## Jurisdictional Basis

This misdemeanor conviction was denied further appellate review by the Alaska Supreme Court on August 14, 2012, the final court of review in the State of Alaska. This petition invokes the jurisdiction of this Court to review the decisions of the highest courts of the fifty states when those cases decide federal law, including the application of the Bill of Rights. 28 U.S.C. 1257(a), Fourteenth Amendment US Constitution

The three constitutional issues raised in this petition were each raised in the various written briefs filed by the defense submitted to all four levels of the Alaska court system. Those defense briefs are not reproduced in the appendix to this petition as evidence of raising the issues below due to the Court's prohibition on publishing earlier briefs in the litigation in the appendix. US Supreme Court Rule 15(2)

The Alaska courts in this case failed to address the constitutional issues raised here, the largest reason for this further appeal. The sole constitutional reference made by any Alaska court is in the superior court opinion which did use the phrase "double jeopardy" three times, though leaving the issue unframed. (App. 7, 13, 16) The Fourth Amendment and the Sixth Amendment are not mentioned at all. The phrases "probable cause hearing" and "criminal jurisdiction" are not used. Not a single decision of this Court or any other court is cited that concerns the constitutional liberties raised in the appeal.

The constitutional questions under the Bill of Rights were treated by the Alaska courts like they did not exist.

Respondent Municipality of Anchorage (hereafter "City") has at no juncture in this appeal contended any of the three constitutional issues raised in this petition were not sufficiently raised prior to the decisions below. Quite differently, the opposition briefs of the City filed in the three Alaska appellate courts also failed to discuss the constitutional issues raised.

## Case History

This misdemeanor prosecution ended in state court with the Alaska Supreme Court denying a further review of the case: the same manner the Alaska Court of Appeals had ruled six weeks earlier.

Prior to those appeals, the Anchorage Superior Court had reviewed on appeal from the Anchorage District Court the DUI conviction at issue here, writing a 24-page opinion affirming the conviction. That superior court opinion is reproduced with related Superior Court orders in the petition's appendix along with the district court conviction, related district court opinions/orders and the two higher appellate review denial orders.

Alaska superior court and district court decisions are not indexed into a manner where decisions can be found based on their subject matter. The series of decisions in this case could only be reviewed in the Anchorage courthouse at

the clerk's office using the case number or parties' names. The appellate denial of review orders in the case are, by their nature, silent on the facts and the issues raised on appeal.

## Statement of the Case
## (First Person)

An attorney since 1980 and new to Alaska in November, 2009, I met a couple friends for a Friday night downtown. At the time I was living at the Anchorage Grand Hotel. I was walking that night.

The events of that night recounted here from the night of the arrest are largely found in the testimony I gave at the trial (audiotape 3/18/11 - 3/19/11) and at a hearing on the First Motion to Dismiss (3/15/10), which adopted the jailhouse events recounted in the defendant's affidavit filed with the motion in district court. (App. 87-105)

By the end of the evening, about 12:30 a.m., I was leaving the Frontier Bar on 4th Avenue with an acquaintance. I drove her two miles home instead of hailing a cab as I should have. I had consumed four drinks over three hours before being stopped by police on the way back downtown. I was stopped for not fully complying with a red light.

My long performance of field sobriety tests bordered on outstanding for a 55-year old Southerner on ice and snow in 10 degree weather wearing worn out cowboy boots. Nonetheless, I was arrested for DUI.

I provided a breath sample at the police

station however the DataMaster machine used malfunctioned somehow reporting its test sample was taken two minutes after the two-minute test window had timed out. (App. 89)

Compelling chemical evidence of alcohol use was though found by the City through a search warrant: the independent blood sample I had requested under Alaska law was seized by the prosecution outside my knowledge. A state lab BAC test on the blood sample from the night of the arrest showed a .102 reading ninety minutes after I had stopped driving.

The events related next are contained in the affidavit filed with the Anchorage District Court in support of the Double Jeopardy dismissal motion. (App. 87-105)

The Anchorage jail, on the City's behalf, tested me for alcohol content with a handheld breathalyzer before I was admitted to detention. The result was .0671 as recorded by jail staff taken minutes after the blood sample was drawn by the City phlebotomist.

