone constitutionally guaranteed rights.

If the State is now allowed to re-forfeit Haeg's property or forfeit the property they still possess after they were denied forfeiture by the court because it was never even used as "evidence", they will have no reason to ever follow the "ensemble of procedural rules that bounds the states discretion to seize [property] and limits the risk and duration of harmful errors" because it will be proven there is no punishment if the State doesn't obey these constitutional protections.

II. Motion to Stay Appeal Pending Post-Conviction Relief Procedure

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying stay of his appeal until after his post-conviction relief procedure claiming ineffective assistance and corruption of counsel, prosecutorial misconduct/corruption, and judicial misconduct/corruption is finished. The court has somehow justified their action by merely stating: "the law allows Haeg to pursue an appeal and a petition for post-conviction relief at the same time". This court never addressed the undeniable, immense, and fatal prejudice to Haeg that doing this would cause him – all documented for them to consider in the very motion this court denied. Also, the court did not claim the State would be in anyway prejudiced if Haeg' appeal was stayed.

All seminal Alaskan cases, including those by this Court of Appeals involving this exact situation, have held a defendant *must* first move for a new trial or sought post-conviction relief before moving forward with an appeal claiming ineffective assistance of counsel. This Court of Appeals in State v. Jones 759 P.2d 558 made it extremely clear: "Jones also filed a direct appeal challenging his conviction & sentence on unrelated grounds. *The appeal was stayed pending resolution of the postconviction procedure".*

> See also: *Barry v. State*, 675 P.2d 1292: "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged as deficient. We concluded that, *'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief'"*
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> *Grinols v. State No. A-7349: "But many states – including Alaska – generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue post-conviction relief Motion for Reconsideration Page 13 of 47 litigation if they want to attack the competence of their trial attorney".*

> Alaska Supreme Court in *Risher v. State* 523 P.2d 421: "Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."
>
> United States Court of Appeals for the Seventh Circuit *US v. Fuller No. 00-2023*: "We generally discourage appellants from bringing ineffective assistance of counsel claims for the first time on direct appeal because only rarely is the trial record sufficiently developed for meaningful review. *See United States v. Pergler,* 233 F.3d 1005, 1009 (7th Cir. 2000); *United States v. Martinez,* 169 F.3d 1049, 1052 (7th Cir. 1999)."

Why does this same Court of Appeals refuse him this when they *require* it of everyone else? Haeg wonders if this is equal protection under law – when it is so extremely prejudicial to force him to proceed with an appeal based upon a nearly worthless record and at the same time telling him if he wants to conduct a post-conviction relief procedure to supplement the record he must do it at the same time. Yet, because his brief must be filed before this is done, this new evidence will never be considered in deciding his appeal. Also, because he will be trying to conduct both

at the same time, along with still providing for his family, neither the appeal nor the postconviction relief procedure will receive the attention each needs to succeed. Is this the reason for this decision from the Court of Appeals? That they do not want Haeg to be able to conduct an effective appeal or post-conviction relief and/or they do not want to have on record the full truth of what happened to Haeg before deciding Haeg's appeal? Haeg would like to point out it was his counsel, who was actively representing interests in direct conflict with Haeg's, who filed Haeg's appeal. Haeg does not want to dismiss this appeal; he just wants a fundamentally fair opportunity to present it.

Of interest also is that nearly every court case Haeg has found has allowed and/or required a post-conviction relief procedure to finish before allowing an appeal claiming ineffective assistance of counsel to move forward. The overwhelming rational is that it is a waste of everyone's resources – judicial, defendant, and prosecution – to conduct an appeal which cannot get to the heart of the matter because the record is inadequate; and will have to be duplicated after the record is supplemented. Haeg has precious few resources left – the judicial and State prosecution have unlimited resources - as they get theirs from Haeg and every other taxpayer. The only possible reason that Haeg can imagine for the Court of Appeals singular treatment of him is that they are actively trying to bankrupt him and sabotage his appeal and post-conviction relief procedure. The only reason he could imagine for this is that they are actively trying to protect the State, Haeg's former attorneys, and/or Judge Murphy from the consequences of their unbelievable actions in Haeg's case.

Haeg is also very curious if the courts will now rule that he cannot bring a post-conviction relief procedure claiming ineffective assistance of counsel, prosecutorial

misconduct, and judicial misconduct because they "*could have been but were not* raised in a direct appeal from the proceeding that resulted in the conviction". Haeg thinks this would be a very effective way for this or any other court to further sabotage his appeal and/or post-conviction relief procedure and keep everything under wraps.

Haeg would also like this court to address, since it failed to do so earlier, his request, made in the motion of November 6, 2006 to stay appeal, to order the district court to accept an application for post-conviction relief and to change the venue for this process to Kenai, Alaska. The reasons for this are already outlined in the original motion. The trial court has ruled that it would not accept an application for post-conviction relief from Haeg and that he would have to file such an application with the Court of Appeals – remaining unpersuaded even after Haeg pointed out the rules did not allow him to file such an application with the Court of Appeals. This again directly shows the bias of the trial court against Haeg, and, along with the huge cost prejudice in conducting this procedure in McGrath, provides a sound basis for the change of venue.

III. *Motion to Supplement the Record*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion to Supplement the Record. Haeg has found that the court record can be supplemented with attorney disciplinary proceedings and judicial disciplinary proceedings but the trial court has refused to grant or even rule on this. This Court of Appeals has also now denied his request, stating "the record on appeal is to consist solely of evidence and documents presented to the trial court during the proceedings that we are being asked to review. See Appellate Rule 210(a)." Yet the Court of Appeals is

mistaken in this – as Appellate Rule 217, which governs appeals from district court, clearly applies. Rule 217(c) states: "Unless otherwise ordered by the court of appeals, the record on appeal shall consist of the *entire* district court file, together with recordings of the electronic record designated by the parties." Haeg asks this court if this means anything he filed with the district court then is part of the record in his case – and if not why not. Haeg also asks this court exactly how and why it is that everything, including the electronic record and motions filed, made during Haeg's representation hearing before the trial court concerning the corruption by the State and attorney's in Haeg's case, have been carefully and completely wiped from the official case record. Haeg points out that the trial court has refused to respond to three different and direct inquiries of this exact issue. Haeg respectfully asks how to proceed - again citing Motion for Reconsideration Page 17 of 47 Alaska Supreme Court case law established in *Collins v. Artic Builders*, 957 P.2d 980 (1998), *Breck v. Ulmer*, 745 P.2d 66 (1987), *Keating v. Traynor*, 833 P.2d 695 (1992), & *Sopko v. Dowell Schlumberger, Inc.*, 21 P.3d 1265 (2001) – all of which indicate a court should point out the proper procedure for a pro se defendant to accomplish what it is he is obviously attempting to accomplish. As indicated in his original motion, Haeg must have all official proceedings, including those before the Alaska Bar Association and the Alaska Commission on Judicial Conduct, made part of the record for him to obtain justice.

> *US v. Fuller,* No. 00-2023 (7th Cir. Dec. 20, 2001). "Mr. Fuller also submitted documentation of a grievance he had filed against his defense counsel with the Wisconsin state bar. We granted Mr. Fuller's motion, holding that for purposes of appeal defense counsel had an actual conflict of

> interest in view of allegations made by Mr. Fuller in various *pro se* submissions to this court. Although our order specified that defense counsel had a conflict of interest for the purposes of Mr. Fuller's appeal, we expressly reserved comment on whether defense counsel had a conflict of interest at the time he argued Mr. Fuller's motion to withdraw his plea. The Government has filed a motion to strike from appellant's opening brief the letter discussing the grievance that Mr. Fuller filed against his defense counsel with the Wisconsin state bar. This letter has already been discussed in our order granting Mr. Fuller's motion for appointment of new counsel. Accordingly, we deny the Government's motion and *sua sponte* supplement the record with the letter."

IV. *Motion for Summary Judgment Reversing Conviction with Prejudice*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion for Summary Judgment Reversing Conviction with Prejudice. If the Court of Motion for Reconsideration Page 18 of 47 Appeals cannot do this Haeg, as a pro se defendant, respectfully asks to know the proper procedure for accomplishing this – as the State has not contested, nor can it contest, the merits of such a motion. This motion would end the gross and ongoing fundamental breakdown in justice and the adversarial system in Haeg's case – sparing he and his family from further harm.

V. *Motion to Correct and Stay Guide License Suspension*

Haeg requests the Court of Appeals to reconsider and clarify their reasons for denying his Motion to Correct and Stay Guide License Suspension. This court has ruled on the motion to correct that it has "the power to grant this kind of relief only if the trial court had no legal authority to revoke Haeg's license, or if the trial court was clearly mistaken in deciding to impose a license revocation as opposed to a suspension. In either event, we would not grant such relief until we decided Haeg's appeal". If this court refuses to correct Haeg's sentence until after his appeal, which, at the rate it is going, may be years away, he will already have been forced to destroy the exceedingly expensive camps - which will include burning them down and flying out the heaters, stoves, lights, bunks, tables, etc. etc. - as required by the Bureau of Land Management because of the current license revocation. How can this court possibly choose to ignore this obvious and immense prejudice to Haeg until *after* it happens to him – especially when the error, both legal and clearly a mistake, by the sentencing court is so clear? The State even admits this plain error is because the judgment *form* states "revocation" while the *law* states "requires the court to ... *suspend* the guide license ... for a specified period of not less than three years, or to *permanently revoke* the guide license". How can the trial court order a five year revocation when the law does not allow this – with a *permanent* revocation the only revocation allowed? Again Haeg asks the reason why the Court of Appeals refuses to promptly rule so Haeg is again undeniably prejudiced so severely simply because a *form* fails to follow the *law*. Haeg points to Appellate Rule 503(d) "As *soon as practical* after the seven-day period [so adverse parties have time to respond], the motion will be considered." Exactly why does this Court of Appeals disregard this rule in Haeg's case? To Haeg it is clear this court and its judges are abdicating one

of their most basic mandates – to keep the parties from being unjustly prejudiced (for those non-attorneys reading this prejudiced means harmed). Haeg can see no reason for this other than he must be prejudiced to the extent he can no longer expose the conduct of his defense attorney's, the prosecution, and the judges in his case. Again Haeg points to the sworn testimony by attorneys before the Alaska Bar Association concerning his representation: "there would be immense [political] pressure brought to bear on the prosecution and *judge* [to make an example of Haeg]". Haeg wonders if in the next round of sworn testimony "judge" will change to "judges". Haeg also respectfully asks this court if he is allowed to sue them for the damages their refusal to rule "as soon as practical" will cause him. It should be in the neighborhood of $100,000.00 in actual damages, although Haeg will of course seek additional punitive damages.

Haeg has asked the trial court (Judge Murphy) to stay suspension/revocation of his guide license and this was denied at sentencing – as was already made clear to this Court of Appeals. This Court of Appeals stated it needed to know the reason for this refusal before it could consider ruling on Haeg's request to stay license suspension/revocation. The reason for denial was, as Haeg already made clear in his motion and is recorded on the sentencing record, that "most, if not all, the wolves were taken where Haeg [guides]". As Haeg has made exceedingly clear in multiple affidavits from both himself and his wife Jackie and wisely unchallenged by prosecutor Rom, this is patently false. This premeditated deception started with the intentional perjury by Trooper Brett Gibbens on all his search warrant affidavits (with Haeg's attorneys telling Haeg "it doesn't matter" when he asked what to do about it), and continued before Haeg's jury and Judge Murphy through the perjury of Gibbens that was suborned by

prosecutor Scot Leaders (*after* they had both taped themselves being told it was perjury). After Haeg was sentenced Trooper Gibbens wrote a memorandum to Trooper Lieutenant Steve Bear (at Haeg's request) stating that *none* of the sites he investigated were in the Game Management Unit in which Haeg guides or has ever been allowed to guide and that the sites were *all* in the Game Management Unit in which the Wolf Control Program was being conducted. This is in direct contradiction to Trooper Gibbens Motion for Reconsideration Page 21 of 47 sworn statements on both his search warrant affidavits and during his testimony (after he and Leaders taped themselves being told it would be perjury) before Haeg's judge and jury. The prejudice of this intentional, continued, knowing, and malicious perjury had an almost incomprehensible effect on Haeg's case. It allowed the prosecution to charge and convict Haeg of big game guiding violations and end his and his wife's livelihood and life investment forever. It speaks volumes that the States opposition to Haeg's motion is silent on this point and many others, including the fact that **after** they induced Haeg (via a Rule 11 Plea Agreement that would have resulted in an active **6 month suspension** instead of the **6 year revocation** Haeg received) to give them a five-hour statement, have him and his wife give up an entire combined years income and the season was past, and had him fly in multiple witnesses from around the U.S. they broke their promises to Haeg yet still used his statements, corrupted by the included, known, and pointed out perjury, to file all charges that were in direct violation of the Rule 11 Plea Agreement (and necessarily Evidence Rule 410 and the constitutional right against self-incrimination), and then take Haeg to trial on these charges because he was now bankrupt and they had his attorney in their pocket. For these many, irrefutable, and compelling reasons, including fraud upon the court, Haeg again asks that his

guide license suspension/revocation be stayed pending outcome of his appeal.

Haeg is in such shock that absolutely no relief was given to him from this Court of Appeals, asked for in the motions hand delivered to this court on November 6, 2006, that he wishes to know the proper procedure[3] to appeal the denials of these motions to the Alaska Supreme Court. It is incomprehensible to Haeg that he was denied relief after explaining, in exact detail, supplemented by numerous affidavits, the fraud and abuses that have happened during his prosecution.

Opposition from State

Haeg, to show the depth and breadth of the corruption, will dissect just the recent State's opposition (included) and actions in Haeg's case. Special Prosecutor Roger Rom, the professional attorney who is representing the State against Haeg (not an attorney) in these matters, swore, under penalty of perjury, that all factual claims made by him in his oppositions are true and accurate to the best of his knowledge.

I

Prosecutor Rom correctly states this court *stayed* imposition of restitution yet the prosecution then garnished Haeg's permanent fund dividend, without providing any of the constitutional guarantees guarding against errors, to pay for this same restitution, even *after* it had been already been paid in full. In other words Rom and the prosecution

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[3] *Breck v. Ulmer*, 745 P.2d 66 (1987) "[a] judge should inform a pro se litigant of the proper procedure for the action he or she is obviously attempting to accomplish..."

not only took Haeg's money *after* the restitution had *already* been paid in full but even *after* Haeg was granted, according to this courts ruling, the right to *not* pay it. And, to do so, they ignored the constitutional guarantees that had to be given *before* doing so (because this had nothing to do with a criminal investigation the hearing to contest the deprivation had to be given in advance of seizure). Haeg wonders just how many others are presently being deprived of their dividends, or other property, in direct violation of constitutional due process in Alaska. Haeg wonders how many will be deprived illegally in the future. The prosecution said they are so far behind that it will be many months before they can look into the problem. This should illustrate the kind of mistakes that the "ensemble" of constitutional guarantees guard against. Just think of the consequences if it was Haeg's property at stake, used to put food in his kids mouths and heat in their bedroom, instead of just his dividend when this "mistake" took place. Oh! Haeg forgot. The "mistake" that did that happened almost three years ago.

