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IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

DAVID HAEG Appellant, vs. STATE OF ALASKA, Appellee.	) Case No.: A-09455

Trial Court Case #4MC-S04-024 Cr.

MEMORANDUM SUPPORTING ALL MOTIONS

I certify this document & its attachments do not contain the (1) name of victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding & disclosure of the information was ordered by the court.

Pro se appellant, David Haeg, respectfully requests that this court heed the Alaska Supreme Court case law established in *Collins v. Artic Builders*, 957 P.2d 980 (1998), *Breck v. Ulmer*, 745 P.2d 66 (1987), *Keating v. Traynor*, 833 P.2d 695 (1992), & *Sopko v. Dowell Schlumberger, Inc.*, 21 P.3d 1265 (2001) – all of which indicate Alaska courts should place substance over form when dealing with a pro se defendant/appellant. This rationale is further bolstered by *Criminal Rule 35.1*, which specifically states, "In considering a pro se application [for post-conviction relief] the court shall consider substance & disregard defects of form." Haeg realizes the immense detriment his ignorance creates yet feels that this detriment should be mitigated through observance of the above case law.

Haeg's intent of this memorandum, motions, & affidavits are to ask this court, in the interest of a swift & economical solution to a gross & ongoing fundamental breakdown in justice & the adversarial system, to address the motions included &, while first addressing the motions in the order best suited to accomplish Haeg's goals, to stay Haeg's appeal pending the outcome of a post-conviction relief procedure. Haeg has diligently & rapidly as possible been educating himself, in between his struggle to provide a livelihood for his family, in the intricacies of a very complex legal system. It is Haeg's sincere belief that all his former attorneys & the state wish him to proceed with an appeal that is based on a record that includes very little, if anything, of the strongest issues of which Haeg should actually be appealing & most of which have yet to be made points of appeal - ineffective assistance of counsel, prosecutorial misconduct, judicial misconduct, etc. Rather then waste this courts time with an appeal for which the record is ill suited & at times totally useless, Haeg humbly asks this court to allow him the opportunity, allowed by law through a post-conviction relief procedure & this courts prior decisions, to likely settle this matter without it ever again returning to the Court of Appeals while not eliminating that option. All of Haeg's attorneys have advised him that since his appeal has already been filed he must exhaust all appellate remedies before asking for post-conviction relief. Haeg, his wife, & trusted friends, including business & former criminal defense attorney

Dale Dolifka (Dolifka), have discussed this conundrum in detail & feel that it is undoubtedly better for Haeg to not proceed through multiple levels of appeals based upon a record which very likely can resolve nothing. It is Haeg & his wife's great concern that it will take more years & money than their family can afford to exhaust these remedies before pursuing the far more appropriate, logical, effective & beneficial remedy of post-conviction relief – which as Haeg reads it will allow him to address the actions of his own attorneys & the state which were of stunning detriment to Haeg & which were never documented on the official record. Haeg feels he may be caught in a "catch 22" situation – if he forgoes this appeal without it being stayed so he can seek post-conviction relief he may not be allowed to then appeal an adverse decision in post-conviction relief because it appears the law could then say that he had previously abandoned his right to appeal. Haeg has looked for a clear answer to this dilemma but can't find a definite one. Haeg is also extremely concerned about Rule 35.1 & AS 12.72.010, concerning post-conviction relief, which state: "A claim may not be brought under AS 12.72.010 or the Alaska Rules of Criminal Procedure if ... the claim **was**, or **could have been but was not**, raised in a direct appeal from the proceeding that resulted in the conviction."[1] Haeg wonders what the procedure is when an appeal has already been filed based on mostly frivolous issues, far stronger issues are then found, there is still the ability to raise these vital

[1] See *AS 12.72.020 Limitations on Applications for Post-Conviction Relief and Rule 35.1.*

issues in this direct appeal by amending the points on appeal, yet the record is virtually nonexistent & extremely ill suited for addressing these issues without considering evidence from outside the record. Haeg respectfully asks this court to inform him of the proper procedure for this action which he is obviously attempting to accomplish.[2] To Haeg it would seem that if the record were ill suited to bring an issue up on direct appeal that this would then meet the definition that it could **not have been** raised on direct appeal – & allow it to be addressed in post-conviction relief even with an appeal pending. If Haeg is forced to address the salient points now in his appeal, he is then barred from ever again addressing them in any future post-conviction relief proceeding – one in which he **would** be allowed to utilize the abundant evidence not already on the record. In simplest terms Haeg wishes to supplement the record with the abundant evidence not already on the record yet preserve his right to appeal, if needed, after the record is supplemented. See Alaska Supreme Court in *Risher v. State* 523 P.2d 421:

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

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

Haeg is well beyond the 5 &/or 180-day limit for requesting a new trial after judgment, according to Criminal Rule 33. See also this courts ruling in *State v. Jones* 759 P.2d 558:

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

Most other courts follow the same rational – holding it is best, in the interest of conserving judicial resources, to supplement the record first if the issues require that. Again Haeg respectfully asks this court stay his appeal pending the outcome of a post-conviction procedure.