Within a couple minutes, at the jail booking desk still, my arresting officer gave me a signed, standard magistrate's arrest order from the district court granting me bail without posting a bond and directing me to appear in court. (App. 106) The sole restriction on my release from jail was that I be able to get home without an unreasonable risk of harm to myself due to my present intoxication.

Thereafter, I remained in the jail facility with a dozen or so people in an open room with benches and television screens and reading material. This area was for the people admitted to bail that night, but were waiting for the rides they called for. Brand new to Anchorage, I had no one to call. Therefore, I had to wait until I was sober enough to walk outside for the one mile trip home to the hotel.

About one hour into my detention I was placed in a cell with the incarcerated populace. I had made the mistake of asking the booking desk officer whether I might be able to use a cab as a means home and then asking for a new bandage for my arm wound. The bandage first applied by the phlebotomist had been torn away by a jailer when I was frisked for incarceration.

My standing at the jail suffered a worse fate several hours later when I declined to give jail staff another breath sample. After two heated impasses, the manager for the night shift decided the best course was to handcuff me as tight as possible, escort me to a tiny cell, brutalize me with the handcuffs once inside and then leave me to rot without food or the ability to lie down.

The jail's morning shift partied that day taunting me over and over.

These events were largely shown by the jail surveillance cameras subpoenaed by the defense in the district court.

I was finally released from Anchorage jail at approximately 7:30 p.m., after nearly eighteen hours of post-bail incarceration. I experienced no difficulty walking home despite the jail's lasting concern for my safety that day.

During discovery in the district court it was confirmed the Anchorage jail operates with no administrative rules in place concerning the handling of persons still held in the facility, but already granted bail like me.

At the first court hearing in the case the City of Anchorage contended it was uncertain whether this was a first-offense DUI. Therefore the City had no "Summons" for the court to review and enter thereby finding probable cause for the offense alleged in the "Complaint". Alaska Rules of Criminal Procedure, 3 and 4 Further investigation by the City was needed. (App 108)

A Summons never was prepared by the City. There was no probable cause finding to support the charge by the Alaska district court at any stage of the proceeding.

The issue was raised prior to trial. If it had not been raised, the issue may have been lost due to an Alaska procedural rule that states procedural irregularities not raised prior to trial are deemed waived. Alaska Rules of Criminal Procedure, Rule 12 The absence of a summons was relied on by the defense in a speedy trial motion under state law. It was argued in that motion the absence of a summons deprived the district court of jurisdiction.

That motion was denied with no comment on the absence of jurisdiction. (App. 49-58)

The defense had informed the City in discovery I intended to call as an expert witness a well-known professor in forensic bio-chemistry, Dr. Robert Stafford of the University of Tennessee and the FBI School. Dr. Stafford was expected to impeach both the breath test result from the City's DataMaster machine and the blood test result from the Alaska state lab, and to support the comparative reliability of the hand-held breath device reading, .067 BAC. (App 85-86)

Dr Stafford at the time he was hired ruled out a personal appearance in Alaska saying he had quit giving courtroom testimony years ago. He only gave depositions now, though a phone or video appearance would be fine. [1]

The City declined my request to allow Dr. Stafford to appear by telephone or audio-visual device at the trial. Under Alaska law any objection by a prosecutor to a witness' appearance by phone at trial is preclusive no matter where the witness resides. Alaska Rule of Criminal Procedure 38.1

The defense therefore moved for a deposition

[1] The notice of defense expert testimony did not address the state lab blood test because the City notice of experts failed to mention and discuss the blood test. **(**App. 82-85**)** A defense motion at trial to exclude expert testimony not previously supplied by the City and therefore the blood test result was denied by the district court. The City experts first offered their opinions on the blood test from the witness stand at trial with no defense expert available to rebut the testimony with.

of Dr. Stafford, either during the defense portion of the trial or sometime earlier in Tennessee. Alaska Criminal Procedure Rule 15, 38.3 The district court denied a deposition of Dr. Stafford in its entirety. In effect, Dr. Stafford's testimony was prohibited by the denial of the deposition in any manner. (App 59-81) The ruling left the defense defenseless in presenting evidence at a trial where the only key evidence of guilt was the two BAC tests conducted by the prosecutor.