II

Rom states Haeg "seeks an order of this court directing the State to return *evidence* lawfully seized and forfeited in this case" and "he needs a court order because he intends to confront the troopers on November 16, 2006, demanding return of the *evidence*." Yet in every one of Haeg's 16 motions it is painfully clear Haeg seeks return of his *property*, used as the primary means to provide a livelihood for his family, and never once asks for return of *evidence*. Once again the difference to Haeg and prosecutor Rom could not be greater. There is no rule to return *evidence* yet there is a clear rule, backed up by the mightiest of constitutional guarantees, to return *property*, even if called "*evidence*" by the prosecution, if seized, held,

and/or forfeited in violation of due process. Thus, because of the blatant violations of these guarantees, Haeg's property was illegally seized, held, and forfeited because it was treated *only* as "evidence". The rational is plain common sense – before you can put someone out of business for god only knows how long by seizing their business property (in Haeg's case almost three years), because you *might* use their property as "evidence" (it is interesting that most of Haeg's property that was seized, held, and/or forfeited was never used as "evidence" and that all of it that the court refused to forfeit is *still* being held by the State), you must comply with different guarantees than if the "evidence" taken and held was someone's fingerprints, statements or wiretap recordings – the deprivation of which would not affect their ability to put food in their families mouth. Apparently Rom thinks it proper for the State to be able to bankrupt a defendant on little more than a whim (its just "evidence"), without making sure there was no error (remember Haeg's dividend), and far before ever having to decide whether or not to even file charges. Before our revered "adversarial system" gets started the prosecution has already won through subterfuge.

III

Rom states Haeg "claims that the State was required to provide him with a hearing so he could challenge the search warrant which led to the collection of the evidence and eventual forfeiture in the judgment of conviction. Because he is both legally and factually mistaken, his motion must be denied." This is blatant, intentional, and knowing perjury (class B felony) by Rom. These Alaska Supreme Court decisions, which Haeg has pointed out over and over to Rom, prove this perjury:

"The standards of due process under the Alaska and federal constitutions require that a deprivation of property be *accompanied by notice and opportunity for hearing* at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, *notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees* even where the government interest in the seizure is urgent." *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

"Waiste and the State agree that the Due Process Clause of the Alaska Constitution *requires a prompt postseizure hearing* upon seizure of a fishing boat potentially subject to forfeiture." "The State argues that **a** *prompt postseizure hearing is the only process due*, both under general constitutional principles and under this court's precedents on fishing-boat seizures". "This courts dicta, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing." "*Given the conceded requirement of a prompt postseizure hearing* on the same issues, in the same forum, "within days, if not hours," the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for seizure a few days or hours earlier. The interest in avoiding that slight

> burden is not significant." "The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income." "An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, *and to afford a prompt postseizure hearing*." Waiste v. State, 10 P.3d 1141 (Alaska 2000)."

Neither Haeg nor his wife Jackie were ever given a single one of this "ensemble" of constitutional guarantees before being deprived for *years* of their primary means of providing a livelihood for their two daughters, ages 5 and 8.

IV

Rom states, "The Aniak District Court authorized two search warrants which appear to apply to appellants arguments." Rom is again incorrect. Haeg's arguments apply to all five search warrants issued in his case because all five seized property that Haeg and his wife used to provide a livelihood.

V

Rom states, "Since appellant was served with the search warrant he had notice that the State had seized his property pursuant to a warrant. Criminal Rule 37(c)

provided a mechanism for him to challenge the lawfulness of the seizure. Whether he exercised his right or not is irrelevant. The law provided due process for him to do so if he made that choice."

This is more smoke and mirrors by Rom. Irrefutable caselaw explaining the constitutional guarantees that must be given, already shown to Rom over and over, again proves this. The "notice" required to be given Haeg and his wife was not just "notice" that the State had just made off with their ability to provide a livelihood but "notice" that they could protest this stunningly prejudicial act and the State would have to defend to make sure there were no errors. "Notice" also needed to be given that the State would seek to forfeit Haeg's property, so he had his constitutional right to know the charges against him. This is in order a defendant has time and an opportunity to prepare to meet the charges. This "notice" of a hearing and of the case against Haeg was in *addition* to the warrant, which was all that was necessary if the State was *only* seizing *evidence* that was not also *property* -especially property used to provide a livelihood. This "notice" had to *positively* notify Haeg and his wife that before the deprivation of property affected their ability to provide a livelihood, Haeg and his wife were entitled to an adversarial hearing, which could include sworn testimony, to ensure there were no errors in the deprivation – and to positively inform Haeg and his wife that the State intended to forfeit their property. During this hearing the State would have to prove its reasons for depriving Haeg and his wife of their means of livelihood were valid and that the States interest in continuing to deprive Haeg and his wife of their livelihood, even if valid, were greater than the Haeg's interest in providing a livelihood for their family. This is the entire reason for the Alaska Supreme Courts unbreakable "ensemble" – to guarantee that a family will not be

deprived of their livelihood in error - as Haeg and his wife undeniably were.

> The United States Supreme Court put the constitutional issue as 'whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.' Justice Stewart, in writing for the majority, said in part: "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified.' . . . It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' . . . The Supreme Court put the constitutional issue as 'whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law. *Sniadach v. Family Fin.Corp*. 395 U.S. 337, 342, 89 S.Ct. 1820,"

How can Rom argue without committing perjury? The U.S. Supreme Court has ruled. Parties whose rights are affected are entitled to be heard; and in order that they may enjoy that right they must be notified.

> The Alaska Supreme Court has ruled: "The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a

meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent." *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

U.S. Supreme Court in *Mullane v. Central Hanover Bank*, 339 U.S. 396, (1950): "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections ... The notice must be of such a nature as reasonably to convey the required information ... and it must Motion for Reconsideration Page 29 of 47 afford a reasonable time for those interested to make their appearance...But *when notice is a person's due, process which is a mere gesture is not due process*."

The U.S. Supreme Court has held that it is unconstitutional to require a litigant who has not received notice to file a verified answer in order to vacate a default judgment:

"*[A] judgment entered without notice or service is constitutionally infirm*.... Where a

person has been deprived of property in a manner contrary to the most basic tenets of due process, "it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits." *Coe v Armour Fertilizer Works*, 237 U.S. 413 (1915). *Peralta v Heights Medical Center, Inc.,* 485 U.S. 80 (1988)." U.S. Supreme Court Justice Harlan, concurring in *Sniadach v. Family Finance Corp*., 395 U.S. 337 (1969) stated, "I think that due process is afforded only by the kinds of "notice" and "hearing" which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property *or its unrestricted use*. I think this is the thrust of the past cases in this Court."[4]

The Supreme Court of Alaska in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972 quoted the U.S. Supreme Court in *Sniadach* "Where the taking of one's property is so obvious, it needs no extended argument to conclude that *absent notice and a prior hearing ... this prejudgment garnishment procedure violates the fundamental principles of due process.*"[5] The Supreme Court of Alaska also mentioned the U.S. Supreme Court decision in *Goldberg v. Kelly*, "The extent to which

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[4] See, e. g., *Mullane v. Central Hanover Trust Co*., 339 U.S. 306, 313 (1950).

[5] *Sniadach v. Family Fin. Corp*., 395 U.S. 337, 342, 89 S.Ct. 1820, 1823, 23 L.Ed.2d 349, 354 (1969)

> procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' ... and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Accordingly,... 'consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.'"[6] In *U.S. v Crozier*, 674 F2d 1293 (9th Cir. 1982) the Ninth Circuit vacated an ex pane restraining order, holding that even when exigent circumstances permit an ex pane restraining order, *the government may not wait until trial to produce adequate grounds for forfeiture.*

Haeg and his wife were guaranteed, by two constitutions, that they would receive notice of their right to an adversarial hearing and participation in that same hearing "in days if not hours" to make sure the deprivation was without error. This was not ever done. In fact Haeg asked Trooper Glen Godfrey, on the day much of Haeg's property was seized, when he could get his property back because he had clients coming in the next day and Godfrey responded "never". Haeg never received a hearing or even a response from the judge after motioning her twice if he could bond his property out after having been deprived of it

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[6] *Goldberg v. Kelly*, 397 U.S. 254, 262-263, 90 S.Ct. 1011, 1018, 25 L.Ed.2d 287, 296 (1970)

for over a year – again in complete violation of the "ensemble" of guarantees. The reason for the active denial of all this due process is simple – if Haeg was afforded his right to point out everything was based on perjury the prosecution of him would have ended. Rom's statements that Haeg received due process, because Haeg had a right to this hearing but didn't afford himself of it (because it was hidden in hundreds of thousands of pages of law), are absolutely preposterous and more blatant perjury. Haeg, or anyone else, would be trying to figure out how to make a living now that their primary means had been stripped from them – not searching through law books for some hearing they didn't even know existed.

Rom's statements that Haeg received due process because the State gave "notice" they had seized his property pursuant to a search warrant is also false. The State was required to provide "notice" that they intended to seek forfeiture of Haeg's property – in order that Haeg could prepare to meet that case. This "notice" was required to be in addition to the criminal process against Haeg himself.

Rom's statements that once Haeg was charged Criminal Rule 12 applied and in someway negated Haeg's constitutional rights to due process before being deprived of his property, is also perjury. Criminal Rule 12 applies exclusively to pleadings and motions before trial, not deprivation of property used to provide a livelihood.

Rom's statements that Haeg's "reliance upon case law in *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980) and *Waiste v. State*, 10 P.3d 1141 (Alaska 2000) is misplaced" is also perjury. These cases are ruling in Alaska for the due process protections that must be received before someone is deprived of property, used to provide a livelihood, during a criminal investigation. In his opposition

Rom deletes the parts of the rulings that indicate notice of a hearing and forfeiture intent was given so that it appears notice of a hearing or forfeiture did not need to be Motion for Reconsideration Page 32 of 47 given. In American Eagle Rom deletes this part of the case: "the seizure was pursuant to AS 16.05.190-.195" (statutes allowing forfeiture in fish and game cases – never given to Haeg so he would know to prepare a defense against forfeiture), "The state subsequently *filed a [civil] complaint for forfeiture*..."(which specifically, and in great detail, outlines all rights to hearings, deadlines for those hearings must be given, deadlines for property deprivations, etc, etc. "The vessel was later released [through bonding] for local fishing", and "The other owners indicated they in fact received timely notice of the seizure, for prior to the state's filing of a formal civil complaint...their attorneys mentioned the possibility of suing for release of the vessel."

Rom then unbelievably states, "The court reviewed dicta in *American Eagle and State v. F/V Baranof*, 677 P.2d 1245 (Alaska 1984) and federal law to determine whether the Due Process Clause of the Alaska Constitution would require *more than a prompt post seizure hearing*. Waiste, 10 P.3d at 1147. In deciding this issue in Waiste, the Court stated: '[W}e balance the State's interest in avoiding removal or concealment with the likelihood and gravity of error in the relevant class of cases, and, in so doing, we hold that a blanket rule of ex parte seizure comports with due process.' Id. at 1152. There was no lack of due process an appellants [Haeg's] motion should be denied."

Rom's theory here is utterly fantastic and incomprehensible. The Alaska Supreme Court, ruling here on Waiste's claim that a *preseizure* hearing was required by due process before depriving someone of his or her property

in a criminal case, determined that this *preseizure* hearing was not required by due process. The ruling, cited by Rom, clearly holds that a *prompt postseizure* hearing was all that was needed to comply with the Due Process Clause of the Alaska Constitution. *Neither Haeg nor his wife ever received a post seizure hearing – let alone a prompt post seizure hearing*. They never even received notice of such a hearing, notice of an intent to forfeit their property or any of the other "ensemble of procedural guarantees".

The Alaska Supreme Court merely held that if the State seizes your property in a criminal investigation they do not have to warn you, with a *preseizure* hearing, *before* they do so. But within "days if not hours" *after* seizure you *must* get a hearing to contest the reasons for being deprived of your property, especially property used to provide a livelihood. Prosecutor Rom must be very desperate indeed to utilize such incredible tactics.

Rom, in his footnotes, states, "forfeiture of the aircraft was contemplated at all times throughout the plea negotiations in this case. The return of the aircraft was apparently not a consideration." To Haeg this is interesting because the State, *after* Haeg had placed nearly $1,000,000.00 in detrimental reliance upon a completed Rule 11 Plea Agreement in which the plane was not required to be given up, then "changed their mind", filed far more severe charges than agreed to, and required Haeg to "give them the plane" if he wanted "the same deal". Haeg declined, realizing he was being held hostage and that giving in would only encourage the State to demand more and more (otherwise known as extortion).

Rom states, "the judgments do not reflect the statutory authorization for forfeiture of the aircraft." Haeg knows that under federal law, property cannot be forfeited

if notice and authorization of forfeiture is not included in the charging documents. Since this is true in Alaska, and since the judgments do not reflect the statuary authorization, Haeg would like to add these to the plethora of reasons already given for the return of his property.

VI

Rom states that there is no basis in law to support Haeg's request to stay his appeal pending a post-conviction relief procedure and that "policy reasons suggest it would be improper to grant his motion." This again is perjury by Rom. Not only is there basis in law but "policy reasons" demand this be done in many cases. See Alaska Supreme Court ruling in *Risher v. State* 523 P.2d 421:

> "Whether counsel is incompetent usually can be ascertained only after trial ... it may be necessary to remand for an evidentiary hearing on this issue. For example, if on appeal it is contended that trial counsel could have discovered helpful evidence, we might remand for a hearing on that issue. In most such cases, however, the necessity of an appeal & remanded may be avoided by first applying at the trial court level for a new trial or moving for post-conviction relief."

See also the Court of Appeals ruling in *State v. Jones* 759 P.2d 558:

> "Jones also filed a direct appeal challenging his conviction & sentence on unrelated grounds. The appeal was stayed pending resolution of the post-conviction

procedure", in *Barry v. State*, 675 P.2d 1292 "we observed that in appeals raising the issue of ineffective assistance of counsel, the trial record will seldom conclusively establish incompetent representation, because it will rarely provide an explanation for the course of conduct that is challenged as deficient. We concluded that, 'henceforth we will not entertain claims of ineffective assistance of counsel on appeal unless the defendant has first moved for a new trial or sought post-conviction relief'" & in *Grinols v. State* No. A- 7349 "But many states – including Alaska – generally forbid a defendant from raising ineffective assistance of counsel claims on direct appeal. Instead, Alaska & these other states require a defendant to pursue postconviction relief litigation if they want to attack the competence of their trial attorney".

U.S. v. Fuller No. 00-2023: "We generally discourage appellants from bringing ineffective assistance of counsel claims for the first time on direct appeal because only rarely is the trial record sufficiently developed for meaningful review. *See United States v. Pergler,* 233 F.3d 1005, 1009 (7th Cir. 2000); *United States v. Martinez,* 169 F.3d 1049, 1052 (7th Cir. 1999)."