Haeg is in one of the most unenviable positions imaginable. Haeg's first attorney, former state prosecutor Brent Cole (Cole), in effect sold Haeg out to the state prosecution, most likely because of Cole's desire to protect & enhance his relationship with the state (Cole handles more Fish & Game case than any other attorney in Alaska) while he was legally & ethically required to represent Haeg against the state "without conflicting interests"

in a highly controversial & political case concerning the Wolf Control Program. The latest petition of animal rights activists to intentionally deprive Haeg of fundamentally fair proceedings has just concluded on 10/9/06. This petition, "targeting" Governor Murkowski, claims, "If Haeg wins his appeal, the sentence would be a travesty."[3] Haeg's subsequent attorneys, Arthur Robinson (Robinson) & Mark Osterman (Osterman), have placed covering up this gross malpractice & sellout by Cole far ahead of advocating for Haeg – to the extent of actively, knowingly, & intelligently sabotaging any available defense that would expose Cole's unheard-of actions. Haeg, in discussing this in detail with Dolifka & others, has begun to slowly realize the gravity of what was happening when Cole told Haeg the unbelievably detrimental & intentional perjury by Alaska state Trooper Brett Gibbens (Gibbens) on all the search warrant affidavits "didn't matter" & failed to move for suppression of **all** evidence or even to tell Haeg about this defense; failed to force the state to return Haeg's & his wife's property & to suppress it as evidence when the state deprived them of this property, which was used as their primary means to provide a livelihood, without any regard whatsoever to a phalanx of unbreakable due process guarantees[4] or even to tell Haeg about this defense; had Haeg give prosecutor Scot Leaders (Leaders) & Gibbens a 5-hour taped interview for a Rule 11 Plea Agreement

[3] See "Justice Must Be Done For Big Game Guide Of Illegally Killing Wolves Petition" www.thepetitionsite.com
[4] See *Memorandum, Motion & Affidavit of 10/12/06* and *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).

(during which Haeg told Leaders & Gibbens, on tape, of the perjury on the search warrant affidavits & which they both continued later to claim was the truth in front of Haeg's judge & jury but after Haeg's sentencing was unabashedly, directly, & matter-of-factly admitted by Gibbens, in writing, as being perjury) but with absolutely nothing in writing & **after** Cole was told by Leaders that no immunity agreements were going to be honored, that he would not put anything in writing, & that no sympathy was going to be given Haeg – again without telling Haeg about any of this; had Haeg give this interview without any investigation into the case & no discovery whatsoever; told Haeg & his wife Jackie they should cancel a whole year of guiding for the same Rule 11 Plea Agreement; told Haeg he should fly in witnesses to McGrath (some from as far away as Illinois) for the same Rule 11 Plea Agreement & then telling everyone (after Haeg & the other witnesses ask in disbelief what can be done) "that's the way it is", "there's nothing that can be done about it except complain to Leaders boss", "I can't piss Leaders off because after you're finished I still have to be able make deals with him" & "suck it up" when Prosecutor Leaders broke the Rule 11 Plea Agreement 5 business hours before it was to be concluded in McGrath. This breach of the Rule 11 Plea Agreement happened after the five (5) hour interview, all of the years hunts had been cancelled (which represented the entire years income for both Haeg & his wife), the hunting season was finished, & all the witnesses had already been flown into Anchorage with tickets in

hand to fly to McGrath (in **direct** contradiction of **all** established case law across the entire U.S. that holds any plea agreement **must** be upheld if **any** detrimental reliance is placed upon it). Prosecutor Leaders breached the Rule 11 Plea Agreement by changing, at the last minute, the charges **already** filed in accordance with the Rule 11 Plea Agreement to charges which would almost assuredly end both Haeg & his wife's dream & business forever, into which they had invested everything in their combined life. In doing so Prosecutor Leaders utilized Haeg's statements, made for the Rule 11 Plea Agreement he broke & obviously never intended to keep, as the **only** probable cause to file over half of the charges & as the primary probable cause for all of the rest in all of the three informations he eventually filed against Haeg - violating not only two constitutions but also Alaska Rule of Evidence 410. Cole never filed a single motion while he was Haeg's attorney, never mentioned the word motion, & never mentioned being able to object to the judge about anything Prosecutor Leaders or the Troopers did. After sentencing, Haeg & his wife, while going through the court record, discovered that Cole had mysteriously failed to file their letters as he had wrote them he had, that explained everything in detail of what they had done for the broken Rule 11 Plea Agreement, with the court.[5] Haeg & his wife had requested Cole give these letters, along with other character witness letters, to Judge Murphy so she could read them before the

[5] See enclosed copies of David & Jackie Haeg's letters.