At trial a promising issue for the defense crashed and burned: the fact the City's chemical tests did not necessarily prove the defendant had a BAC level of .08 or above at the time he was driving, the delayed absorption defense. In Alaska the fact one was somewhat under the .08 BAC limit at the time they were actually driving is of little relevance to guilt or innocence. See *Valentine v. State,* 215 P.3d 319 (Alaska 2009)

It was also at the trial a final motion to dismiss was filed by the defense asking now for dismissal of the charge based solely on the absence of a probable cause summons: something required in all prosecutions under the Fourth Amendment guaranty against unreasonable seizures. That final motion was denied after the trial and the jury's verdict of guilty. (App. 49-58)

## The Superior Court Opinion

On appeal to the Anchorage Superior Court the City became 45-days delinquent in

filing its opposition brief. Only an unusual pre-briefing hearing called by the superior court persuaded the City to participate in the appeal. The City contended it was aware of the appeal by the delivery of the defense brief, but was waiting for bound volumes of the appellate brief to be delivered, something not required at all by the Alaska appellate rules. (App. 41-42)

Each of the three constitutional issues argued in this petition were argued at brief before the superior court as they were before the district court.

The superior court decision is written in a manner that leaves essential facts unstated and provides an overly narrow analytical focus not responsive at all to the most fundamental issues raised in the appeal.

Unmentioned facts in the opinion and its consequence include:

1. The opinion assumes I was granted bail only after my incarceration, not before. There is no description at all of the nature of my long incarceration on the night of the alleged offense after bail was granted, including the unlawful, classically punitive acts by the jail supervisor. This omission left the necessary Double Jeopardy analysis under *Hendricks,* infra*,* undone, indeed impossible, the applicable law

never cited, and the constitutional issue never framed.

2. There is no description of the gaping defects in the DataMaster breath test report. This omission, of course, made an analysis of the test's admissibility impossible.

3. The fact a Summons was never issued by the district court is stated in the superior court opinion only by inference. The word jurisdiction is not mentioned by superior court or the district court. Neither is the Fourth Amendment nor "probable cause". What is emphasized instead is the presence of one charging document, the Complaint, leaving the impression this somehow resolves the absence of the equally essential Summons. (App 8-12) The contention by the superior court that a probable cause determination was substituted by my bail order is fanciful. At the time of the bail order there was no Complaint to be reviewed by the magistrate. No probable cause finding is stated in the bail order. That is not how the charging process works.

4. The superior court's decision to affirm the exclusion of Dr. Stafford's testimony by deposition pretended the problem was getting the witness to appear in Tennessee, holding the defense needed only to issue a subpoena to the doctor from his local court. (App.30-37) The issue before the superior court was the denial of

the deposition altogether by the district court, a point left unaddressed by the appellate courts so far in this appeal.

Dr. Stafford is a leading expert in the nation in forensic chemistry. He would have been the most accomplished and most important witness to testify at the trial. He offered to provide his testimony in person in Tennessee or through communication devices directly into the courtroom at the trial as allowed by Alaska procedural rules.

5. More than once the superior court says the defense moved to exclude the City's experts on chemical testing. The defense only moved to exclude from evidence a part of the City's expert testimony, the part that had not been identified prior to the trial, the state lab blood test.

## ARGUMENT

"[A] bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference." Thomas Jefferson December 20, 1787

### Fourth Amendment

"In the administration of preventive justice, the following principles have been held sacred; that some probable ground of suspicion be exhibited

before some judicial authority; that it be supported by oath or affirmation …." St. George Tucker, Blackstone's Commentaries 1:App. 301-4 (1803)

A pillar of the criminal law is that charges must be reviewed and approved by an independent authority even before a trial is scheduled. In the case of a felony prosecution, an independent grand jury must be called to examine and approve the existence of evidence establishing "probable cause" before an indictment issues. Grand jury proceedings are a personal liberty guaranteed by the 4th and 6th Amendments and by the criminal procedure of all fifty states by operation of the 14th Amendment.

The same general principle applies to serious misdemeanor charges where the courts, in one manner or another, must approve charges brought by police and prosecutors based on the available evidence. In most states, a magistrate's review of charges and his or her approval fills this requirement entirely on the night of arrest for a misdemeanor charge. In Alaska and a few other states the process is more formal with a different step required.