Rom then unbelievably claims, "A petition for post conviction relief is a civil matter." This is unbelievably blatant perjury. Criminal Rule 35.1 authorizes petitions for post-conviction relief and there is no post-conviction relief

in the Civil Rules. In fact the very name "post-conviction" obviously indicates this because there is no "conviction" under civil law.[7] Rom uses this fiction to advance the theory that the evidence gathered during a post-conviction relief procedure would not be allowed in Haeg's appeal – and thus his appeal should not be stayed pending a post-conviction relief procedure. Yet this is the exact reasoning for the vast majority of courts to *require* post conviction relief – so an appeal without an adequate record may move forward after the record is supplemented through a post-conviction relief procedure. Rom cites Appellate Rule 210 in support. Rom again is mistaken - Appellate Rule 217 governs appeals from district court. Rule 217(c) states: "the record on appeal shall consist of the entire district court file, together with recordings of the parts of the electronic record designated by the parties." In other words, all Haeg's post conviction procedures, as by rule they will be conducted, recorded, and filed in the district court, will be admissible on appeal. Rom again uses the perjury that Appellate Rule 210 governs to argue that official proceedings before the Alaska Bar Association, district court representation hearing, and Alaska Commission on Judicial Conduct are "*excluded* by this rule." As Haeg already explained Rule 217 governs and *allows* the addition of these proceedings by stating, "*Unless otherwise ordered by the court of appeals*, the record on appeal shall consist of the entire district court file..." Also, Haeg again maintains it is blatant corruption that the Court of Appeals is not allowing Haeg's representation hearing to remain part of the record in Haeg's case. The sworn testimony in this hearing, especially that by Haeg's third attorney, was

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[7] See Rule 35.1. Post-Conviction Procedure. (a) Scope. A person who has been convicted of or sentenced for a crime may institute a proceeding for post- conviction relief under AS 12.72.010 - 12.72.040 if the person claims:

stunning. To continue to scrub the district court record clean of all evidence of the misconduct of Haeg's attorneys, the State, and Haeg's judge is of absolute devastation to Haeg. How can Haeg ever show the corruption in his case when at every turn the evidence of it is wiped from the record?

Rom has the gall to state, "Since the items he wants to include in the record would not advance his appeal, his motion should be denied." So Rom does not think that when Haeg's attorneys are proven, while under oath, that they have been actively representing the State's interests against Haeg and their own interests against Haeg by working together to hide this from Haeg that this would not advance Haeg's appeal? That the formal investigation into the personal relationship between Haeg's judge and the main investigating trooper and witness against Haeg would not advance Haeg's appeal? Exactly what would advance Haeg's appeal according to Rom?

VII

Rom, in considering the issue of modifying Haeg's sentence from a revocation to a suspension, for once agrees; stating this was overlooked because the form differed from the law. Yet he opposes doing this by motion and requests that Haeg do so by amending his appeal and waiting for it to be decided before it takes effect. Again Haeg would be horribly prejudiced by this delay – much to the State's benefit and delight.

Rom, in asking this court to deny Haeg's ability to guide during his appeal states, "The trial court was in the best position to determine whether appellant should be permitted to act as a guide during his appeal. The trial court rejected his request." Rom apparently expects the

Court of Appeals to conveniently overlook the fact Haeg's conviction and sentence was obtained through fraud before Haeg's judge and jury; and this very fraud was specifically articulated on the record by the sentencing judge as the reason for Haeg's harsh sentence. Haeg wishes to know exactly why Rom fails to challenge Haeg's claims in this regard, because Rom cannot, and to do so would mean more perjury by Rom and further the fraud intentionally committed to harm Haeg and his family. The reasons given for Haeg's sentence by the sentencing judge, because Haeg's conviction and sentence was obtained through fraud, cannot be considered by this Court of Appeals, thus his license should not be suspended/revoked during his appeal.

Conclusion

It is overwhelming obvious to everyone involved Haeg and family have been absolutely crushed beyond recognition by a runaway prosecution. If you look at the entire process, as Haeg and family have to do every day, it is incomprehensible something so disastrous and so fundamentally unfair could actually take place in America. It is not what Rom claims in the State's opposition that is the most frightening – it is what Rom doesn't claim. There is not a word denying that the State made a Rule 11 Plea Agreement to induce Haeg and his family to give up guiding for an entire year, to give a five hour interview, and to fly in numerous witnesses from around the United States. There is no denial that the State broke this Rule 11 Plea Agreement only five business hours before it was to be completed – by filing charges far more severe than those agreed to. There is no denial that the State broke the Rule 11 Plea Agreement after Haeg and family's opportunity to guide and make a living for a whole year was past. There is no denying the State used Haeg's statements, made for the Rule 11 Plea Agreement the State broke, to file all the

charges in his case. There is no denial the search warrants were based upon knowing, intentional, misleading and amazingly prejudicial perjury. There is no denial that this same perjury continued at Haeg's trial, *after* Haeg had told the prosecution about it at his taped five-hour interview. There is no denial the judge specifically articulated this perjury as the basis for her harsh sentence of Haeg. Each and every one of these individual violations is enough to reverse Haeg's conviction with prejudice.

Adding to what makes all this so chilling is that all of Haeg's attorneys have done far more than even the prosecution to cover all this up. Haeg has all his attorney's, on tape, claiming it didn't matter that the State did all this and "there is nothing that can be done about it." Haeg is further panicked when he reads the Court of Appeals discussion in Smith v. State 717 P.2d 402:

> "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."

Haeg demanded, over and over, for the Rule 11 Plea Agreement, and all he had done in reliance on it, to be brought up numerous times – yet he was lied to by his attorneys over and over and over (on tape) about his right to enforce it or bring it to the courts attention. Haeg finally got so upset he paid for a subpoena for his first attorney (who did not enforce the Rule 11 Plea Agreement when it was first broken and told Haeg it could not be enforced) to appear and explain this at Haeg's sentencing, paid for it to be successfully delivered, paid for witness fees, paid for an airline ticket to McGrath, paid for a hotel room and then the attorney never showed up. Haeg's second attorney told Haeg (on tape), "He didn't come because his testimony wasn't relevant to your guilt." Haeg told the second attorney, "I had already been found guilty, I subpoenaed him to my sentencing and his testimony would have been relevant to my sentence *and you know it*."

In the Smith case above the defendant had got what he bargained for – the ability to go to trial on only one charge and if he were found innocent the second charge would be dropped; if he were found guilty he would plead guilty to the second charge. His attorney, after he was found guilty on the first charge thought he had to plead guilty to the second charge – as agreed. The Court of Appeals held this is not the case – and since he plead guilty because of his attorney's erroneous advice – overturned his conviction. What should happen in Haeg's case? Instead of an attorney with the integrity to think his client should honor his bargains, Haeg has an attorney who helps the State forcefully and maliciously take away Haeg's constitutional right to have the bargain he paid for enforced. Haeg has his attorneys on tape telling him they couldn't enforce the Rule 11 Plea Agreement. Then Haeg has the first one perjuring himself 17 times before the Alaska Bar Association when he tried to claim he had told

Haeg he could enforce the Rule 11 Plea Agreement but "Haeg didn't want to". This was very difficult task as the Alaska Bar Association allowed in as evidence the tapes and transcriptions that Haeg had of this same attorney telling Haeg the Rule 11 Plea Agreement could not be enforced. When Haeg had this attorney read the transcriptions, while under oath, they would shake so hard he could hardly do so. The amount of effort to cover all this up and the effectiveness with which this happens is terrifying. Haeg, just to be on the safe side, has distributed tapes and CD of everything in multiple, widely separated vaults.

The State (and the courts in at least Haeg's case) relies heavily on someone's financial and mental weakness to wear them down and make them forgo the formidable protections of their constitutional rights. Yet Haeg, now that he is doing almost all of his own litigation and begins to understand and utilize the power of the U.S. constitution and law, including the specific powers against corruption, can, will, and must (for the future his beautiful wife and daughters) last indefinitely. The case against Haeg started because the State of Alaska failed to manage game in direct violation of its own constitution; and Haeg and family relied, with everything they had in life, on this constitutionally guaranteed management. Because of animal right activists, media coverage, and the resulting political fear the prosecution of Haeg morphed into something far more akin to a witch-hunt than the fundamentally fair proceedings guaranteed by multiple constitutions – bolstered no doubt by the corruption that has come to light. It is overdue to end the "farce and mockery" that has been the cornerstone of Haeg's prosecution before more damage is done. Haeg can see that the "immense pressure" brought to bear against him will keep adding to the number of careers ultimately ruined.

Haeg will remain unwavering, as he has understood for quite some time that all he must do is not miss any filing deadlines, not get maneuvered out of his appeal and/or post-conviction relief procedure, carefully continue recording the plethora of constitutional violations and criminal actions against him, preserve his right to appeal to the federal courts, and the U.S. and Alaska constitutions will see him and his family through very successfully. He does not wish the "immense pressure" to keep adding more innocent souls to the trap created when those charged with protecting Haeg's rights violate them instead while trying to free those already caught

It was very illuminating and a very deep breath of fresh air/sanity, when Haeg first contacted the U.S. Department of Justice in Washington D.C., to learn that the exact type of corruption Haeg has run into (defense attorneys, law enforcement, prosecutors, and/or judges working together to defraud ignorant defendants) is not uncommon. It happens on a regular basis in those parts of the U.S. (primarily Arkansas, Kentucky, Oregon and Louisiana) that have relatively small, isolated populations utilizing the same legal players over and over. Haeg was told this corruption had never been recorded in Alaska but that Alaska fit the profile exactly. To Haeg the numerous comments of "big state – small pool", made when he was unsuccessfully trying to hire attorney number four after he had fired attorney number three, finally made sense.

More and more puzzling things are beginning to make sense to Haeg. Take the brutal fight Haeg had during remand of his case from the Court of Appeals to the district court to determine if Haeg knowingly and intelligently waived his right to counsel and if he was competent to represent himself on appeal. Haeg claimed all of his attorney's, including the one he had just fired but was still

his attorney of record (Osterman), were actively representing the State's interests instead of his own. Haeg asked Osterman to file motions and oppositions to Rom's motions. When Osterman refused (on tape) to do so Haeg filed these pro se. The State objected, stating Haeg was represented by counsel and thus was precluded from representing himself. In addition the State filed to strike Haeg's motions and included affidavits from the record. Haeg, in a motion to this Court of Appeals, asked permission to represent himself because his counsel refused to represent him and he had a constitutional right to a defense, even if it was only himself, during the remand of his case. This Court of Appeals denied Haeg's motion, stating he was already represented – even though Haeg had included affidavits that Osterman had refused on tape to represent him. The district court granted all these unopposed motions of the State, including the one to strike from the record everything Haeg had filed. In light of this gross and fundamental breakdown in the adversarial system Haeg filed a motion to this Court of Appeals to reconsider their ruling denying him the right to any representation during remand. This Court of Appeals again denied Haeg – actively and intentionally denying Haeg any representation whatsoever during the remand of his case. The prejudice this caused is tremendous. All record that Haeg needed to conduct a successful appeal has been wiped away because this Court of Appeals made sure there was no one at the wheel of Haeg's defense to oppose the State's motions doing this. This Court of Appeals never addressed the prejudice their rulings caused Haeg or discussed any prejudice, if any, to the State. It is of interest to Haeg that anyone can request to be co-counsel while represented by an attorney – which allows him or her to act in the same capacity as if they were pro se. If this is the case why did the Court of Appeals refuse Haeg any representation

during remand in which the State did so much damage because of this absence of representation?

Haeg was allowed to question Osterman under oath, but when Osterman claimed he needed to go, the court released him after stating on the record Haeg reserved his right to recall him. The testimony Osterman gave under oath was stunning – collaborating all Haeg's allegations of collusion/conspiracy between the State and Haeg's attorneys – and proving it was an intelligent decision for Haeg, totally ignorant of the law, to proceed pro se. Then, when Haeg asked to continue his questioning of Osterman under oath as the court itself stated he had reserved the right to do, the court refused. This again was of immense prejudice to Haeg, as Haeg was unable to finish gathering the stunning evidence of this collusion/conspiracy between his own attorney's and the State.

Haeg knows that he is not an attorney and realizes that much, or even most, of the opposition to him, his motions, and to his quest for justice is because of this fact. With the stakes so unbelievably high much will be gambled in the knowledge Haeg has a good chance of failing. Yet Haeg realizes, as many possibly don't, that justice is not and cannot be reserved just for those represented by an attorney. Just because "esquire" doesn't appear behind Haeg's name doesn't mean he isn't allowed to enforce his rights. Haeg has incentive like no other attorney alive to be innovative, tough, and flat out persistent. Haeg has been at the top of the field in every endeavor he has put his mind to and this has his entire undivided attention. He knows this is the fight of his and his family's life and to be successful he must see it to an end. The fact that one third of the cases pending before the United States Court of Appeals, Ninth Circuit, are from pro se appellants is of great inspiration to Haeg. In addition to this Haeg, in reading thousands upon

thousands of cases, has yet to come across a single case in which one tenth as much injustice has occurred. Haeg cannot possibly imagine what a federal court will think when they start reading his case – never has a case contained such an ongoing, perverted, and fundamental breakdown in justice.

Haeg will die trying before he lets this kind of corruption live. The United States Constitution and the safety of Haeg's family demand no less.

These motions and requests are supported by the accompanying affidavits, documents, and by the motions, memorandum, affidavits, and supporting documents that were already delivered by hand to this court on November 6, 2006.

RESPECTFULLY SUBMITTED this 27th day of November 2006.

"s/"

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David S. Haeg, Pro Se Appellant

November 8, 2006 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455.

Memorandum of Law

I. Introduction

Appellant was convicted at jury trial for various misdemeanor offenses alleging violations of Title 8, 11 and 16, and regulations promulgated under those statutes. He was sentenced on September 30, 2005, by District Court Judge Margaret L. Murphy for the nine counts upon which he was found guilty. Counts I through V were convictions for Unlawful Acts by a Guide for Taking Game on the Same Day Airborne (AS 8.54.720(a)(15), Counts VI and VII for Unlawful Possession of Game (5AAC 92.140(a), Count VIII for Unsworn Falsification (AS 11.56.210(a)(2), and Count IX for Trapping in a Closed Season (5 AAC 84.270(14). He timely filed his notice of appeal.

After various extensions of time to file appellant's brief, appellant substituted attorneys. On April 16, 2006, appellant moved for a stay of the forfeiture and his license suspension pending appeal in this court. The State opposed his request and on May 16, 2006, this court granted the stay of the order of the trial court imposing restitution, but denied the motion to stay the order of the trial court suspending appellant's guide license and forfeiture of his airplane. Thereafter, appellant sought an order of this court for permission to represent himself.

On June 23, 2006, this court remanded the case to the district court to determine whether appellant knowingly and intelligently waived his right to counsel and whether he was competent to represent himself on appeal.

Following the recommendation of the trial court, this court granted appellant's request to represent himself in his appeal.

This court's order of June 23, 2006, denied without prejudice appellant's motion for reconsideration of the order denying a stay on the suspension of his guide license and forfeiture of his aircraft. On September 21, 2006, this court denied appellant's motion to supplement the record. However, the basis for the court's denial was that the filing was premature since the court had not yet determined that appellant could represent himself on appeal. Therefore, it appears that he has now properly brought before the court the issue of reconsideration of the stay on his guide license and forfeiture of his aircraft and his request to supplement the record. The court has directed the State to respond by November 8, 2006. The State opposes the Appellant's request.

I. Legal Argument.

A. Appellant's emergency motion for return of property and to suppress evidence should be denied.

Appellant seeks an order of this court directing .the State to return evidence lawfully seized and forfeited in this case. He claims that he needs a court order because he intends to confront the troopers on November 16, 2006, demanding return of the evidence.