November 9, 2004 Rule 11 Plea Agreement sentencing. Cole wrote Haeg that he had submitted them to the court, yet the most important letters, from Haeg & his wife, & the only ones explaining all that had been done for the broken Rule 11 Plea Agreement, are **missing from the record while all the rest are there**.

In actuality Cole was far worse then **any** prosecutor ever could have been. Haeg, instead of trusting his paid & supposedly loyal advocate who said "it didn't matter" when asked what to do about the blatant & unbelievably prejudicial perjury on the search warrant affidavits, would have immediately asked the judge how to address it, which likely would have eliminated virtually all evidence in his case; would have researched & found out the Wolf Control Program was intentionally separate from any sport or commercial game activity & thus charges could not affect Haeg's business[6]; would have pointed out that the prosecutions perjury on the search warrant affidavits, which stated that all the suspicious tracks found were in the Game Management Unit that Haeg's family guided in instead of the truth that all the suspicious tracks were in the Game Management Unit in which the Wolf Control Program was being conducted, was obviously intentional so they could justify charging & possibly convicting Haeg of big game guiding violations; would have demanded his & Jackie's property back after the prosecution violated unbreakable

[6] See *05 AAC 92.039 Permit For Taking Wolves Using Aircraft*: (h) In accordance with AS 16.05.783 , the methods and means authorized in a permit issued under this section are independent of all other methods and means restrictions in AS 16 and this title.

constitutional due process in seizing, holding, & forfeiting it, also eliminating virtually all evidence in his case; would have never given the prosecution a 5-hour interview, & if he did so, would have got the agreement in writing; would have never given the prosecution anything if they told him beforehand they were going to make an example of him, would not honor any immunity agreements, & would not put anything in writing; if he had made a deal with Prosecutor Leaders that included a detrimental reliance of over $750,000.00, along with a 5-hour interview, & flying in multiple witnesses from around the U.S. that, after all the forging was in Leaders possession, Leaders had then broke, Haeg would have immediately told the judge about it & respectfully requested the judge enforce the agreement (all courts in the U.S. have held that if any [even **$350.00** or **any** information given to the prosecution] detrimental reliance is placed on a Rule 11 Plea Agreement it must be upheld)[7]; if Prosecutor Leaders used the statements he obtained from Haeg through lies & subterfuge, in direct violation of two constitutions, & in violation of Evidence Rule 410, Haeg would have asked the court to address Prosecutor Leaders immediately, appropriately, & effectively.

As noted in *The State of California v. Kenneth H.*, #C029608, Superior Court No. J-25617:

> "The question 'whether a prosecutor can withdraw from a plea bargain before the bargain is submitted for court approval' recently was addressed in *People v. Rhoden* (1999) 75 Cal.App.4th 1346, 1351-1352 (*Rhoden*). Noting that the question 'appears to be an issue of

[7] *The State of California v. Kenneth H.*, #C029608, Superior Court No. J-25617.

> first impression in California courts,' *Rhoden* reviewed cases from other jurisdictions, as well as secondary authority (*id*. at pp. 1352-1355), and concluded In *People* v. *Rhoden* (1999) 75 Cal.App.4th 1346, 1351-1352: 'a prosecutor may withdraw from a plea bargain before a defendant pleads guilty **or otherwise detrimentally relies on that bargain**.'
>
> The fact that the court is not bound by a plea agreement entered into by the prosecutor and the accused, and the fact that a plea agreement made by the parties before it is submitted for court approval is akin to an executory contract which does not bind the accused, does not undermine the principle that the prosecutor should be bound by the agreement if the accused has relied detrimentally upon it. The integrity of the office of the prosecutor is implicated because a "'pledge of public faith'" occurs when the prosecution enters into an agreement with an accused. (*Butler* v. *State* (1969) 228 So.2d 421, 424.) A court's subsequent approval or disapproval of the plea agreement does not detract from the prosecutorial obligation to uphold "our historical ideals of fair play and the very majesty of our government ...' (*Id*. at p. 425.) The "failure of the [prosecutor] to fulfill [his] promise ... affects the fairness, integrity, and public reputation of judicial proceedings." (*U.S.* v. *Goldfaden* (5th Cir. 1992) 959 F.2d 1324, 1328.)
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> "'A defendant relies upon a [prosecutor's] plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. [Citation.] Detrimental reliance may be demonstrated where the defendant performed some part of the bargain. [Citation.]...'" (*Rhoden, supra,* 75 Cal.App.4th at p. 1355, quoting *Reed* v. *Becka* (1999) 333 S.C. 676 [511 S.E.2d 396, 403].)"[8]

Haeg ended up firing Cole & hiring Robinson who told Haeg that he couldn't do anything to fix what happened because of Cole & that the Rule 11 Plea Agreement could not be enforced because it was "fuzzy", there was a "dispute" between Leaders & Cole, it was "water under the bridge", & that he [Robinson] "recommend

[8] *The State of California v. Kenneth H*., #C029608, Superior Court No. J-25617.