Under Alaska Criminal Rules 3 and 4 the district court judge generally reviews a copy of a police complaint at the first court hearing and then may issue a Summons if probable cause for the offense is found. The issuance of the Summons is

considered to be the actual charging event beginning an active prosecution in court. [2]

This general principle is reinforced under Alaska Criminal Rule 45 which defines a misdemeanor prosecution as beginning with the service of the "charging documents".

---

[2] II. PRELIMINARY PROCEEDINGS

**Rule 3. The Complaint.**

(a) The complaint is a written statement of the essential facts constituting the offense charged. A citation issued for the commission of a misdemeanor or a violation shall have the same force and effect as a complaint and shall be filed as a complaint; provided, that the citation satisfies the requirements of a valid complaint as provided by these rules. A complaint or citation shall be made upon oath or affirmation before any person authorized by law to administer oaths or affirmations, or signed with a certification under penalty of perjury that the complaint or citation is true. …..

(b) A copy of the complaint shall be served upon the defendant at the time of service of the summons, and whenever practicable, upon execution of the warrant. ….

**Rule 4. Warrant or Summons Upon Complaint.**

(a) **Issuance.**

(1) *Probable Cause.* A warrant or summons shall be issued by a judge or magistrate only if it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it. ….

A probable cause determination is also an essential step to criminal prosecution under the Constitution.

> "The Fourth Amendment requires that arrest warrants be based "upon probable cause, supported by Oath or affirmation"–a requirement that may be satisfied by an indictment returned by a grand jury, but not by the mere filing of criminal charges in an unsworn information signed by the prosecutor". *Gerstein* v. *Pugh,* 420 U.S. 103, 117 (1975); see also *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971)." *Kalina v. Fletcher,* 522 U.S. 118, 656 (1997)
>
> *Gerstein* invalidated a Florida arrest procedure that relied solely on the assessment of police and prosecutors. The decision says expressly the Fourth Amendment requirement applies in all cases where there is a risk of incarceration. *Id*, 420 U.S.at 118-120
>
> The decision in *Gerstein* was hardly a new concept.
>
> > "A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not, in itself, an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of

> cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication." *McNabb v. United States,* 318 U. S. 332, 318 U. S. 343 (1943)

The later *Kalina v. Fletcher,* supra, case held that falsehoods in a prosecutor's arrest affidavit violated the Fourth Amendment outside the absolute immunity of prosecutors under the civil liberties act, 42 U.S.C. Section 1983. The suspect in *Kalina* was prosecuted for less than one month's time without a proper probable cause finding before the charge was voluntarily dismissed by the prosecutor. Though a civil suit, *Kalina* further cements the fundamental liberty to a pretrial review of criminal charges.

Once jeopardy attaches upon the seating of a jury further procedures by the prosecutor to correct a jurisdictional failing come too late. There cannot be a second trial on the same charge when the court lacked jurisdiction over the first trial.

So, the Fourth Amendment has clearly been violated in the case: a fact that should have led to dismissal of the criminal charge.

Whether that is a good reason to grant a Writ of Certiorari will wait for discussion until the Fifth Amendment and the Sixth Amendment are also examined under the fact of this case.

## The Fifth Amendment

The Double Jeopardy Clause protects both life and limb. It is a metaphor for the constitutional principle that multiple punishments are prohibited as well as multiple trials. *Whalen v. United States*, 445 U.S. 684, 688 (1980), *United States v. Halper, 490 U.S. 435 (1989), United States v. Borjesson, 92 F.3d 954 (9th Cir. 1996)* The doctrine here has special Fifth Amendment application because the goal of my City imposed pretrial punishment was to force me to submit to unauthorized chemical testing.

As a provision protective of liberty prior to a trial, Double Jeopardy admittedly is slowly becoming a constitutional dead letter when it comes to punishments prior to the trial.

Double Jeopardy's nadir thus far on this issue is reached in a US Supreme Court decision where a person who had completed his sentence of incarceration in full was nonetheless involuntarily held in a state facility thereafter, presumably for the rest of his life, under newly passed laws. *Kansas v. Hendricks, 521 U.S. 346 (1997)* An Alaska decision following *Hendricks* also found

little substance to the double jeopardy and "ex post facto" constitutional protections when it comes to sex offender registration. *Smith v. Doe*, 538 U.S. 84 (2003), *Doe v. Otte,* 361 F.3d 594 (9th Cir. 2004)

The decisions look to the intent of the State in applying the new laws.