Appellant's argument is essentially a due process argument. He claims that the State was required to provide him with a hearing so he could challenge the search warrant which led to the collection of the evidence and eventual forfeiture in the judgment of conviction. Because he is both legally and factually mistaken, his motion should

be denied. Additionally, it is questionable whether this court is the proper forum to grant the relief requested.

According to the police report, the Aniak District Court authorized two search warrants which appear to apply to appellant's arguments. Search warrant 4MC-04-002SW permitted the troopers to search appellant's residence in Soldotna, as well as his hangar and outbuildings for evidence pertaining to his illegal taking of wolves. Search warrant 4MC-04-003SW permitted the search and seizure of appellant's Piper Pa-12 Supercruiser aircraft for evidence, also pertaining to the illegal taking of wolves. On April 1, 2004, the warrants were executed and a copy of the warrant and inventory was left with appellant at his residence. The return was properly filed with the Aniak District Court. Appellant was eventually charged with the crimes for which he was convicted. He was represented by counsel in the criminal case.

A criminal case is procedurally governed by the Alaska Rules of Criminal Procedure. Criminal Rule 37 addresses search warrants. Subsection (c) provides:

> **Motion for return of property and to suppress evidence**. A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

Since appellant was served with the search warrant he had notice that the State had seized his property pursuant to a warrant. Criminal Rule 37 (c) provided a

mechanism for him to challenge the lawfulness of the seizure. Whether he exercised his right or not is irrelevant. The law provided due process for him to do so if he made that choice. Once he was charged, Criminal Rule 12 applied. Subsection (b) regulates pretrial motions and permits a defendant to challenge the evidence which may be used against him at trial. Alaska Criminal Rule 12(b)(3) specifically provides a mechanism for a defendant charged with a crime to suppress evidence on the ground that it was illegally obtained. Failure to move to suppress evidence constitutes a waiver. Criminal Rule 12(e) provides:

> **Effect of failure to raise defenses or objections**. Failure by the defendant to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to section. (c), or prior to any extension thereof made by the court, shall constitute waiver thereof but the court for cause shown may grant relief from the waiver.

Again, it is irrelevant whether the defendant chose to exercise his right or not. The law provided a mechanism for him to do so and his due process rights were satisfied. Apparently his attorney did not seek suppression and this court should not be in a position to second guess the decision. It is also legally irrelevant whether the defendant personally assented to the attorney's tactical decision not to seek suppression. Beltz v State, 895 P.2d 5 13 (Alaska App. 1995); see Cornwall v. State, 909 P.2d 360 (Alaska App. 1996).

Appellant claims that the State was required to provide him with more process I than this. He claims that the State was required to provide him with a hearing

immediately upon seizure of his property. However, his argument fails because he relies upon the civil rules which necessarily do not apply to the criminal case. Specifically, his reliance on Alaska Rule of Civil Procedure 89 is misplaced. Civil Rule 89 pertains to prejudgment attachment, and the very first sentence states: "After a civil action is commenced, the plaintiff may apply to the court to have the property of the defendant attached under AS 09.40.010-110 as security for satisfaction of a judgment that may be recovered." No civil action commenced and appellant's reliance on other portions of the rule is simply misplaced.

Because appellant misconstrues the procedural rules, his reliance on the case law is also misplaced. Appellant relies upon two cases in support of his argument: F/V American Eagle v. State, 620 P.2d 657(Alaska 1980) and Waiste v. State, 10 P.3d 1131 (Alaska 2000). Both of these cases indicate that the procedural protections granted by the criminal rules and as they were followed here, satisfies a defendant's right to due process. In F/V American Eagle the court recognized that both the Alaska and Federal Constitutions require notice and an opportunity for hearing at a meaningful time when property is seized. In that case the court found that the owners of the vessel were provided sufficient due process because the vessel was seized pursuant to a judicially authorized warrant, the vessel owners were formally notified of the State's action, and the vessel owners had "an immediate and unqualified right to contest the State's justification for the seizure before a judge under Criminal Rule 37 (c)." F/V American Eagle, 620 P.2d at 677.[1] In

[1] A review of the file suggests that forfeiture of the aircraft was contemplated at all times throughout the plea negotiations in this case. The return of the aircraft was apparently not a consideration.

Waiste the court revisited some of the issues raised in F/V American Eagle including seizure and forfeiture of a fishing vessel where the criminal charges resulted in acquittal, but the State still could have proceeded with a civil forfeiture. The court reviewed dicta in American Eagle and State v. F/V Baranof; 677 P.2d 1245 (Alaska 1984) and federal law to determine whether the Due Process Clause of the Alaska Constitution would require more than a prompt post seizure hearing. Waiste, 10 P.3d at 1147. In deciding this issue in Waiste, the Court stated: "[W]e balance the State's interest in avoiding removal or concealment with the likelihood and gravity of error in the relevant class of cases, and, in so doing, we hold that a blanket rule of ex parte seizure comports with due process." Id. at 1152.

There was no lack of due process and appellants motion should be denied.[2]

B. Opposition to Motion to Stay Appeal Pending Post Conviction Relief Procedure

Appellant seeks an order staying his appeal so that he may file a petition for post conviction relief. There is no basis in the law for to support appellant's request and policy reasons suggest it would be improper to grant his motion.

A petition for post conviction relief is a civil matter. Conclusion of appellant's post conviction relief case could be

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[2] Although the judgments do not reflect the statutory authorization for forfeiture of the aircraft, and appellant does not directly raise this in his brief, AS 16.05.190-.195 and AS 08.54.72O(f)(4)authorize forfeiture upon conviction. See Waiste, 10 P.3d at 1152-53.

years away. If by chance he concluded his post conviction relief matter and returned to his appeal, and the court granted an appeal overturning his conviction, the State would be in the unenviable position of having to retry a case that would be several years old. There is substantial prejudice to the State in the event his were to unfold, including loss of witnesses and the impact of time on the memory of witnesses.

Moreover, appellant's reason behind this request for a stay is to gather additional evidence upon which he hopes to base his appeal. None of the evidence he generates in a post conviction relief procedure would be permitted to be included in the record on appeal in this case. This appeal has to do with his criminal trial and the record on appeal is already complete. See Alaska Rule of Appellate procedure 210.

Appellant seems to recognize that he is unable to bring his ineffective of counsel claim before this court on a direct appeal. For this reason, he has essentially argued that his appeal is fruitless. If that is the case, and because his sole interest is in furthering an ineffective assistance claim, then he should dismiss his appeal and file his petition for post conviction relief.

C. Opposition to Motion to Supplement the Record

Appellant seeks to supplement the record with matters that were not before the trial court, including proceedings before the Alaska Bar Association, appellant's representation hearing on remand, and proceedings before the Alaska Commission on Judicial Conduct.

Alaska Rule of Appellant Procedure 210 governs this request. Subsection (a) states:

> **Composition of record**. The record on appeal consists of the entire Superior Court file, including the original papers and exhibits filed in the Superior Court, and the electronic records of proceedings before the Superior Court.

All of the items appellant seeks to include in the record are excluded by this rule. Since the items he wants to include in the record would not advance his appeal, his motion should be denied.

D. Opposition to Motion for Summary Judgment Reversing Conviction With Prejudice

Appellant seeks summary judgment in his appeal. He misconstrues Alaska Rule of Appellant Procedure 214. Rule 214 applies to summary disposition, not summary judgment. Apparently, appellant believes he can demonstrate with supporting affidavits that he is entitled to summary judgment pursuant to Alaska Rule of Civil Procedure 56. Because there is no legal basis for the court to grant the relief appellant requests, his motion should be denied.

E. Opposition to Motion to Correct and Stay Guide License

Appellant raises two issues in this motion. First, he claims that the trial court should have suspended his license, rather than revoke it for five years. Second, he again seeks a stay on his license suspension.

Modification of the sentence from revocation to suspension should not be brought by motion. Rather, appellant should have included this issue in his points on appeal. The State would not oppose the court permitting appellant to revise his points on appeal to raise this single issue. The judgment states, as appellant claims, that his license is revoked for a five year period. The judgment is a prepared form, and it does not appear that the trial court considered the distinction between revocation and suspension when it entered its order. Since AS 08.54.720(f)(3) requires the court to order the [big game commercial services] board "to suspend the guide license … for a specified period of not less than three years, or to permanently revoke the guide license" upon conviction for taking game while same day airborne, appellant at least raises a colorable argument.

Appellant also seeks to stay his guide license suspension. The State opposes this request. Appellant made this request in the trial court and it was denied. He made this request through counsel in this court and it was denied. After his motion for reconsideration was filed, his attorney withdrew and it appears that this court has not addressed his motion for reconsideration. Alternatively, the court has permitted him to renew his motions. The court should deny his request and permit the license suspension to continue during his appeal.

The trial court was in the best position to determine whether appellant should be permitted to act as a guide during his appeal. The trial court rejected his request. Appellant was duly convicted by a jury of his peers and the court found that it was in the public interest to suspend his guide license. Appellant was convicted of multiple counts of violating fish and game laws, and taking game on the same day one was airborne is one of the more egregious wildlife

violations under the fish and game code. Guides are held to a certain standard of conduct and are expected to maintain ethical and professional conduct in their affairs. Appellant failed to adhere to one of the host basic principals in hunting: fair chase. Additionally, he engaged in the taking of nine wolves out side of the permitted area in a controversial predator control program. It would not be in the public's interest for appellant to continue to operate as a big game guide based on his practice of engaging in illicit conduct involving wildlife laws.

Dated this 8th day of November, 2006 at Anchorage, Alaska.

DAVID W. MARQUEZ
ATTORNEY GENERAL

By: "s/"
Roger B. Rom
Assistant Attorney General
Alaska Bar No. 901 1128

November 6, 2006 - In the Court of Appeals of the State of Alaska, Haeg v. State, Order, No. A-9455.

EMERGENCY MOTION FOR RETURN OF PROPERTY & TO SUPPRESS EVIDENCE

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files the following emergency motion for return of property & to suppress evidence in accordance with *Alaska Rules of Appellate Procedure Rule No. 504(d)(f)* and with: *Alaska Rules of Criminal Procedure Rule No. 37(c)*:

> "A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized."
>
> See also *Waiste v. State*: "...Criminal Rule 37(c) hearing, in which a property owner can contest the basis for a seizure."[1]

Haeg and his wife have had property, which they use as the primary means to provide a livelihood, seized, held, and forfeited in direct violation of the due process clauses of the Alaska and the U.S. constitutions. This property was seized in March and April of 2004 and neither David or Jackie Haeg have ever been given their due process rights in the years since, even though the Alaska Supreme Court

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[1] See *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).

ruled they had to be provided "notice and an unconditioned opportunity to contest the state's reasons for seizing the property ... within days, if not hours ".[2] David and Jackie Haeg need a decision in hand by November 16, 2006 or a decision delivered to the Evidence Custodian of the Alaska State Troopers at 5700 E. Tudor Road, Anchorage, AK 99507-1225, phone number (907)269-5761 by 1:00 p.m. November 17, 2006. On November 17, 2006 David and Jackie Haeg will be driving from their home in Soldotna to Anchorage to effect possession of their property, which was seized, held, and forfeited in clear violation of law, rule, and constitution. Every day that David and Jackie Haeg are illegally deprived of this property causes them irreparable harm by directly affecting their ability to provide a livelihood for their two daughters.

All grounds advanced in support of this motion were submitted to the trial court and the first of several motions were filed on July 18, 2006. Assistant Attorney General Roger Rom (Rom) opposed Haeg's motion on September 22, 2006. The trial court subsequently refused to rule upon the motion. Rom was called and talked to on 10/30/06 about this emergency motion being filed with this court. He expressed he will oppose this motion and wants an opportunity to do so although in essence Rom has already responded to this motion, although not to this court, through his opposition to motion and request for evidentiary hearing and oral argument (a copy of which is included for this courts review).

In Rom's opposition he entirely misses the point. The point is not that Haeg is trying to exert what Rom calls a "waived" right to challenge evidence according to *Rule*

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[2] See F/V American Eagle v. State, 10 P.3d 1141 (Alaska 1980)

12(b)(3) – even though Haeg can and will do this later through the rubric of ineffective assistance of counsel, he had good cause, and it was plain error. The point (by law and constitution) is that when *property* (even though the State may claim it is "evidence") is seized, especially when the *property* seized is used to provide a livelihood, an "ensemble of procedural rules bounds the State's discretion...and limits the risks and duration of harmful errors"(Alaska Supreme Court).[3] The Alaska Supreme Court has held this ensemble includes that "[T]he standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. When the seized property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest is urgent."[4]

Neither Haeg nor his wife Jackie, who both owned the seized property and both used it as the primary means to earn a livelihood, were *ever* given any of these procedures. In not being given these procedures both Haeg and his wife were harmed immeasurably.

There are no debatable issues of fact as Haeg has described in the Motion for Summary Judgment, Motion for Emergency Hearing, and Reply to Opposition and request for Evidentiary Hearing and Oral Argument and included supporting affidavits – which the District Court has also failed to rule upon.

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[3] See *Waiste v. State* 10 P.3d 1141 (Alaska 2000).
[4] See *F/V American Eagle v. State*, 10 P.3d 1141 (Alaska 1980).

Haeg also points out a further Alaska Supreme Court holding in *F/V American Eagle v. State*, "As a general rule, forfeitures are disfavored by law, and thus forfeiture statutes should be strictly construed against the government". The State failed to follow *any* of the "ensemble of procedural rules" specifically required. They never gave Haeg or his wife any of the constitutional guarantees specifically mandated by both the Alaska Supreme Court and the U.S. Supreme Court.

The specific written requirements in Alaska to comply with these rulings are found in the *Alaska Rules of Civil Procedure* – as property seizures and forfeitures, although of "quasi-criminal nature"[5], are "civil in form". In fact there is no mention at all of the due process requirements for seizing and forfeiting property in the *Alaska Rules of Criminal Procedure* although Alaska Statutes *authorize* property seizures and forfeitures in Fish and Game criminal prosecutions under:

> *AS 16.05.190*: "[Property] seized under the provisions of this chapter or a regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any."
>
> *AS 16.05.195*: "[Property] used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, may be forfeited to the state. (1) upon conviction of the offender in a criminal proceeding of a violation of this title or AS

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[5] See *Graybill v. State*, 545 P.2d 629 (Alaska 1976).

> 08.54 in a court of competent jurisdiction; or (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or AS 08.54 or a regulation adopted under this title or AS 08.54".

Thus, although authorized as an additional punishment for a criminal conviction, a property seizure and forfeiture [attachment], even when ancillary [secondary] to a criminal proceeding, must follow civil rules. In Alaska forfeiture of seized property is obtained through the remedy of *attachment*. This is the only method published in Alaska:

> *Alaska Rules of Criminal Procedure Rule 54*: Process – "Process issued in all criminal actions in the superior court shall be issued, and return thereon made, in the manner prescribed by *Rule 4, Rules of Civil Procedure."*
>
> *Alaska Rules of Civil Procedure Rule 4:* "(c) *Methods of Service - Appointments to Serve Process* - (3) *Special appointments for the service of all process relating to remedies for the seizure of* persons or *property pursuant to Rule 64* or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the

protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process."

Alaska Rules of Civil Procedure Rule 64: "At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law existing at the time the remedy is sought. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by law the remedy is ancillary to an action or must be obtained by an independent action."