Haeg go to trial" because the informations had never been positively sworn to & that this was a "fatal" defect. Robinson also told Haeg that he was "going to lose at trial" recommended Haeg "put on **no** evidence", but would "no doubt win on appeal" because of the fatal defect. Robinson **specifically** told Haeg that his guide license could **not** be taken away during the appeal process & that Haeg would **also** have the use of his airplane during this process (both of which did **not** happen). Robinson also told Haeg that under **no** circumstances should Haeg tell **anyone** that he had a Rule 11 Plea Agreement that was broken, or that Cole had allowed it to be broken with not any mention whatsoever to the court, because this would admit to the court that Haeg had submitted to the "jurisdiction" of the court & thus the "tactic" that the court did not have jurisdiction because the information was never positively sworn to by the prosecutor would be rendered useless. At trial Leaders again suborned the same perjury from Trooper Gibbens that Haeg had told both Gibbens & Prosecutor Leaders about during plea negotiations (that the suspicious sites were in the Game Management Unit where Haeg guides rather than the truth that they were in the Game Management Unit where the Wolf Control Program was being conducted) so Haeg could be (& was) convicted of big game guiding violations. Haeg absolutely demanded Cole (who was successfully served a subpoena, airline ticket, & hotel reservation) testify in person at Haeg's sentencing about all that Haeg & his family had done for the Rule 11 Plea Agreement that Leaders had

subsequently broken - including the fact that for this deal Haeg had given the prosecution a 5-hour interview which was the basis of the prosecutions entire case, that Haeg & his wife had already given up an entire years combined income for the same deal including spending untold thousands in travel & hotel arrangements for 6 witnesses for the same broken deal & that Leaders & Cole had deliberately kept all this from the judge. Haeg told Robinson, in front of multiple witnesses, that he wanted to "look Cole in the eye" as Cole sold him out. Haeg had paid for Cole's subpoena, paid for it to be successfully delivered, paid a witness fee, paid for Cole's airline tickets & hotel reservations & **then Cole never showed up to testify at Haeg's sentencing**. Haeg asked Robinson how this could be & Robinson told Haeg: "**I knew Brent (Cole) wasn't coming because his testimony wasn't relevant to your guilt**" (taped conversation). Haeg in shock & disbelief said "I had already been found **guilty**; I had subpoenaed Brent to my **sentencing**, not my trial", & "It would have been relevant to my **sentence** & you know it...**I wanted that judge to know I had been sold down the river**" (taped conversation). The judge sentenced Haeg without knowing **anything** whatsoever of all Haeg & his family had given the prosecution for a Rule 11 Plea Agreement that Prosecutor Leaders broke **after** he (Leaders) had reaped all the benefit from the prosecutions side of it. In fact, to help justify giving Haeg the unbelievably harsh sentence that was handed down, Prosecutor Leaders told the judge Haeg had "even broke a Rule 11 Plea

Agreement" (apparently because Haeg did not plead guilty to the charges Leaders changed at the last minute, never discussed or agreed to in any Rule 11 Plea Agreement, that would end life for Haeg's family, as they knew it, forever). Trooper Gibbens, while discussing the timeline of events, mentioned for the first time Haeg had not guided for a whole year previous to sentencing but, with Leaders & Robinsons acceptance, stated: "We have no idea why he did that". This is **after** Gibbens & Prosecutor Leaders had **required** Haeg & his wife to give up this year in payment for the Rule 11 Plea Agreement that Prosecutor Leaders **later** broke by filing charges never agreed to & which would likely end Haeg & his wife's business forever. "Because things are going so well," Robinson recommended Haeg not testify at sentencing, & as sentencing happened at midnight after Haeg had been up nearly 24 hours straight, he essentially did not do so. The sentence was for two years in jail, forfeit over one hundred thousand dollars ($100,000.00) in property used to provide a livelihood (seized illegally three (3) times over), & to a 5 year **revocation** of guide license (not allowed by law)[9], **not** including any knowledge or consideration of the full year of guiding that Haeg & his wife had **already** given up for the prosecutions promises for the Rule 11 Plea Agreement that the prosecution broke **after** they made sure Haeg & his wife had **already** sacrificed the entire guide season.

[9] See *AS 08.54.720 (f)(3)* **(f)** In addition to the penalties set out in (b) - (e) of this section and a disciplinary sanction imposed under AS 08.54.710 , **(3)** the court shall order the department to suspend the guide license or transporter license for a specified period of not less than three years, or to permanently revoke the guide license or transporter license, of a person who commits an offense set out in (a)(15) or (16) of this section.

