MEMORANDUM AND AFFIDAVIT

In Support of David Haeg's

APPLICATION FOR POST-CONVICTION RELIEF

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

INTRODUCTION

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

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

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

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

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

I

LEGAL STANDARDS

A. Statutory and Rule 35.1 Provisions.

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

B. Ineffectiveness Standards.

1. U. S. Constitution.

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

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

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

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

2. Alaska Constitution.

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

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

3. Tactical justification.

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

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

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

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

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

"We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions." Smith v. State, 717 P.2d 402 (Ak 1986)

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

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

4. Conflicts of Interest

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

"[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel. Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Because it is in the simultaneous representation of conflicting interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)

"[I]n a case of joint representation of conflicting interests the evil – it bears repeating – is in what the advocate finds himself compelled to refrain from doing….It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)

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

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

II

ERRONEOUS COUNSEL AFTER SPECIFIC INQUIRY AND RESULTING PREJUDICE

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

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

A. Entrapment Not a Legal Defense

1. Law

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

2. Facts

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

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

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

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

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

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

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

3. Prejudice

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

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

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

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

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

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

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

1. Law

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

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

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

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

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

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

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

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

2. Facts

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

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

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

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

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

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

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

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

3. Prejudice

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

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

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

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

C. No Right to a Postseizure Hearing to Protest Property Deprivation and No Right to Bond Out Property

1. Law

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

Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...**But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier...** 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**... As the Good Court noted, moreover, **the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.'** 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."

AS 28.05.131 Opportunity For Hearing Required (a) Unless otherwise specifically provided, or unless immediate action in suspending, revoking, canceling, limiting, restricting, denying, or impounding is necessary for the protection of the health, safety, or welfare of the public, the Department of Public Safety or the Department of Administration, as appropriate, shall give notice of the opportunity for an administrative hearing before a license, registration, title, permit, or privilege issued or allowed under this title or regulations adopted under this title is suspended, revoked, cancelled, limited, restricted, or denied **or a vehicle is impounded by that department. If action is required under this section and prior opportunity for a hearing cannot be afforded, the appropriate department shall promptly give notice of the opportunity for a hearing as soon after the action as possible to the parties concerned.**

AS 28.90.990 Definitions for Title

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

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

2. Facts

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

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

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

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

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

3. Prejudice

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

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

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

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

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

D. No Right Against Self-Incrimination

1. Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Facts

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

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

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

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

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

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

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

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

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

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

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

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

3. Prejudice

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

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

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

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

E. No Way to Enforce PA or Original Charges

1. Law

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

"When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

"The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)

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

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

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

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

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

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

(O)nce a prosecutor exercises his discretion to bring certain charges against the defendant, neither he nor his successor may, without explanation, increase the number of or severity of those charges in circumstances which suggest that the increase is retaliation for the defendant's assertion of statutory or constitutional rights. … The Alaska Supreme Court has consistently held that courts should not hesitate to reverse a conviction when a substantial flaw in the underlying indictment is found, regardless of the strength of the evidence against the accused or the fairness of the trial leading to the conviction." Atchak v. State, 640 P.2d 135 (Ak 1981) Keith v. State, 612 P.2d 977, 980-81 (Ak 1980); Adams v. State, 598 P.2d 503, 510 (Ak 1979).

2. Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Prejudice

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

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

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

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

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

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

1. Law

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

"[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

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

"Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)

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

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

2. Facts

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

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

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

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

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

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

3. Prejudice

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

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

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

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

G. No Way to Enforce Subpoena

1. Law

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

2. Facts

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

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

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

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

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

3. Prejudice

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

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

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

H. No Way to Get Credit for Year of Guiding Already Given Up

1. Law

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

"The basic Fifth Amendment guarantee against double jeopardy, which is enforceable against the States by the Fourteenth Amendment is violated when punishment already exacted for an offense is not fully "credited" in imposing a new sentence for the same offense . . .. [T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it. We hold that the constitutional guarantee against multiple punishments for the same offense absolutely requires that punishment already exacted must be fully "credited" in imposing sentence…" North Carolina v. Pearce, 395 U.S. 711 (U.S. Supreme Court 1969)

2. Facts

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

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

3. Prejudice

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

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

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

I. No Way to Appeal Sentence

1. Law

Alaska Rule of Crimial Procedure 32.5 Appeal From Conviction or Sentence--Notification of Right to Appeal. A person convicted of a crime after trial shall be advised by the judge or magistrate… at the time of imposition of any sentence of imprisonment, the judge or magistrate shall advise the defendant as required by Appellate Rule 215(b).

Appellate Rule 215. Sentence Appeal.
(a) Appellate Review of Sentence.
(5) Right to Seek Discretionary Review for Excessiveness. A defendant may seek discretionary review of an unsuspended sentence of imprisonment which is not appealable under subparagraph (a)(1) by filing a petition for review in the supreme court under Appellate Rule 402. A defendant who is filing a sentence petition and a sentence appeal, or a sentence petition and a merit appeal, must follow the procedure set out in paragraph (j).
(b) Notification of Right to Seek Review of Sentence. At the time of imposition of any sentence of imprisonment, the judge shall inform the defendant
of the defendant's right to appeal or petition for review of the sentence

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

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

2. Facts

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

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

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

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

3. Prejudice

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

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

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

J. Subject-Matter Jurisdiction Tactic is Good

1. Law

Subject-Matter jurisdiction is granted by statute.

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

2. Facts

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

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

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

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

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

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

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

3. Prejudice

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

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

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

III

INADEQUATE COUNSEL AND PREJUDICE

A. Property Forfeited With Inadequate Notice

1. Law

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

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

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

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

No judgment of forfeitrue may be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

Rule 32.2(a) *Notice to the Defendant*

A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.

2. Facts

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

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

3. Prejudice

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

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

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

B. Sentence Based on Misinformation

1. Law

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

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

2. Facts

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

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

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

3. Prejudice

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

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

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

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

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

C. Revocation Instead of Suspension

1. Law

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

2. Facts

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

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

3. Prejudice

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

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

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

D. Apparent Bias of Judge Murphy

1. Law

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

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

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

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

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

2. Facts

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

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

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

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

3. Prejudice

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

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

IV

CONFLICTS OF INTEREST AND RESULTING PREJUDICE

A. Law

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

"[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980).

"[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to

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

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

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

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

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

B. Facts

1. Cole

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

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

2. Robinson

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

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

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

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

3. Osterman

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

C. Prejudice

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

1. Cole

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

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

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

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

2. Robinson

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

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

3. Osterman

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

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

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

V

Unreasonable Tactics

A. Law

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

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

B. Prejudice

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

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

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

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

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

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

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

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

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

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

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

VI

EVIDENCE TAMPERING AND PREJUDICE

A. Facts

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

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

B. Prejudice

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

VII

CUMULATIVE INEFFECTIVENESS AND PREJUDICE

A. Law

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

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

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

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

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

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

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

B. Cumulative Error and Prejudice

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. **Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.** He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he not be guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 45 (U.S. Supreme Court 1932)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RELIEF REQUESTED

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

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

Executed on_____in Browns Lake, Alaska.

_____

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