Alaska Rules of Civil Procedure Rule 89: *Attachment* "(b) *Motion and Affidavit for Attachment.* The plaintiff shall file a motion with the court requesting the writ of attachment, together with an affidavit showing... (m) *Ex Parte Attachments.* The court may issue a writ of attachment in an ex parte proceeding based upon the plaintiff's motion, affidavit, and undertaking only in the following extraordinary situations: (1) *When Defendant Non-Resident.* In an action upon an express or

implied contract against a defendant not residing in the state, the court may issue an ex parte writ of attachment only when necessary to establish jurisdiction in the court. To establish necessity, the plaintiff must demonstrate that personal jurisdiction over the defendant is not readily obtainable under AS 09.05.015. (2) *Imminence of Defendant Avoiding Legal Obligations.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff states in the affidavit specific facts sufficient to support a judicial finding of one of the following circumstances: (i) The defendant is fleeing, or about to flee, the jurisdiction of the court; or (ii) The defendant is concealing the defendant's whereabouts; or (iii) The defendant is causing, or about to cause, the defendant's property to be removed beyond the limits of the state; or (iv) The defendant is concealing, or about to conceal, convey or encumber property in order to escape the defendant's legal obligations; or (v) The defendant is otherwise disposing, or about to dispose, of property in a manner so as to defraud the defendant's creditors, including the plaintiff. (3) *Defendant's Waiver of Right to Pre-Attachment Hearing.* The court may issue an ex parte writ of attachment if the plaintiff establishes the probable validity of the plaintiff's claim for relief in the main action, and if the plaintiff accompanies the affidavit and motion with a document signed by the defendant voluntarily, knowingly and

intelligently waiving the constitutional right to a hearing before prejudgment attachment of the property. (4) *The Government as Plaintiff.* The court may issue an ex parte writ of attachment when the motion for such writ is made by a government agency (state or federal), provided the government plaintiff demonstrates that such ex parte writ is necessary to protect an important governmental or general public interest. (n) *Execution, Duration, and Vacation of Ex Parte Writs of Attachment.* When the peace officer executes an ex parte writ of attachment, the peace officer shall at the same time serve on the defendant copies of the plaintiff's affidavit, motion and undertaking, and the order. No ex parte attachment shall be valid for more than seven (7) business days (exclusive of Saturdays, Sundays, and legal holidays), unless the defendant waives the right to a pre-attachment hearing in accordance with subsection (m) (3) of this rule, or unless the defendant consents in writing to an additional extension of time for the duration of the ex parte attachment, or the attachment is extended, after hearing, pursuant to section (e) of this rule. The defendant may at any time after service of the writ request an emergency hearing at which the defendant may refute the special need for the attachment and validity of the plaintiff's claim for relief in the main action... (p) *Duration and Vacation of Writs of Attachment Issued Pursuant to Hearing.* A writ of attachment issued pursuant to a

> hearing provided for in section (c) of this rule shall unless sooner released or Emergency Motion For Return of Property & to Suppress Evidence Page 8 of 16 discharged, cease to be of any force or effect and the property attached shall be released from the operation of the writ at the expiration of six (6) months from the date of the issuance of the writ unless a notice of readiness for trial is filed or a judgment is entered against the defendant in the action in which the writ was issued, in which case the writ shall continue in effect until released or vacated after judgment as provided in these rules. However, upon motion of the plaintiff, made not less than ten (10) nor more than sixty (60) days before the expiration of such period of six (6) months, and upon notice of not less than five (5) days to the defendant, the court in which the action is pending may, by order filed prior to the expiration of the period, extend the duration of the writ for an additional period or periods as the court may direct, if the court is satisfied that the failure to file the notice of readiness is due to the dilatoriness of the defendant and was not caused by any action of the plaintiff. The order may be extended from time to time in the manner herein prescribed."

The state never obtained a writ of attachment [forfeiture] as required by rule, never served such writ upon Haeg as required by rule, never gave Haeg his "constitutionally guaranteed" notice, never gave Haeg his "constitutionally guaranteed" hearing "within in days if not hours" in 930 days let alone within the constitutionally

mandated seven (7) business days, never applied for an extension within two and one half (2½) years let alone the mandated six (6) months as required by rule from time of seizure to time of notice of readiness of trial or to time of judgment, and never gave him his right to an "emergency hearing", even after he asked for it, as required by rule. Jackie Haeg was denied these same constitutionally guaranteed procedures.

The above rules describe the procedure Alaska has to seize and forfeit someones property while guaranteeing them their constitutional rights. It is in addition to the process for seizing evidence.[6]

> "[A] judgment entered without notice or service is constitutionally infirm... Where a person has been deprived of property in a manner contrary to the most basic tenets of due process, 'it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits'."[7]

The obvious reason the State did not afford Haeg his constitutional right to a hearing in the first place is he would have no doubt prevailed upon the merits and ended any further prosecution. All the search warrants were based upon intentionally misleading and unbelievably prejudicial perjury, this would have been exposed during a hearing, and this would have ended any criminal prosecution.

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[6] See *Waiste v. State* 10 P.3d 1141 (Alaska 2000).
[7] See *Peralta v Heights Medical Center, Inc.*, 485 U.S. 80,87 (1988) & *Coe v Armour Fertilizer Works*, 237 U.S. 413, 424 (1915).

Trooper Gibbens testified on the search warrant affidavits, under penalty of perjury, that the suspicious sites he investigated were in Unit 19C, and that Haeg's lodge, that he "used for guided hunts" and that "there is a clear economic incentive for Haeg... to eliminate or reduce predators from this area, which could potentially increase numbers of trophy animals for them to harvest with clients", was in 19C (leading everyone, including the judge issuing the search warrants, to believe Haeg was a suspect and that the suspicious sites involved a big game guiding violation and had nothing to do with the Wolf Control Program). In fact all the sites that Trooper Gibbens investigated were in Unit 19D, the unit which the Wolf Control Program was being conducted and where Haeg had never hunted, guided, or ever been licensed to guide. Trooper Gibbens and Prosecutor Scot Leaders **taped** Haeg telling them this during the interview Haeg gave them for the Rule 11 Plea Agreement. Then, after Prosecutor Leaders broke the agreement and forced Haeg to trial on big game guiding charges rather than some Wolf Control Program violation (a conviction of which could not affect Haeg's guide business), he asked for and accepted sworn testimony from Trooper Gibbens in front of Haeg's judge and jury that sites he investigated were in GMU 19C. Then Judge Murphy uses this continued perjury to justify Haeg's unbelievably harsh sentence of taking his business away for six (6) years and his business property forever, saying it was because, "the majority if not all the wolves were taken in 19C ... where [Haeg was] hunting." Even more unbelievable is when Haeg filed a complaint of this continuous perjury that harmed his family unbelievably, with the entire Trooper chain of command from the Governor on down, they had Department of Law prosecutors do the "investigation". Prosecutors Roger Rom and James Fayette ruled: "to convict Trooper Gibbens of perjury, a jury would have to believe that [Haeg was]

truthful when [he] told [Gibbens] where [he] thought the kill sites were located." (It is very interesting that Roger Rom is the one representing the State against Haeg in his appeal and Trooper Gibbens is his main witness against Haeg) After this "investigation" Haeg tried for a long time to get anyone in authority to confirm his statements that were recorded by Trooper Gibbens and finally asked Lieutenant Steve Bear of the Soldotna detachment of the Alaska State Troopers to determine in which GMU all the GPS coordinates were located that Trooper Gibbens himself recorded. Lieutenant Bear subsequently received a memo from Trooper Gibbens himself that ALL the sites he investigated were in game management unit 19D. Haeg would like to commend Lieutenant Bear for his help when no one else was willing.

If State prosecutors, to convict Trooper Gibbens of perjury, need to convince a jury that Haeg believed he was truthful when he told Trooper Gibbens the sites were in Unit 19D don't you think that a memo from Trooper Gibbens himself, confirming this, and directly contradicting his sworn search warrant affidavits and his sworn testimony before Haeg's judge and jury, which led to a illegal conviction along with a draconian sentence, would suffice? Would anyone agree that the reason for Rom and Fayette's refusal to prosecute Trooper Gibbens for Class B felony perjury against Haeg is this would not only make the Troopers and State prosecution look bad but that also Haeg's conviction would have to be reversed? Several people who witnessed these crimes even called Rom and Fayette to give their accounts and they were never called back during this entire "investigation" of Trooper Gibbens actions by Rom or Fayette.

> *Lewis v. State*, 9 P.3d 1028. (Ak., 2000). "Once defendant has shown that specific

statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made."

Gustafson v. State, 854 P.2d 751, (Ak.,1993). "Prosecutors and police officers applying for a warrant owe a duty of candor to the court; they may neither attempt to mislead the magistrate nor recklessly misrepresent facts material to the magistrate's decision to issue the warrant."

Cruse v. State, 584 P.2d 1141, (Ak.,1978). "Constitutional protection against warrantless invasions of privacy is endangered by concealment of relevant facts from district court issuing search warrant, as search warrants issue ex parte, & issuing court must rely upon trustworthiness of affidavit before it."

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

State v. Faust, 265 Neb. 845, 660 N.W.2d 844 (2003). "An error in admitting or excluding evidence in a criminal trial, whether of a constitutional magnitude or otherwise, is prejudicial unless it can be said that the

error was harmless beyond a reasonable doubt."[8]

U.S. Supreme Court in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "Only 'wip[ing] the slate clean ...would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place.' The Due Process Clause demands no less in this case."

U.S. Supreme Court in *Sniadach v. Family Finance Corp*., 395 U.S. 337 (1969). "[D]ue process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged [defendant] before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court [U.S. Supreme Court]."

U.S. Supreme Court in *Wiren v Eide*, 542 F2d 757 (9th Cir. 1976)."Where the property was forfeited without constitutionally adequate notice to the claimant, the courts

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[8] See *McLaughlin v. State*, 818 P.2d 683, (Ak.,1991). *Stavenjord v. State*, 2003 WL1589519, (Ak.,2003). *U.S. v. Hunt*, 496 F.2d 888, C.A.5.Tex.,1974. *U.S. v. Markey*, 131 F.Supp.2d 316, D.Conn.,2001, *State v. Malkin*, 722 P.2d 943 (Ak. 1986), *People v. Reagan*, 235 N.W.2d 581, 587 (Mich. S.Ct. 1975), *U.S. v. Thomas*, 489 F.2d 664 (1973), and the Seminal U.S. Supreme Court case, *Mapp v. Ohio*, 367 U.S. 643 (1961) [held that all evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a State court].

> must provide relief, either by vacating the default judgment, or by allowing a collateral suit."
>
> Alaska Supreme Court in *Etheredge v. Bradley,* 502 P.2d 146 Alaska 1972. "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing ... this prejudgment garnishment procedure violates the fundamental principles of due process."

Haeg's property, used to put food in the mouths of his wife (Jackie) and two daughters (Kayla, age eight (8) and Cassie, age five (5)), was seized, held, and forfeited without any regard whatsoever for the constitutional safties protecting the right of every U.S. and Alaskan citizen to provide a livelihood for their family. Again Haeg would like to ask where is the "ensemble of procedural rules" that "bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors" that the Alaska Supreme Court has ruled protects citizens against unnecessary or illegal seizures and/or forfeitures.[9]

Haeg would like to point out that *Criminal Rule 37(c)* provides the right, in the court in the judicial district which the property was seized or which the property may be used, to contest the seizure of property, anytime after the seizure, no matter why it was seized, and that it is a right independent of any criminal proceeding. The district courts and state prosecutor Rom, from what little they have given Haeg, seem to think this right was waived or not needed to be complied with something to do with Haeg's

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[9] See *Waiste v. State*, 10 P.3d 1141 (Alaska 2000).

criminal case. This is obviously wrong. The whole point of this "ensemble of procedural rules" is to protect the use of your property, especially when it is seized under the "ruse" that it is "only" evidence and especially when it is seized via ex parte affidavits of a single individual Trooper who may be overzealous in his request that will put deprive someone of property used to provide a livelihood. He may be so overzealous he is even willing to commit perjury. Haeg would like to point out property owned by his wife was also seized and forfeited without anyone asking her if she had an objection or providing an opportunity to object. Haeg would like to point out the state seized and deprived him of his property for eight (8) months before ever charging him. The state prosecution no doubt relished the fact that Haeg was being financially devastated during this entire time. It would put them in a far superior position if Haeg was already bankrupt *before* even being charged. Even if they *never* filed charges they could count it as a sweet victory.

Maybe with this new-found law enforcement tactic the Troopers will be able to bypass trials entirely – if they think someone is doing something wrong (or maybe someone they just don't like) they can just seize all of the persons property that they use to make a livelihood, bankrupt them, destroy their dreams, and they will just go out and commit suicide.

Since state and the court lost jurisdiction to seize, hold or forfeit David and/or Jackie Haeg's property or to use it as evidence, for the following reasons: the state did not obtain a writ for the seizure and subsequent forfeiture; the state did not give timely notice it intended to forfeit David and/or Jackie Haeg's property; the state didn't provide David and/or Jackie Haeg with a hearing within 7 days of seizing their property; the state did not get anything waiving this hearing, in writing or otherwise; David and/or

Jack ie Haeg did not consent in writing to an additional extension of time to the ex parte seizure and deprivation; because there was no notice of readiness for trial or judgment entered within six (6) months of seizure and because there was no motion filed before the expiration of six (6) months extending this time period; David and Jackie Haeg respectfully request this court to grant this emergency motion and order the State of Alaska to release their property and suppress evidence. Haeg respectfully asks for an order in his hand before November 16, 2006 or delivered to the Evidence Custodian of the Alaska State Troopers at 5700 E. Tudor Road, Anchorage, AK 99507-1225, phone (907) 269-5761, returning his and his wife's property and suppress evidence.

This emergency motion is supported by the accompanying memorandum, documents and affidavits from David and Jackie Haeg.

RESPECTFULLY SUBMITTED this 6th day of November 2006.

"s/"

_____

David S. Haeg, Pro Se Appellant

APPENDIX JJ

Robinson & Associates Lawyers
35401 Kenai Spur Highway
Soldotna, Alaska 99669
Tele: (907) 262-9164 Fax: (907) 262-7034 (800) 770-9164
E-mail: office@robinsonandassociates.net

August 25, 2005

The Honorable Margaret L. Murphy Via Fax and Mail
District Court Judge
3670 Lake St., Suite 400
Homer, Alaska 99603
RE: State v. Dave Haeg
4MC-04-024 Cr.

Dear Judge Murphy:

Enclosed you will find a Petition for Issuance of Certificate for Out-of-State Subpoena, Affidavit of Counsel, proposed Order, and Certificate Requesting Out of State Subpoena requesting the telephonic appearance of Doug Jayo at Mr. Haeg's sentencing hearing on September 1st.

I am waiting for a call back from the clerk in the Idaho court to tell me if they will allow faxed copies of the documents. Usually the court requires two certified copies of the entire packet (petition, affidavit, order, and certificate). So, I am sending down to you the original documents (by overnight mail) for certification and I would ask that you return two certified copies of the documents to us to forward to the Idaho court. We have made arrangements for a process server in Idaho to serve Mr. Jayo with the summons the Idaho court will issue for his appearance at a hearing. In the event that the clerk calls

me back and indicates that they will indeed accept faxed copies, I will notify you right away.

I am also faxing to you a letter we received from another of Mr. Haeg's witnesses, Brent Cole, indicating that he will not be available to testify on September 1st.