In addition Robinson mysteriously failed to ask any of the typed up & numbered questions for the seven (7) witnesses, specifically provided by Haeg & his wife to make sure he did so (56 typed questions for Cole alone), concerning all that Haeg & his family had done for the Rule 11 Plea Agreement that Prosecutor Leaders broke. Haeg had demanded all these questions be asked of the witnesses he had paid to fly into McGrath at a great expense. Haeg, his wife Jackie, Dolifka & numerous other friends are still in disbelieving & unbelieving shock that such an enormous & fundamental breakdown in justice & the adversarial process as Cole's intentional, knowing, intelligent, blatant & malicious sellout & subsequent cover-up could actually succeed & continue to succeed for so long. Even more unbelievable, Judge Margaret Murphy, when justifying Haeg's unbelievable sentence, stated she was using the very perjury that was on all of Trooper Gibbens search warrant affidavits & the very perjury Trooper Gibbens committed on the witness stand (**After** he & Prosecutor Leaders had been shown it was perjury) in front of Haeg's jury, as rationalization for it. Judge Murphy never told Haeg he could appeal his sentence, as by Criminal Rule 32.5 she had to do.[10]

After Haeg was sentenced Robinson told him "you cannot appeal your sentence" (you are allowed appeal your sentence)[11] &

[10] See *Criminal Rule 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: (a) that the person has the right to appeal from the judgment of conviction…"

[11] See *Appellate Rule 215(a)(5). 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

"you better get a new job for the next 5 years" – in direct contrast to his statement of "we are going win on appeal" that was made before trial along with the contradiction of not being deprived of his guide license & airplane while his appeal was pending. When Haeg questioned Robinson again about why they could not have enforced the Rule 11 Agreement Robinson told Haeg, "I even put my investigator on it & he told me there was nothing there". Haeg finds this interesting because it was Haeg who had to literally set up the meeting between Cole & Robinson's investigator Joe Malatesta (Malatesta). Even more interesting is that Malatesta **taped** Cole stating that Prosecutor Leaders had broken the Rule 11 Plea Agreement. Later Haeg uncovered Malatesta's report of the meeting to Robinson which states, "**Don't forget to motion on the DA backing out of the original offer**". To Haeg it seems clear the investigator thought there was something there & specifically told Robinson so. Haeg, starting to read more & more of the law as his suspicions grew, discovered that the **last** time a conviction was overturned because the information was not sworn to by the prosecutor deprived the court of "jurisdiction" was a 1909 case. [12] Ever since then a prosecutor not swearing to an information has been ruled as "harmless error". When Haeg pointed this immense & glaring flaw out Robinson later said he found two "fresher" cases:

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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).

[12] See *Salter v. State 2 Okla. Crim. 464, 479, 102 P. 719 (1909).*

> *Albrecht v. U.S.*, 273 U.S. 1 (**1927):** The invalidity of the warrant is not comparable to the invalidity of an indictment. A person may not be punished for a crime without a formal & sufficient accusation even if he voluntarily submits to the jurisdiction of the court. Compare Ex parte Bain, 121 U.S. 1 , 7 S. Ct. 781. But a false arrest does not necessarily deprive the court of jurisdiction of the proceeding in which it was made. Where there was an appropriate accusation either by indictment or information, a court may acquire jurisdiction over the person of the defendant by his voluntary appearance. That a defendant may be brought before the court by a summons, without an arrest, is shown by the practice in prosecutions against corporations which are necessarily commenced by a summons. Here, the court had juris- [273 U.S. 1, 9] diction of the subject-matter; & the persons named as defendants were within its territorial jurisdiction.
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> *Gerstein v. Pugh*, 420 U.S. 103 (1975): In holding that the prosecutor's assessment of probable [420 U.S. 103, 119] cause is not sufficient alone to justify restraint of liberty pending trial, we do not imply that the accused is entitled to judicial oversight or review of the decision to prosecute. Instead, we adhere to the Court's prior holding that a judicial hearing is not prerequisite to prosecution by information. *Beck v. Washington*, 369 U.S. 541, 545 (1962); Lem Woon v. Oregon, 229 U.S. 586 (1913). Nor do we retreat from the established rule that illegal arrest or detention does not void a subsequent conviction. Frisbie v. Collins, 342 U.S. 519 (1952); Ker v. Illinois, 119 U.S. 436 (1886). Thus, as the Court of Appeals noted below, although a suspect who is presently detained may challenge the probable cause for that confinement, a conviction will not be vacated on the ground that the defendant was detained pending trial without a determination of probable cause. 483 F.2d, at 786-787. Compare Scarbrough v. Dutton, 393 F.2d 6 (CA5 1968), with Brown v. Fauntleroy, 143 U.S. App. D.C. 116, 442 F.2d 838 (1971), & Cooley v. Stone, 134 U.S. App. D.C. 317, 414 F.2d 1213 (1969).[13]