> "Where the State has "disavowed any punitive intent"; limited confinement to a small segment of particularly dangerous individuals; **provided strict procedural safeguards; directed that confined persons be segregated from the general prison population and afforded the same status as others who have been civilly committed; recommended treatment if such is possible; and permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired**, we cannot say that it acted with punitive intent. We therefore hold that the Act does not establish criminal proceedings and that involuntary confinement pursuant to the Act is not punitive." *Kansas v. Hendricks, supra,* at *U.S.* 368-69. (Emphasis supplied.)

This is a case though that breaks through every safeguard still in place against unlawful punishment. Contrary to the rule in *Hendricks*, I was treated like a prisoner by the City's jailers, not like the other people granted bail and free to wander about. My incarceration was penal by any measure, placed in a cell where lying down is impossible, left without food, denied making

writings to the outside world about my sudden confinement, including to the courts. There were no rules in place at the City's jail to prevent this kind of abusive treatment of suspects granted bail, but held indefinitely at the jail's whim. There are no such rules in place at the city jail even today.

Before the case was decided on appeal the City continued with unlawful punishments, imposing a four-month driver's license suspension and garnishing my Permanent Fund dividend for fines, the very criminal sanctions imposed at the trial and stayed on appeal. When the City failed to comprehend the error in this, the superior court effectively relieved the City of its obligation to reply to the Double Jeopardy defense motion to dismiss made on appeal. The motion was dismissed without comment instead. (App 43-44)

Not one of the above cases on Double Jeopardy cited to the superior court is mentioned in the opinion. Neither is any other judicial decision on this issue. Like the right to be properly charged with a crime, the right to general liberty itself becomes a ghost amid the missing discussion of facts and issues.

## The Sixth Amendment

> "… the uniform practice of this country has been to permit any individual charged with a crime to prepare for his defence, and to obtain the processes of the Court for the purpose of enabling him to do so. …" *United States v. Burr*, 25 F.Cas. 30, 32 (1807) C. J. Marshall

> Because the public "… has a right to every man's evidence …". *U.S. v. Nixon* , 418 U.S. 683 , 709 (1974), *U.S. v. Bryan*, 339 U.S. 323, 331 (1949), *Blackmer v. U.S.*, 284 U.S. 421, 438 (1932)

In this case the universal practice cited by Justice Marshall in *Burr* concerning an accused's access to every man's evidence was not permitted. Allowing for the pretrial deposition or the courtroom appearance by video of an unavailable witness is a practice essential to ensuring the Sixth Amendment liberty to present evidence in one's own defense. *Washington v. State of Texas*, 388 US 14 (1967), *Singleton v. Lefkowitz*, 583 F.2d 618 (2nd Cir. 1978), cert denied 440 U.S. 929.

> "First, there must be a showing (a) the potential witness is competent to testify and (b) he possesses material, relevant evidence having some tendency to aid the defendant's case." *Thompson v. United States*, 372 F.2d 826, 828 (5th Cir. 1967), *Schartzmiller v. Idaho*, 108 Idaho 329, 699 P.2d 429, 433 (Idaho 1985)

Here, the most important witness in the case, the person best able to dissect the critical case evidence and prepared to do so, was stricken from testifying. To accommodate his testimony without traveling 5,000 miles would not have prejudiced the City in any way. The proceeding itself, the trial, would not have been meaningfully impaired in any way. No costs would have been incurred by the

City to allow for a fair defense at trial.

A state small in population and especially distant from the rest of the nation, a state with few universities, Alaska criminal procedure simply must allow reasonable access to expert witnesses in the lower-48 in order to have a level playing-field at trial. That is often the only practical way to discover the truth of things in a case that focuses on science for the key evidence. Nothing in the rules as presently written prevent an Alaska trial court from doing so. Indeed, the rules call for it.

It was an abuse of discretion by the Anchorage district court of constitutional dimension to disallow the testimony of Dr. Robert Stafford. State laws must be interpreted in a manner that retains the protections of constitutional liberties. Those faulty court findings violate the Sixth Amendment right to present evidence in one's defense.

Nothing strikes more squarely at fundamental US freedom, the opportunity for a fair criminal trial.