Sincerely,

"s/"

Bonnie Burger
Paralegal

/bb
cc: DA

APPENDIX KK

January 8, 2008 - In the Court of Appeals of the State of Alaska, Order, Haeg v. State, No. A-9455/A-10015. Opposition.

1/8/08 OPPOSITION TO STATE'S 12/27/07 MOTION TO ORDER APPELLANT TO DESIGNATE PRECISE PORTIONS OF THE ELECTRONIC RECORD & TO STAY THE DATE FOR FILING THE APPELLEE'S BRIEF

COMES NOW Pro Se Appellant, DAVID HAEG, in the above referenced case and hereby files an opposition to the State's motion to order Appellant to designate precise portions of the electronic record and to stay the date for filing the Appellee's brief.

Respected judges of both the Alaska Supreme Court and the Alaska Court of Appeals – David Haeg writes all of you today in hope of ending an ongoing fundamental breakdown in justice never before recorded in Alaska. David Haeg will make every effort to be brief, to the point, and apologizes for his directness.

David Haeg filed a pro se appeal opening brief in his criminal appeal on January 22, 2007 – claiming judicial system corruption involving Troopers, prosecutors, and David Haeg's own defense attorneys and was ordered to submit a shortened brief on or before February 20, 2007 – which he did.

According to the rules the State was to file their brief 20 days after this.

Through a series of motions by the State and actions by this Court of Appeals it is now nearly a year after David Haeg filed his brief – with the State just recently asking for a second non-routine 49 day extension of time in which to file their brief (300+ days after they were first required to file it) and is now asking their briefing schedule be again stayed so David Haeg can be required to identify the portions of the record that support his claims of error – *which he was already required to do and has so done*. See the numerous motions, orders, and compliances from nearly a year ago to present.

It is clear that the violation of David Haeg's constitutional rights are so gross, intentional, malicious, and apparent that the State can see no other way to keep David Haeg convicted than to just delay until David Haeg gives up.

David Haeg regrets to tell the State, this Court of Appeals, and the Alaska Supreme Court this will never happen. David Haeg will continue to carefully document Alaska's corrupt judicial system and those that seek to keep it covered up. Waiting for nearly a year for an appellee brief from the State prosecution is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

This Court of Appeals ordering the transcribing of only the State's designation of record and not David Haeg's designation is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

The State bearing false witness against a U.S. Citizen to change the location of evidence found, used on every search warrant affidavit used to seize his business property and presented to his judge and jury – specifically cited by the same judge as reason to end that citizens

ability to provide for his family and to put him in jail– is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

The use of illegally obtained evidence as nearly the only evidence used against a U.S. Citizen is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

Not providing a prompt opportunity for a U.S. Citizen to contest the deprivation of property, used as the primary means of providing a livelihood, is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

Denying a U.S. Citizen the right to confront adverse witnesses, present evidence, present oral argument, and present witness testimony in trying to get his property back is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

The State promising immunity to get a U.S. Citizen to give up his right against self incrimination and then breaking that immunity to use the citizens statement and its fruits as nearly all the evidence against that citizen at trial is unacceptable to the U.S. Supreme Court and the U.S. Constitution.

David Haeg can see the States dilemma – very nearly their entire case rests on gross, blatant, and intentional violations of David Haeg's constitutional rights. Where would you start to defend such a case?

Look at it in broad strokes:

(1) All evidence seized and deprived with the search warrants was in violation of due process and against unreasonable searches and seizures - and thus could never

have been used against David Haeg – yet it all was used and it was very nearly all the evidence the State had.

(2) David Haeg had immunity for his statement – so nothing connected to it could have been used against David Haeg – yet very nearly everything the State used against David Haeg was directly connected to David Haeg's statement.

Imagine David Haeg's surprise when he read that nothing must be used no matter how thin the thread of connection – and that the prosecution, once they obtain a statement by promising immunity, then has to *affirmatively* prove the case then presented is absent any taint, no matter how small – to the extent the officers interviewing the immunized witness should have no connection whatsoever to those prosecuting that witness at trial. It is even recommended that the prosecuting officers conduct themselves so they can testify they never spoke with the immunized witness, never seen transcripts of the witnesses testimony, and never read reports in which testimony was mentioned. See *Kastigar v. United States*, 406 U.S. 441 (1972) & *Counselman v. Hitchcock*, 142 U.S. 547 (1892).

See also *Daly* v. *Superior Court* (1977) 19 Cal.3d 132, 145:

> "[T]he very existence of such testimony may present serious problems of *proving* its complete independence from evidence introduced in the criminal proceeding"

Yet in David Haeg's case both the prosecutor and trooper conducting David Haeg's interview were the very same prosecuting the trial against David Haeg. And the State's star witness against David Haeg, Tony Zellers, has

testified under oath (along with Zellers attorney Kevin Fitzgerald) that Tony Zellers would have never cooperated with the State but for David Haeg's statement. How then could the State *require* Tony Zellers testify against David Haeg? How could *every* information filed against David Haeg say, "David Haeg came in and said blah - blah – blah and thus we are charging him with blah - blah – blah"?

The entire case presented to convict David Haeg is an abomination.

This doesn't even take into consideration everything (whole year of income from both David and Jackie Haeg among other things) the State stripped away from David Haeg that had been given for a plea agreement the State broke so they could force David to trial – in direct violation of David Haeg's constitutional rights of getting what he bargained and already paid for.

How could the State then claim at David's sentencing they didn't know why David and Jackie gave up this year – just so they made sure David never even got credit for this year when they asked he be sentenced to another 5 years without a guide license? What is going on? Where is justice? Has it forsaken Alaska's courts?

Maybe even more shocking than anything above is that if the errors in David Haeg's case are so gross, obvious, and prejudicial why didn't any of David's 3 attorneys, paid nearly $100,000, use this in David Haeg's defense? There is only one explanation – they were also involved in the conspiracy to deprive David Haeg of his constitutional rights that would guarantee fair proceedings.

This then brings into focus this Court of Appeals purpose in ignoring David Haeg's main claim in his opening

brief – that there was corruption and conspiracy between David Haeg's own attorneys, the State prosecution, the Troopers, and even David's trial court. Why would this Court of Appeals tell David Haeg and the State to only address David Haeg's claims of prosecutorial misconduct and errors by the trial court – leaving the involvement of David Haeg's attorneys unaddressed? Sounds like a continuation of the cover up of the bigger conspiracy. Something of a red herring to make the bigger issue of David Haeg's attorneys selling him out to the prosecution vanish into obscurity.

Why won't David Haeg's trial court accept the constitutionally guaranteed application for post conviction relief claiming ineffective assistance of counsel so David Haeg can prove what his attorneys did to him?

Why won't this Court of Appeals stay David Haeg's appeal so he could do this? Especially since they have *required* all other appeals be stayed if the defendant wishes to file for post conviction relief claiming ineffective assistance of counsel?

How can this Court of Appeals continue to postpone David Haeg's urgent request for a ruling on the return of his property – when he has been asking for this for *years* because he needs this property to provide a livelihood for his family? Especially when this ruling is to be provided "within days, if not hours"? Especially when the State's claim they didn't have to provide him with a prompt opportunity to contest is in exact opposition to all U.S. Supreme Court and 9th Circuit Court rulings?

Exactly what is going on?

Does anyone think David Haeg will not secure the return of his property along with full compensation, actual and punitive, for an illegal deprivation complete with proof that everyone *knew* they were illegally keeping this property from David Haeg?

Has the State and this Court of Appeals every thought of the toll this fundamental breakdown in justice has had on David Haeg and his family over the past 4 years? Stress that has turned David's hair gray, having to sell off their possessions, cash in their kids college funds, wipe out all savings and retirement, hock their house, lose all their hunting camps (due primarily to the intentional and unjust refusal of this Court of Appeals to correct David Haeg's illegal sentence) and almost certainly going to lose the hunting lodge they put their life's effort into? Is this the plan – keep piling it on until David Haeg breaks? Does this Court of Appeals consider the anger and determination generated when David Haeg and those with him realize breaking nearly every one of David Haeg's constitutional rights did all this? Does this Court of Appeals consider that those standing with David Haeg realize it must stop with David or their property, business, and life will be the next one illegally taken?

David & Jackie Haeg calculated the additional cost attorney's would have charged them had David not started representing himself. It would be an additional 1.2 million dollars.

It is very clear to David & Jackie Haeg, and those now joining in their demand for justice, exactly why this corruption has got so bad – everyone else went bankrupt before they could expose it. David & Jackie will not go bankrupt before they reach justice.

Now that the constitutional violations are so obvious and the cover up has become so clear there is no stopping the Haeg family. The Haeg's incredible investment will not be wasted. Everyone who continues the conspiracy of denying and delaying David Haeg his constitutional rights and justice only continues to sacrifice his or her career, life, and likely steps further into a federal penitentiary.

David Haeg admires the obedience of the State's attorneys to do this for their bosses. Not only will David Haeg's conviction be reversed but David Haeg and those with him will continue to demand the current Department of Justice investigation be completed, indictments issued, U.S. Congressional and Alaska Legislative investigations started, and civil lawsuits (in addition to David's) pursued.

David Haeg looks forward to this Court of Appeals ruling on the State's request to again stay the filing of the State's brief so David Haeg can be forced to once again do the same thing this Court of Appeals has already required him to do.

David Haeg is including a brochure that captures a little of the wonderful life that has been destroyed by this corruption. It also captures something of the people who are standing with David, Jackie, Kayla, & Cassie Haeg to see justice done.

If you look at this brochure carefully it is likely you will get some insight at the strength, determination, and quality that is going to see this perversion of justice brought down.

This opposition is supported by the accompanying affidavit. RESPECTFULLY SUBMITTED this 8 day of January 2008.

"s/"

David S. Haeg, Pro Se Appellant

APPENDIX LL

September 19, 2008 - In the Court of Appeals of the State of Alaska, Order, Haeg v. State, No. A-9455/A-10015. Petition for Rehearing.

9/19/08 PETITION FOR REHEARING

COMES NOW DAVID HAEG, in the above case & in accordance with Rule 506 hereby asks the Court of Appeals for a rehearing.

1. The Court overlooked the directly controlling Alaska Supreme Court case *Waiste v. State* 10 P.3d 1141 (Ak 2000) in denying Haeg's due process claim he was entitled to the return of property & then to suppress it as evidence.

The Court claims Haeg, "relies *primarily* on the decisions in F/V American Eagle v. State and State v. F/V Baranof" – with not a single mention of Waiste when Haeg first, primarily, & repeatedly cited Waiste. [At. Br. 4; Motion for Return of Property 8-9].

How could due process have been given when the State seized property Haeg *was using at the very time as his primary means to provide a livelihood,* without a prompt postseizure hearing ("within days if not hours") or even notice such a hearing was available? What about Haeg asking when he could get his property back & the very Trooper seizing the property telling Haeg *"never"*? To Haeg this meant there was *no* prompt opportunity to contest – he was out of business with no judge to hear his side.

Multiplying the harm was the fact every affidavit used to seize his property falsified the location of the

evidence against Haeg & this false location was specifically used to charge & convict Haeg of crimes harsher then what may have been otherwise warranted. Because a judge never addressed the false evidence location at a prompt postseizure hearing it never was addressed - & thus adversely affected Haeg's entire case. *The reason for a mandatory hearing after taking someone's livelihood unopposed is clear – it may not be warranted.*

Haeg respectfully asks this Court apply the controlling caselaw in Waiste to the facts of Haeg's case & return Haeg's property.

2. The Court overlooked the material question that since Haeg was not given the due process of intent to forfeit, items to be forfeited, and/or the statutes authorizing forfeiture in any charging information he is entitled to the return of property. [Motion For Return of Prop 4-6, 32-35, & 52-60; Pet. For Rev. 2-3]

Haeg claimed due process required the State to place the intent to forfeit, items to be forfeited, & the statutes authorizing forfeiture in the charging informations. *See* Rules 7 & 32.2 of the Federal Rules of Criminal Procedure.

Since States must grant as much due process as the Federal Government, Haeg asks the Court apply the Federal standard to his case & return his property.

3. The Court overlooked the question the State's entire argument to Haeg's judge & jury was the evidence showed Haeg killed wolves *were he guided* to benefit his business when they knew this was false when presenting the arguments & testimony. Also, the Court overlooked the directly

controlling cases *Mooney v. Holohan*, 295 U.S. 732 & *Napue v. People*, 360 U.S. 264 [At. Br. 5-6, 13-16].

The State argued Haeg should be convicted because he took wolves where he guides to benefit his business. Gibbens then testified the evidence showed Haeg took the wolves where he guides – as he had put on all search & seizure affidavits. Yet Gibbens, when trapped on cross-examination, admitted this was false testimony & argument – proving he knew it was false when he testified – making it irrefutable perjury. Money & Napue hold it is a denial of due process to convict a person on false testimony known to the State. The false testimony in Haeg's case wasn't just known to the State, it was the State itself who knowingly gave the false testimony. Haeg respectfully asks this Court apply the controlling caselaw in Mooney & Napue to the facts of Haeg's case.

4. The Court overlooked the material question Haeg wished to stay his appeal to conduct a post-conviction relief procedure claiming ineffective assistance of counsel to prove his attorneys maliciously deprived him of constitutional rights & conspired to do so. [At. Br. 1-20]

For nearly 2 years Haeg has filed many motions with this Court to stay his appeal so he could conduct PCR, a critically important issue for Haeg. This Court held in *State v. Jones* 759 P.2d 558 that this was the proper procedure for someone on appeal wishing to claim IAOC - American Bar Association Standard 22-2.2 agrees. Yet this Court refused to stay Haeg's appeal, with *no justification* other then the law allows both to be conducted at the same time. Haeg filed many motions for reconsideration – asking for a justification to deny him, a non-attorney who cannot possibly conduct both at the same time, the same procedure

given to everyone else. This Court remained unmoved & now, with its decision in Haeg's appeal *after nearly 3 years*, the harm to Haeg is clear.

The decision claims "Haeg" waived innumerable fundamental constitutional rights that guarantee a fair prosecution. 1. The right against unreasonable searches & seizures; 2. The right to due process; 3. The right to equal protection of law; 4. The right against self-incrimination; 5. The right against double jeopardy; 6. The right to compulsory process for witnesses in his favor; 7. The right to have assistance of counsel; & 8. The right to have no State deprive any person the equal protection of the law or of due process.

Yet "Haeg" never waived a single right – his attorneys did over his taped demands something be done. Since, with this decision, this Court has kept him on an appeal treadmill for 2 years for nothing, Haeg's wants a *legitimate reason*, other then " the law allows it", that this court will not let him stay his appeal so he can prove his attorneys maliciously waived Haeg's rights over Haeg's demands. If there is no legitimate reason this is another violation of Haeg's right to the equal protection of the laws.

5. A smoking gun?

The day before his PA was to be finalized Haeg sent the court & the State a letter documenting what he was going to testify to under oath the next day - that a sitting Board of Game member told him if more wolves were not taken the WCP would most likely be shut down as ineffective; that Haeg had to kill more wolves so this did not happen; & that if Haeg took wolves outside the area to just mark them on GPS as being taken on the inside of the area. Just hours after they received this letter the State

filed an amended information violating the PA by greatly increasing the severity of the charges. As a result the PA never happened & Haeg never testified under oath in open court what the Board of Game member told him.