Haeg researched these cases in detail & found they clearly did not support Robinson's defense tactic, since Cole had Haeg "voluntarily" submit to the jurisdiction of the court before any

[13] See *Gerstein v. Pugh*, 420 U.S. 103 (1975).

summons or arrest warrant was issued. As clearly indicated in the cases above a conviction will not be overturned if the information itself is valid, regardless of it not being able to support a summons &/or an arrest warrant because it was not sworn to. In addition, Alaska Criminal Rule 7 allows "any information to be filed without leave of court", that "It shall be **signed** by the prosecuting attorney". In other words the only time an information must be sworn to is if a summons or arrest warrant is issued – & even if a summons or arrest warrant is issued on an information not sworn to the conviction will still not be affected & that "Defects of form do not invalidate". This tactic of first Robinson & then Osterman, in which both were willing to place everything that Haeg & his family have, is absolutely frivolous & can only be a smokescreen to keep Haeg from pursuing the other very real & very powerful constitutional issues – all of which highlight the gross malpractice of Haeg's counsel.

When Haeg pointed all this out to Robinson he replied that Haeg was not interpreting the law "correctly". When Haeg continued to insist the tactic was flawed Robinson replied that not swearing to the information "may not invalidate personal jurisdiction" but would still invalidate "subject matter jurisdiction". Haeg researched this & found that any act recognized by the state as a crime, & which happened on land under state jurisdiction, was **all** that is needed for Alaskan courts to obtain "subject matter jurisdiction" (example: Alaska doesn't have "subject matter jurisdiction" of crimes that happen

inside a U.S. post office – because the U.S. Government alone has "subject matter jurisdiction" on federal territory). Haeg also realized there was something exceedingly disturbing about Robinson's "tactic" of requiring Haeg to never bring up the fact that there was a Rule 11 Plea Agreement that the state was allowed to break after Haeg had placed such an immense amount of detrimental reliance upon it. Haeg realized that if bringing up the fact that there had been a Rule 11 Plea Agreement would defeat Robinson's "tactic" there was absolutely **nothing** to prevent the state itself from bringing up the **fact** that there had been a Rule 11 Plea Agreement in order to defeat Robinson's tactic. In fact Haeg realized that the state, in order to justify a harsher sentence, **had already brought up the Rule 11 Plea Agreement** just so they could falsely claim Haeg had broke it. In other words Robinson's "tactic" of covering up the Rule 11 Plea Agreement could have had no legitimate basis whatsoever in helping Haeg & in fact could only have been another smokescreen to keep Haeg quiet about Cole's unbelievable conduct while dealing an absolutely devastating blow to Haeg & his family [throwing away any benefit whatsoever from a 5-hour interview given to the state which they freely used for anything they wanted, Haeg & his wife both giving up an entire years income while they still had to pay for leases, bonding, insurance, & permits, etc..., along with the enormous expense of flying in 6 witnesses from around the country & then **still** having to pay for trial & the subsequent appeals, attorneys, & **sentence**]. There is

hardly a family in existence that could make it for over 2½ years through such a terribly effective & devious team of lawyers & Troopers working both sides of the fence against an unsuspecting family. Haeg directed these brutally clear observations to Robinson & Robinson was **unable** to answer. It was after this, & another discussion with Dolifka, that Haeg started looking for attorney number three (3).

Haeg continued to read & discover his own attorneys had deliberately hid defense after defense from him when he repeatedly asked over & over & over how things could be so fundamentally unfair with nothing to remedy it. One such defense was "ineffective assistance of counsel". When Haeg asked Robinson if he had thought about this defense Robinson replied "No - Brent lying to you [about your defenses] is not necessarily ineffective assistance of counsel" (all courts have held it is) & "You're not paying me for Ineffective Assistance claim against Brent Cole", "I'm not suppose to defend you in an Ineffective Assistance claim against Brent Cole" & "I didn't have an obligation to do that [raise appropriate & effective constitutional defenses] Dave."[14] Haeg would like to ask what he was paying $250.00 per hour for (totaling nearly $30,000.00 for Robinson alone) to one of the very best, most expensive, & highly recommended attorneys in Alaska if it was not to raise unbelievably formidable & specific **constitutional** defenses? Another defense available never mentioned to Haeg included the

[14] All taped and witnessed conversations.

due process clause of both the Alaska & U.S. constitutions – which absolutely require fundamentally fair procedures - no perjury or lying by Troopers or prosecutors; honoring Rule 11 Plea Agreements that have immense detrimental reliance on them; mandatory hearings when taking away a persons property they need to provide a livelihood; not having the judge eat with & be chauffeured around fulltime by Trooper Gibbens, the prosecutions main witness; etc.