## Supreme Court Rule 10 Considerations: Reasons for Granting a Writ

This litigation is confounding, especially now that it has reached its court of last resort, the guarantor of the Constitution. *Marbury v. Madison*, 5 U.S. (Cranch 1) 137 (1803)

Supreme Court Rule 10 defines the circumstances and posture of a case that is likely to lead to a US Supreme Court review. The rule outright states writs are "rarely granted" in cases where the rules of law have simply been misapplied by the lower courts as opposed to writ petitions presenting a sharply disputed question of federal or constitutional law. Even courts commit errors. Not every such error made can be corrected by one court.

No quarrel may be taken with the conclusion that every court in this prosecution should have applied the plain Fourth Amendment rule requiring a probable cause determination at the outset of a case. The facts on this issue are simple and not in dispute. The constitutional rule is absolutely clear, even to those uninitiated in the law. A pretrial finding of probable cause is mandatory in all case threatening incarceration.

No great quarrel may be taken with the conclusion that every court in this prosecution should have allowed for the testimony of Dr. Stafford to be taken in some manner, without requiring his physical appearance in Anchorage. Such a gesture toward fundamental equity at a trial in every case should not require a United States Supreme Court decision to preserve.

A case can be made that the completely rule-free Anchorage jail, holding select people granted bail in confinement worse than prison, would paint the black-letter limit to the rules of *Hendricks*, even rejuvenating Double Jeopardy protections to some extent.

However, without overruling the reasoning of *Hendricks,* it seems impossible to make a reasonable argument that the pretrial confinement here did not invoke Double Jeopardy. It is the pretrial application of the classic penalty in criminal cases, incarceration, without any legal basis to do so, no applicable administrative rules in place at all, and an unlawful motive to boot.

A good test case for a constitutional question is seldom one where the extreme example has taken place as here. The facts in this case are stark throughout, not nuanced thereby obscuring the intent of the law.

Yet, the writ should be granted in this case. The effective secrecy of decision-making is a large reason to do so.

This is the case that proves the point that such a stark set of rules like Rule 10 in sorting cases does need some limit. This is the rare case where a writ of certiorari should be granted in a case where the law has plainly been misapplied: because the law was avoided.

Not just one constitutional sin is shown here. Three are shown. The state law issues met the same abysmal fate the Fourth, Fifth and Sixth Amendments met should one care to examine those arguments. Refusing to address meritorious issues under the Bill of Rights goes well beyond a mistake. It opens wide the territory of bad faith.

This case presents a parallel to the facts of *In Re Oliver*, 333 US 257 (1948) where a grand jury witness testified, was charged, tried, convicted and sentenced to jail for perjury, all in a single secret proceeding by a single magistrate. The jail had no idea how Oliver had gotten there. Neither did the prosecutor. Oliver was denied a public trial among several violations of his civil liberties.

In this case, instead of being stripped bare of one's rights like Oliver, the law itself has been stripped away.

A large element of the right to a public trial is the restraint that open deliberations and decision-making impose on courts. See *Presley v. United States*, 558 U.S. 209 (2010) When a court decision is sanitized in its content a public explanation of the law is denied to the petitioner.

In this case the largest restraint on judicial power is also avoided, the principle of "stare decisis", the very underpinning of the rule of law. State courts cannot fail to apply constitutional standards, even when the subject is not discussed, just forgotten. Without the doctrine of "stare decisis" always applying, the law can be changed from white to black in a particular case while leaving hardly a trace of the injustice behind.

Hopefully, this errant case diverted so much from the law to make an unmistakable point within the guild of lawyers. If so, it is a point that should never be made by any court, anytime. It violates the oath of office. It hardly matters what the reason may have been.

There are few greater dangers to the Republic than courts refusing to apply the Constitution. This is the Court entrusted with ensuring the founding document of the Republic remains the law of the land in all cases for all citizens. In that way granting a Writ in this case would prove an invaluable service to fundamental US liberty. It is a telling choice to be made once starkly presented.

## Conclusion

For these reasons, the petitioner moves this High Court to grant a Writ of Certiorari and conduct a further review of this conviction on one or more of the issues raised and ultimately send the case back to Alaska for further proceedings.

_____

STEPHEN MERRILL, Petitioner/Appellant

Stephen Merrill, Attorney
Alaska State Bar # 0911058
201 Barrow Street, Suite 102c
Anchorage, Alaska 99501
Tel. 907-771-9900
Fax 907-771-9998