Animal rights activists were (and still are) trying to shut the WCP down by claiming the State & Board of Game were not using sound science & were manipulating facts to justify the program. Haeg's testimony in open court during his PA would have been the smoking gun proving this as fact.

Also interesting? Haeg's written statement vanished from the official court record of his case – *but the cover letter documenting its submission remained in the file.*

This motion is supported by the accompanying affidavit.

RESPECTFULLY SUBMITTED this 18th day of September 2008.

"s/"

_____

David S. Haeg, Pro Se Appellant

APPENDIX MM

ADN.COM
Anchorage Daily News

"It's a complicated, ugly case against guide David Haeg"

CRAIG MEDRED
OUTDOORS
(05/17/08 22:14:50)

When pilot and big-game guide David Haeg strayed outside the boundaries of a wolf control area near McGrath in 2004 to slaughter some wolves, there is little doubt he thought he was doing the right thing. Everyone involved with the wolf-killing program for which the state had permitted Haeg understood the objective was killing wolves to increase the survival chances for moose.

And even if Haeg and gunner Tony Zellers were technically outside the control area, they were still operating within the boundaries of state Game Management Unit 19D, and the state calls these things "Game Management Units" for a reason.

What were Haeg and Zellers doing anyway but helping to manage the game in Unit 19D?

Unfortunately the state didn't see it that way. Under fire from animal activists upset about the aerial gunning of wolves, the state saw in Haeg a chance to demonstrate that you can't just let wolf-control run wild, to spin an old phrase from former Gov. Wally Hickel.

Still, in fairness to the Alaska state troopers and the state attorneys involved, it is near certain they too thought they were doing the right thing when they busted Haeg.

Everyone agreed Haeg broke the law. He shot nine wolves 20 to 30 miles outside the control area. He deserved to be punished for that.

Where the issue turned ugly was in deciding what punishment fit the crime. This is the reason the case is still making its way through the Alaska court system.

The state wanted make an example of David Haeg. It was supposed to be pretty simple:

They'd bust him. They'd make a big show of it by playing the press like a trophy king salmon, something at which law enforcement officials in this state are good.

Wolves shot 20 to 30 miles outside the control area became wolves shot up to 80 miles outside the control area. Haeg was portrayed as a rogue, out-of-control aerial wolf hunter to make it appear the state was keeping a close watch on these hunts, which is the biggest fraud in all this.

Haeg was supposed to take the publicity hit, hire a fixer to negotiate a plea deal and then just wait for everything to fade away.

That's the way these cases usually go down.

Haeg, for his part, played his role properly at the start. He hired a lawyer who specializes in plea-bargaining wildlife cases. A plea bargain was struck.

And then everything fell apart. Why isn't exactly clear.

State assistant attorney general Andrew Peterson said it was because Haeg didn't want to let the state take his airplane, a pricey Piper Super Cub specially outfitted for short-field landings.

"He didn't want to give it up," Peterson said.

But it isn't quite that simple.

The state had seized Haeg's airplane early in the investigation. State officials never bothered to tell him he had the right to protest that seizure and go before a judge to try to get the plane back while his case was adjudicated. When he finally found out, he got mad.

By then, he'd also lost a hunting season with its tens of thousand of dollars in business. He was watching his life drain away along with his money.

"All they had to do," he told the three, gray-haired judges of the appeals court in mid-May, "was write a little note on the search warrant: 'Mr. Haeg, you have the right to appeal it.' "

Instead, Haeg said, when he asked troopers how and when he might get his plane back, "the trooper told me I was never going to get my plane back."

Somewhere in there, the now 42-year-old Haeg decided the government -- our government -- was trying to railroad him, and he started fighting back. He hired two attorneys. When one seemed more interested in negotiating deals than battling for his case and the other couldn't do

much to stop him from getting convicted, he got even madder.

He became his own lawyer, a one-man legal aid society cranking out the briefs and appeals. Four years after the wolf shooting, he is a man obsessed with his case.

But then, we all might be if you consider what happened to Haeg after the plea agreement went bust.

The state used what Haeg said in a five-hour, plea-agreement interview to put together a bunch of new charges. They didn't just go after him for violating the terms of the aerial wolf-control permit. They went after him for the crime of aerial hunting.

(Haeg makes an interesting argument that someone engaged in state-permitted wolf control isn't "hunting" because the state, in permitting the aerial gunning, specifically says it isn't hunting.)

The prosecutors saw it differently. To them, it looked like hunting, and they tried to tie it to the game management unit in which Haeg guides to make it appear he was doing wolf control to further his hunting business.

A trooper testified that Haeg killed the wolves in the game management unit where he has his hunting camps, but eventually recanted that testimony on cross-examination at Haeg's trail.

As Haeg pointed out to the appeals court, however, not even the judge appeared to hear. In taking away Haeg's guide license, and thus his business, for five years, the judge specifically cited the egregious act of Haeg illegally

killing wolves in the area where he guides -- something which just didn't happen.

Haeg gets especially upset about this. He tosses the word "perjury" around a lot.

I don't know what to think about David Haeg. He and some of his friends have e-mailed me repeatedly over the years to plead his case. He's always sounded a bit paranoid.

He started a Web site to publicly air the case: alaskastateofcorruption.com. It appears a little paranoid too -- rambling and disjointed. Haeg is not a particularly eloquent man.

He is a big-game guide. He looked different in suit and tie before the appeals court judges in a sterile Anchorage courtroom, but he was clearly still a guy who would have been a lot more comfortable in the woods.

After his presentation, all by himself, without the aid of any of the attorneys he's come to detest, a lone man behind a wooden table bucking the system in what he believes to be a fight for what is right, Haeg broke down in tears.

I knew then even less than when I entered the court room. Some 50 or so people in attendance, though, had a distinct and communal opinion. After the judges walked out of the chambers, they stood up to applaud Haeg long and loud.

Poor state attorney Peterson had to sort of slink out of the chambers.

A colleague at the top of the stairway leading to the door, shook his hand -- a deserved thank you for arguing what has come to be a complicated and ugly case.

I was left knowing that I didn't like a lot of what I saw. I felt a little sorry for Haeg. I remember thinking mainly about the over-used phrase of an old friend: Just because you're paranoid doesn't mean they aren't out to get you.

What Haeg was apparently trying to do in March of 2004 was help the state out with its dirty little business of manipulating wolf numbers. He got a little carried away, yes, but for that he deserves to lose his business for five years and his airplane?

If that's the case, what should be the punishment for those commercial fishermen who on any given day over the course of the Alaska summer stray outside the boundaries of carefully drawn fishing districts to snatch public resources worth tens of thousands of dollars?

Haeg wasn't making any money off shooting those wolves.

He was just a poor fool trying to help the state with its stated goal of reducing wolf numbers in the McGrath area. So far, it appears to have cost him about four years of his life.

Outdoors editor Craig Medred is an opinion columnist. Find him online at adn.com/contact/cmedred or call 257-4588.

APPENDIX NN

AFFIDAVITS

January 29, 2009

Justice Anthony M. Kennedy
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Dear Justice Kennedy,

I retired after over 20 years in the Alaska State Troopers, where I supervised Troopers in a large portion of the State.

I am now a private investigator and process server.

I have first hand knowledge of evidence of the same constitutional violations which Mr. Haeg has brought to your attention. I know of 14 people, other then Mr. Haeg, that these violations caused life-changing effects.

I personally presented evidence of these violations to appropriate authorities up to and included Governor Sarah Palin's office. It is now months later and my concerns have still not been addressed.

I believe these constitutional violations will continue until they are addressed. I believe it is very important you address Mr. Haeg's appeal as the issues raised affect numerous individuals in this State.

I swear under penalty of perjury the foregoing is true to the best of my knowledge.

"s/"
Fred Angleton, POB 4155, Soldotna, Ak 99669
907-262-2266

To the United States Supreme Court,

I came to Alaska while in the United States Coast Guard and have since been an Alaska State Trooper & Commercial Pilot.

I am writing in regard to my friend David Haeg. I can attest to the fact he is quite sane, which is amazing considering what the failure of our justice system has put him and his family through. I have witnessed a terrible injustice take place over and over in his prosecution, falsification of search warrants, perjury during trial, failure to honor plea agreements, & inappropriate actions by his attorneys, Attorney Generals Office, & Alaska Bar Association.

His rights are being violated by extreme measures to suppress the inevitable exposure of these crimes.

David is very intelligent & recognizes these wrongs & cannot believe this is happening in a State he loves by a Judicial System he has had tremendous faith in.

I have participated in both David's court & Bar cases & have personally witnessed these wrongs.

I ask you to hear David's case as the Constitutional violations taking place affect all of us.

I attest this statement to be true to the best of my knowledge under penalty of perjury.

"s/"
Wendell L. Jones
POB 942
Cordova, Ak 99574 907-424-7607

Justices of the United States Supreme Court I pledged an oath to protect and defend the United States Constitution and then did so by serving 14 years in the U.S. Airforce as an F-15 Captain. Afterward I was Mr. Haeg's codefendant in this case & was a witness in numerous proceedings concerning him and my own attorney Kevin Fitzgerald.

I personally witnessed and was victim of many of the same constitutional violations Mr. Haeg seeks to have you address, lies by our attorneys, perjury by Trooper Gibbens, unlawful use of plea statements, & others.

The other frustrating part is the reluctance/refusal of the Alaska Court system to address these violations.

This seems to be standard operating procedure here in Alaska, a small close-knit legal system covering its member's tracks. This is wrong; all anybody asks for is a fair trial. It is important that you address this situation not just for Mr. Haeg but also for all of us.

I hope I did not spend 14 years of my life defending a constitution this State does not have to obey.

I hereby swear under penalty of perjury the foregoing is true to the best of my knowledge & ability.

"s/"

Tony R. Zellers
9420 Swan Circle
Eagle River, AK 99577
907-696-2319

January 29, 2009

Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Justices of the Supreme Court,

I am a resident of the state of Alaska where I practice my trade as a hunting and fishing guide.

I have been acquainted with the details of Mr. Haeg's case from the start and have been present at many of the court and bar hearings relating to his case.

I have been present and witnessed blatant lies and perjuries from Mr. Haeg's past attorneys and Alaska State Trooper Gibbens.

I fear for the rights of myself, Mr. Haeg, and every other resident of the State of Alaska.

It seems that we live in a state where constitutional law is no longer practiced by the "justice system".

I ask that you hear the appeal of Mr. Haeg regarding the gross injustices that have been done against him at the hands of our state legal system.

I hereby swear under penalty of perjury the foregoing is true to the best of my knowledge and ability.

"s/"
Drew Hilterbrand
PO Box 1038
Soldotna, AK 99669 907-252-4090

2/2/09

JUSTICES OF THE UNITED STATES SUPREME COURT

I, Thomas J. Stepnosky, a Vietnam veteran, who fought for our way of life and the rights of our citizens, have come to witness, by the judicial system of the State of Alaska, a complete breakdown of these rights and protections afforded to all of us under our Constitution.

In the case of David Haeg, I have seen through tainted testimony, him convicted, not only by this, but by a complete lack of due process and a violation of his constitutional rights. I am astounded and ashamed that this could happen to one of our citizens in this day and age. The Alaska "Good old Boy" Judicial System is beyond broken!

Therefore, I implore you to review, and right the wrongs done in this case.

Sincerely,

"s/"
Thomas J. Stepnosky
PO Box 205
Thompson, PA 18465
570-727-3130

February 1, 2009

To the Justices of the United States Supreme Court,

My name is Michael Adlam. I am a business owner and have been a resident of the state of Alaska for over 20 years. My message to you is this: I respectively and urgently request that you consider Mr. Haeg's petition for Writ of Certiorari.

Countless members of the voting public in our state and around the country have followed this case closely, and are appalled at the lack of justice exhibited here. When deceit and perjury in our law enforcement and judicial system go unchecked and unpunished, it crushes the trust that one should have for the protection of an individual's constitutional rights. This simply affects us all.

I know this family personally and have watched in disbelief as Dave has fought for his family's well being and constitutional rights. Having watch this situation unfold, I can assure you that Mr. Haeg is not an individual that will lie down and give up as others have in the past; he will not allow the players of injustice to have their way. The citizens of this state our coming together on this, and keeping each other informed with a watchful eye on what happens in this case.

In closing, I would strongly encourage you to help Mr. Haeg and his family. His spirit and tenacity are an excellent example of how our state was settled, and I know that he will find justice with your help. I thank you for your time and attention in this matter.
Sincerely,
"s/"
Michael Adlam,

39310 Hallelujah Dr., Soldotna, AK 99669, (907)262-0669

January 28, 2009

Justice Anthony M. Kennedy
Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

Dear Justice Kennedy,

I, James Isaak have followed the events of David Haeg and I am appalled the way our justice system can strip an American citizen of his constitutional rights just to protect the "Good old Boys Club".

This has to stop, and I am pleading to you to look at his case and all the corruption, lies and deceit that was told against him.

I used to have faith in our justice system. After what I have seen our Justice system put David Haeg and his family through I have very little respect for it.

My father served in the marine core in the South Pacific in World War 2. He was appalled at what our justice system has done to David Haeg. My father died at 85 in 2007.

I would like to close with the Pledge of Allegiance. I pledge allegiance to the flag to the United States of America and to the republic for which it stands, one nation under God indivisible, with liberty and JUSTICE for all.

I pray that you will hear his case and stop the corruption in our great state of Alaska. Thank you,

"s/"

James Isaak, Box 1341, Soldotna Alaska, 99669, 907-262-1960.

January 17, 2009

Supreme Court of the United States
One First Street N.E.
Washington, DC 20543

To the U.S. Supreme Court,

My name is Mark Bressler and I ask you to consider taking the case of David Haeg for the injustices done against him, his family and many Alaskans who suffer under a corrupt police and court system in Alaska. It is a good ol boys network that needs your help in reining in their terror against U.S. citizens living in Alaska.

It is time for justice to come to "The Last Frontier".

Thank You.

“s”

Mark Bressler
2750 VIP Dr
Kenai, Ak 99611
907-335-6373

29 January 2009

To the honorable Justices of the United States Supreme Court:

My name is William J. Twohy. I am a practicing Nurse Anesthetist residing in Soldotna, Alaska. I ask on behalf of Dave Haeg that you hear his case against the State of Alaska. I have been following this case very closely since it emerged, and I have witnessed myriad injustices, Constitutional irregularities, and blatant incompetence by the State's Judicial Branch and Mr. Haeg's hired Counsel. These accusations are supported by the pages of transcripts that Mr. Haeg can submit in his defense. I shudder at the prospects of anybody ever receiving a fair trial in this State after what I have seen.

Alaska has been exposed for its corruption up to and including the highest levels of Government. I am discouraged as I believe the United States Constitution affords individual, unalienable rights which are now being undermined by paid, Alaska State officials who make up their own rules or bend existing rules as they see fit.

I am hopeful a hardworking, intelligent, devoted family man such as Mr. Haeg can finally get effective and lawful vindication from the United States Supreme Court for the injustices he has received from the State of Alaska. Thank you.

I swear under penalty of perjury that the aforementioned is true to the best of my knowledge. Sincerely,

"s/"

William J. Twohy, P.O. Box 871, Sterling, Alaska 99672

907-262-5447.