After Haeg realized Robinson had done absolutely everything he could do to protect Cole at Haeg's stunning expense he fired Robinson & ended up finally hiring Osterman, after diligently trying for almost a month to retain an attorney from outside the state at Dolifka's insistence, with whom **every** conversation was taped. Osterman, before being hired & after reading through the other attorney's files, tells Haeg that the "sellout" was the biggest he had ever seen & that when the Court of Appeals saw it there was no doubt the conviction would be reversed, & that Robinsons points on appeal did not address the real issues.

In a taped conversation on 3/15/05 with Haeg Osterman states,

> *Osterman*, "I cannot believe any defense attorney in the world would do that, give the state everything, & particularly any defense in the world would do that with Scot Leaders ...I don't necessarily agree with the points on appeal that he's [Robinson] got ...I'm not real happy with Chuck's [Robinson] position not to go after Cole."..."I looked at this & it was a disaster in it & what Chuck did was wrong – what Cole did was wrong. There's no two ways about it." ... *Haeg*, "And is there – do you have any compunction against utilizing that for me?" *Osterman*, "No." *Haeg*,

"Well that's what I want to hear." *Osterman*, "... I don't like doing it – I'll tell you I don't like doing it but I don't like washing dishes & I don't like sweeping the floor too." *Osterman*, "You got an automatic Ineffective Assistance claim. Automatic. ... Cole has a malpractice problem a big malpractice problem ... I would be focusing on Cole because Cole set up a by his conduct absolutely malpractice. You gave the evidence to the District Attorney to use against you because of Cole's conduct ... like I said the issues on appeal that you've got don't really seem to cover the issue on appeal. ... **You did not realize he was goanna set it up so that their dang dice was always loaded ... They were always goanna win."**

Osterman also states, "When he committed the malpractice act, which was selling the farm ... I'm goanna need 12,000.00. ... three to four thousand per point on appeal" *Haeg*, "I've put my heart & soul into this & I would like to stay involved just for my own..." *Osterman*, "I want you involved."

In a taped conversation on 3/20/06 with Haeg Osterman states,

Osterman, "Issues of motions that should've been or could've been brought up that weren't – whether there were the 'big one' the 'big give away' - ineffective assistance by your first attorney...no doubt about it. I think when the Court of Appeals sees the sell out that happened here...that your attorney told you to talk & you talked to a huge detriment. Why in the world this guy never got any kind of a deal in writing. It's one thing to hold somebody back. It's another thing to get them down on the ground & stomp on their head with boots. What Scot Leaders did was stomped on your head with boots. He went way, way, way to far – ok – & he violated all the rules that would normally apply in these kind of cases & your attorney allowed him at that time to commit these violations. Your attorney just didn't open the door – ok - he blew the side of the house off, with his conduct. Search warrants is the poisonous tree. You've got to trust me for a while. The Judge should have had an evidentiary hearing to see if there was a deal or not."

In a taped conversation on 5/19/06 (**After** Haeg has hired Osterman & given him **everything** needed for the entire appeal **upfront**) Osterman states,

> *Osterman*, "What's at issue here is what is the Court of Appeals going to think. That's the issue." *Haeg*, "You don't think that you prove that your attorneys lying to you is important?" *Osterman*, "They [Appellate Court] could give a shit less." ... *Haeg*, "Have you ever heard of a thing called Detrimental Reliance?" *Osterman*, "No, Detrimental Reliance occurs in contracts." *Haeg*, "Do you know that when you put Detrimental Reliance on a criminal plea Rule 11 Agreement it must be upheld?" – *Osterman*, "No kidding. That's exactly correct Dave. You're absolutely right." *Haeg*, "Why isn't there anything like that in your brief?" *Osterman*, "Primarily because as I said before we were giving you a draft to see how these issues were goanna work with you." ... *Osterman*, "Are you accusing me of protecting other attorneys & not doing the job for you, is that what your accusing me of?" *Haeg*, "It sure looks like it". *Osterman*, "You gotta tell me what action it is that you think I've taken that has caused that." *Haeg*, "Well telling me all the things that I had found & that you agreed with me right off the bat, were all excited about it – I mean you were just – you were just freaked – you were like 'I can't believe that Brent Cole sold you out & Chuck Robinson didn't do anything about it - it's unbelievable'." *Osterman*, "Wow Dave it didn't get in there, did it?" *Haeg*, "it sure didn't". *Osterman*, "Well why do you think that is?" – *Haeg*, "Cause I think if it was in there old Brent Cole & Chuck Robinson they'd be flipping hamburgers after they got out of the ****** Federal pen." *Osterman*, "Well I got news for you that aint goanna happen here, you're not goanna get that to happen here, & I'm not goanna get that to happen here."
>
> Osterman shortly after this asks Haeg, "Taking away & depriving people of their livelihoods is that what you enjoy? Are you so crass that that's what you believe? **That's what you're asking me in essence to do is you're asking me to go on & interfere with another mans livelihood so I hesitate**, I don't think it's the same as hunting a deer out in the woods." - *Haeg*, "Mark Osterman what has all them attorneys that I showed you what they did what have they been doing to me? They've been hunting me." – *Osterman*, "No they