APPENDIX OO

BROCHURE

Dave Haeg's Alaskan Hunts

Coastal Brown Bear

9'10" Brown "I have to tell you I still can't wipe the smile off my face. I am so proud of that bear I tell everyone about it. I also tell them you are the only outfitter to use in Alaska. I still can't believe how hard you guys work for your hunters with all the flying & moving but I guess that's what makes it work. I will call you soon to talk about the best time to come up for moose." Steve Boniface, NY 845-583-7226 sboniface@pbeinc.com

9' Brown shot at 10 yards with his bow. "Scuba" Jim Brawdy, NY 716-438-0589 Jpbrawdy@pcom.net

9'8" Brown Bear "Dave's business is an enrichment for Alaska." Taken on day 1 after spooking off the "big one" an hour before. Dr. Reinhard Klaessen, Germany Klaessen-Uedem@t-online.de

"I feel I'm qualified to recognize character when I see it & Dave Haeg fits the ticket." Jim Novak. PA jnovak@arrowunited.com 570-274-7723(h) & 570-746-1888(w)

10'4' Boone & Crockett Brown - Dr. Ron Neider, WI 262-637-7276

9' Brown & 6'11" Black "After my caribou & black bear hunt with Dave I immediately booked my second hunt because I knew I had found the man I wanted to hunt

Alaskan Brown Bear with. As President of the Western & Central NY Safari Club Chapters I get many offers – some cheaper & many with more promises but after seeing Dave's setup & working with the man & crew I would go with no other." Mike Shevlin, NY 716-652-3534(h)

10' Brown "I consider Dave a very conscientious individual with high ethical standards – always concerned about Alaska's wildlife resources, safety, & care of his clients & most of all the enjoyment of nature & the hunting experience." Sandro Crivelli, Switzerland 310-519-3969 huntsmen1@ earthlink.net

9'2" Brown Bear "By noon on my first day hunting with you I had seen twice as many bears as in the entire 28 days I had hunted brown bear with other guides in Alaska."

When asked if he wanted to shoot an average bear on day 1 or try for a bigger one Michael replied, "to me this is day 29 of my Alaskan hunt." Dr. Michael Seare, England +441903240770 mike@endospecialist.co.uk

Over 10'Boone & Crockett "Wolverine" Colored Bear - Dr. Anthony Longo, NY 845-888-5875 antjoe@catskill.net

Why hunt with us? Jackie (the real boss) & I asked as many of our past clients as possible to answer this one question. The answer was professionalism, honesty, success on exceptional animals (95% success on brown bears averaging 9'2" & moose averaging 62"), ethics, hard working, experience, knowledge of hunt areas, flying skills, & conscientious. Many more descriptive words & phrases were used but the ones above were repeated time & time again. If you asked me this same question I would answer that I am driven to provide our guests with the absolute best hunt we can. When a guest is unhappy I am unhappy. When I am unhappy things change rapidly. It is as simple

as that. When a weakness is found in our operation we change tactics immediately. This has led to many exclusive use hunting areas bordering National Parks, the best guides in Alaska, highly modified, custom built airplanes, the best equipment money can buy, and the best game management possible.

9'4" Brown Bear "What was reality in Alaska is now a hunter's cherished memory. Dave & Jackie earn a five star rating, providing the best in accommodations, transport & hunting. Thanks for a great experience. To the one who turned out to be my most valued companion on this 2002 Bear Hunt, Tony, my guide, a sincere thank you, for your skill & sharing the art of the hunt. You made this a trip that I am not likely to forget!" Sal Cucorullo, NY 845-496-5151 cucastle@frontiernet.net

Black Bear day one, 9'9" Cinnamon Brown day 2. Benjamin Suarez, Mexico 8717-13-83-24

9'10" Cinnamon Brown - Volker Manke, Germany 41-93901181

9'4" Brown Bear - Dr. John Pavlakis, NY 845-266-3974 drpavy@aol.com

10'6" Brown Bear taken on first day of hunt. "As you know, although this was my first hunt for brown bear with you, it was my 4th attempt in AK. So, although I only spent 1 day with your team it was my 26th day of chasing after brown bears. You told me there were big ones in your territory & you delivered with a magnificent bear. As happy as I am with this bear, I am ever happier with the outstanding operation you run & the even better guide you teamed me up with. Tony went well above & beyond

helping me get this bear." Walt Maximuck, NJ 609-397-0567 wmaximuck@aol,com

9'7" Brown Bear on day 2 "I have hunted and known several Alaskan guides over the past 30 years and would rate David at the top of the list. David, as well as his assistant guides, all exhibited the highest level of honesty and integrity and I would recommend them to anyone interested in top-of-the-line Alaskan hunts." Jack White, CA 925-838-3163 juanblancojw@yahoo.com

"Great state, great hunt, and a great big bear." 10' Cinnamon Brown Danny Phypers, FL 863-465-3280(h) & 863-441-1298(c) dplace@htn.net

"My fall 2001 bear hunt was booked at the end of a very successful 671/2" spread moose hunt with David in 1998. My 11-day hunt started October 1 and ended 2 hours later after I took a 10'4" bear. By the evening of the second day we had seen 7 other bears, 3 of which I could have shot from our wall tent, and 2 of which were well over 9'. My 2 guides were exceptional, the 4-bunk permanent wall tent was warm and comfortable, and the non-freeze dried food included steak, vegetables, and fresh fruit. In talking to the other 3 guests present I found out the only bear under 10' was a dark 9-1/2 footer. Even more impressive is the fact that 3 out of the 4 of us in camp at that time shot their bears on the first day!" Rusty Brines, CA 530-895-0110 & 530-520-5000

9' Brown Bear - Paul Stuart, NY 845-782-8270

Combination Hunts

"The hunt was one of the most gratifying experiences I have ever had in the field. The accommodations, food, &

attentiveness to my needs exceeded any guided hunt I have been on before or since." Virgil Hannig. IL 618-529-1562 vhannig2003@yahoo.net

64" Moose - Kurt Gabler, Austria 43-1-7995098

The Devenport Family Hunt Jim, Roger, and 13-year old Lloyd, WI 262-306-8866

Roger's Beautiful 65" Moose & Caribou

Jim's Monster Palmed Moose

Lloyd with his nice moose and Black Bear

10'2" Brown Bear & 64"Moose – Jochen Gartz, Germany 00492804-237

Day one 70" Moose, day four 9'9" Brown Bear – Bob Pontius, MI 248-363-5744

9'6" Brown & 63" Moose "I consider Dave the best because he offered his hunting is a serious way combined with his perfect knowledge of the hunting areas & his flying experience. After completing my Brown Bear hunting with him I decided to do the moose hunting with him because the experience was excellent." Eduardo Villalobos, Mexico eavch@jotav.com.mx 52-871-7177474(w) & 52-871-7948954(c)

"You made it possible that Liesel was able to shoot a big moose, a bear, & a caribou. I have hunted in Germany & round the world since I was a child & I can tell you, you are an excellent guide. We both thank you again." Rigobert (Rio) Schwarze, Germany 01149-221-8900818

68" Moose – Pat Arlinghaus, KY 859-689-5708

8'4" Grizzly & 64" Moose "I have hunted in Africa, Russia, Newfoundland, British Columbia, & all over the U.S. That said, Dave Haeg is the most professional, ethical guide/outfitter that I have ever hunted with - bar none!" Royce James, TX 281-370-9333 rwjtcj@msn.com

8' Wolf & 9' Brown Bear "Dave exceeded all expectations." Charlie Squillante, NY 845-778-7092

"I appreciate Dave's perfect knowledge of the hunting laws, the wildlife resource, & the rules of being a hunting guide. The hunting area & the hunt itself were both carefully organized." Manfred Bockenheimer, Germany 011-49-6101-42825 M.Bockenheimer@gmx.de

10' #2 all time SCI Record Book Grizzly & 65' Moose – Jack Van Loon, MI 616-842-1343 Jvlvanloon@aol.com

A Few More Happy Hunters

9'+ Brown Bear, 55' Moose & nice Caribou – Nick Bullock, CA 650-222-4417

First Day Moose "Because of my job I am often hunting in other countries & professional hunters are not uncommon to me. I must access David Haeg one of the most serious persons in this context." Hartmut Syskowski, German Editor, "die Pirsch" (German hunting magazine) hartmut.syskowski@dlv.de (089)12705315

"One major factor for my choosing to trust Dave was his professionalism and kindness. He never tried to "hard sell" a hunting package. He just quietly and professionally explained what I would expect, what the risks and what the limitations were. And everything happened just the way he

said." Dominique Blieck, Belgium 32 475 276767 dblieck@skynet.be

The hunt we donated to 16 year old Tony Kinney through Catch a Dream (the hunting & fishing version of Make A Wish Foundation). The entire hunt was filmed & shown on television by Mossy Oaks Hunting the Country. Tony Kinney & Calvin Shifflet, PA 814-443-9574 debrakinney@aol.com

66" Moose – Dr. Wolfgang Zronek, Austria 00431-4165164 dr.zronek@vienna.at

Monster Moose – John Tini, MI 810-781-6435

"I found Mr. Haeg to be reliable, honest, and courteous in my dealings with him. He did not over-embellish to sell his hunts, & offered excellent references (successful & unsuccessful), to verify his statements. He is the type of person one enjoys doing business with & because of his integrity I plan to hunt with him again in the future." Paul Pare, FL 772-286-9522

"Old White Claws", an ancient battle scarred 9'4" Brown Bear & Beautiful 70" Moose – Doug Jayo, ID 208-322-3663 doug@jayoconstruction.com

Fishing & Ptarmigan

Our secret grayling and silver salmon hole where you don't even need to cast. Just dip anything orange in the water!

Karen &Dave Savoie, ID 115 lb. Halibut (Many of our guides when they are not hunting provide fishing trips)

"There's nothing better than a winter ptarmigan hunt out of a wilderness lodge!" (Our winter ptarmigan hunts by skis, snowshoes, snow machine & airplane have been a great hit)

"The Silver was almost as nice as the weather"

"Is this Rainbow big enough?" (16.4 lbs.)

Mother & Daughters "Silvers on the Fly"

Tom & Randy Geile, ID "Great Memories"

Eduardo Villalobos, Mexico

Camps & Food

"The Lodge"

The "Monster" Camp

"Lower Babel" Camp

Finishing the "little cabin" that got big! Base camp for many of our bear hunters & fishermen. We now rent this out to a lot of you guys that want to explore the Kenai Peninsula during the summer with your family. (Built by us guides when fishing was slow)

The famous "bomb shelter" used mostly when we are hunting spring bears in extremely deep snow. Hard to believe the most important item on these hunts is sunglasses & sun block. (85 degrees F. out)

"Ye Olde Frosty Sphincter" The coolest outhouse in Alaska!

Our home, lake, runway & hanger in Soldotna.

"Rogers Strip" Camp

Relaxing after hunt in the "Cave"

Comfortable "Rock Creek" Camp

A quiet moment by "Kayla's Kabin"

Food is almost always non freeze-dried (except for spring brown bear deep snow hunts) including steak, fresh fruit, eggs, bacon, etc. We do have difficulties with fragile items like bananas, tomatoes, and the like so don't expect items like these. Reasonable amounts of alcohol is welcome but not provided. We have gone through almost unbelievable lengths to find a way to access areas close to trophy animal country. Rarely do hunters need to venture more than 1 mile form camp to be successful. We have successfully guided many 70+ year old clients with few problems.

Transportation & Communication

"Batcub" on patrol

"Where's the snow?"

Jake & John "bringing home the bacon" (or an entire bull moose as the case may be)

"Looks like a good spot to hunt caribou!"

"Bon Voyage" Jake & Tony heading across a Class 6 river to pick up a bear.

"How are all these antlers going to fit?"

Our Coastal Brown Bear area is located on the upper end of the Alaska Peninsula. Much of the land we hunt is private land on which we have exclusive hunting rights & which borders the south edge of Lake Clark National Park. Our Moose, Grizzly, Black Bear & Caribou area is located on the western slope of the Alaska Range.

Maxx and a new friend.

Turbine Otter for "The Big Stuff"

"Firewood patrol"

"Snowshoes, big bears in dens, & sun make Frank sweat!"

"That's not a snow machine trailer!" (Note snow machine mounted under airplane)

Hauling in another camp.

"Let it snow, let it snow, let it snow."

Clients hunting moose, grizzly, caribou, and black bear fly into our Unit 19 lodge on DeHaviland Beaver's and Otter's on floats form Anchorage. Coastal Brown Bear hunters fly directly form Anchorage either into Kenai on a commuter flight or down to Chinitna Bay in Cessna 206's equipped with tundra tires for landing on the beach. Once clients reach our base lodge they transfer to our lightweight high performance PA-12's and Super Cubs for their final flight to their hunting camps. We now equip all of our guides with Iridium Satellite Phones and Very High

Frequency Radios so we have communication with all our hunters at all times. This has done wonders both safety wise and logistically by reducing flights needed before just to check on camps. Now, before I ever take to the air, I know what supplies to bring you and if I need to haul out a helper to pack out that monster bear or moose.

The Haeg Household

Hunting Friends and "Schiss" Binoculars (toilet paper roll & duct tape)

Dave's 1st Boone & Crockett Moose

Dave's 2nd Boone & Crockett Moose

Duct Tape use #1001 (Homemade Diapers)

Kayla's bath-time at lodge!

Kayla, Cassie & Jackie Grayling Fishing

Dave with another "O dark thirty" bear!

Cassie (age3) & her first Salmon!

Jackie with another Boone & Crockett trophy Caribou!

Dave grew up in the Alaskan wilderness where hunting, fishing and trapping was the only way to survive. The nearest family lived over 30 air miles away, there were no roads or telephones, and it once was 4 months before he or his parents saw another person. Dave started hunting big game alone at 14 – taking a 10' brown bear on his own at 16 and his first Boone & Crockett moose soon after. Dave

learned to fly at 16, graduated with honors from home school at 17 and declined full scholarships from 3 Ivy League Colleges so he could pursue his love of hunting and flying. At 18 Dave received both his commercial pilot and assistant guide license, at 21 his Flight Instructor license, and became a Mater Guide at 38 – one of the youngest to ever do so. Dave now has many thousands of hours flying bush planes he builds himself in support of the hundreds of hunts conducted where he grew up. Jackie was born on Kodiak Island and has grown up hunting and fishing across most of Alaska. She and Dave met in their early 20's and have been together ever since. Jackie handles the office, website, hunter scheduling and transportation, and supply purchasing along with being "Super Mom". Kayla arrived to bless the Haeg clan in 1998 and Cassie did the same in 2001. They are a big handful and have already turned into enthusiastic hunters and fishermen.

The Crew!

"Happy guides"

"I wish the 10' bears would stop killing the 70" moose" – Drew

Boone & Crockett Bull for Little German Lady "We got Big Willy" – John

"This is how you call in the big ones" – Dave

Tony (on right) "We got Big Foot!"

10' Record Book Grizzly that charged. "Everyone started shooting when it got within 20'!" - Arthur

"The fun's over after the shooting stops" – Jake

"Wilderness Jam session"

"Tell me again – why did we hike so far from camp?" – Mark with 10' Cinnamon Brown

"I think there's something out in them thar woods" – Mike

Frank with 9'10" bear he took with his bow. "Almost as exciting as that special spring hunt"

"Manage this" – Tom, Camp Manger
"Le chef"