> have not been hunting you." – *Haeg*, "Want to bet?" – *Osterman*, "By some act of negligence or carelessness they've caused you harm & granted they should pay for the act of carelessness or negligence but those people are not out there with a gun trying to shoot you like you're trying to shoot them. As I said before..." – *Haeg*, "No they've only put so much pressure on me that my wife takes tranquilizers & for every tranquilizer she takes I'll put a bullet in them not through the law but with the Law." – *Osterman*, "Bear with me for a second. That is going to make me hesitate when I do that – hesitate yes, hesitate to be reflected yes..." – *Haeg*, "Does your wife take tranquilizers because of the pressure put on them by some crooked attorneys?"

Osterman tells Haeg that he needs to get "the right plea agreement in place, at the right time, or whatever, or get your sentencing modified to adjust it more like the co-defendant". Haeg tells him that Zellers has looked at the law & case law & says, "I got screwed too".

> *Haeg,* "what the hell is going on..." *Osterman*, "Well I don't disagree with you..." – *Haeg*, "... with these sons of bitches, man?" *Osterman*, "These sons of bitches have been in this particular area of practice for so long they've been schmoozing so many people that when they hit Scot Leaders, the new kid on the block, they had no idea what was goanna happen & it happened to them" – *Haeg*, "**Well wasn't it their duty to say 'hey Scot Leaders broke the law?'" –** *Osterman*, **"Well damn straight they should have..."**

In a taped conversation on 5/22/06 with Haeg Osterman states,

> *Osterman*, "Yes he [Robinson] screwed up; yes he should have shoved that damn plea agreement down Scot Leader's throat. Ok? - I'm telling you the propriety of your case hangs on what Cole did to you & perhaps on the fact that Robinson failed to back it up - Can't do anything with Chuck. Maybe something could be done ethically with Chuck. Ok? Through the attorney grievance commission for his conduct for not seeking to back it up - cause I made that statement to you **– I just don't feel like I – that's it's my responsibility to run around & destroy people's livelihoods**. And I

don't give a damn if they're fishermen, or bankers, or whoever they are. If I've got clear cut evidence that somebody screwed up they're goanna hang. Mr. Cole I've got clear-cut evidence of, Chuck Robinson I - it's not so clear. Not so obvious."

Osterman then goes on to say, "He [Cole] ****** up. He ****** up royally. He ****** up cause you've been..." – *Haeg*, "That's all he did?" – *Osterman*, "Well bear with me for a second he's been out there doing these damn game cases for so long that he – that he thought he was dealing with somebody else not with Scot Leaders. That's what I think was his **** up was his judgment but he hung you out to dry. His bad judgment should not be affecting your life. Ok?" – *Haeg*, "And isn't there anymore proof, like you said that Ineffective Assistance of Counsel was a cumulative thing. Is that correct?" – *Osterman*, "It is a cumulative thing cause it looks at & determines the entire performance" – *Haeg*, "Wouldn't a wise attorney put in everything that showed the ineffectiveness? – *Osterman*, "But well – not - bear with me for a second. Perhaps..." – *Haeg*, "Or is that attacking the attorney too much?" – *Osterman*, "Well first of all bear with me for a second. How's the Attorney General in response to your motion on appeal going to claim that Cole's process was not ineffective? He's goanna have to go to the Strickland test & say, 'Strickland doesn't apply'. Ok?" – *Haeg*, "Why's that?" – *Osterman*, "Well bear with me for a second. Strickland is the only measure of Ineffective Assistance of Counsel. The Strickland test coming out of the Strickland vs. US case. Ok? If Strick – if the Strickland criteria is there – the state can go spit in the wind. Once you've established that criteria. If I go into the ad homonym attack. Well he did this, knowing that, & he did this knowing that, I give them fuel to say this is all bullshit judge & you ought to - you ought to just not even consider it. Because see all the emotional baggage in there causes damage to the claim. We want to – we want to face the claim in cold steel eyes & say here it is. In fact slightly understated makes the Court of Appeals understand the nature of the claim. If you go in & say 'That no good bastard he did this, & he did that, & his claim was this, & his claim was that, & you know yada yada yada' & on & on & on – on issues that cannot be supported independently of the record. Ok? Then the Court of Appeals is goanna say 'pff who cares'. Fly this is a – this is a distraction, this is a 'red herring' whatever you want to call it" –

> *Haeg*, "Yep" – *Osterman*, "Ok? This is dragging bait across the trail" – *Haeg*, "Yep" – *Osterman*, "Which is goanna lead us off into the bushes & we're not goanna go this, we're just goanna disregard the claim."
>
> *Osterman* goes on to say that "This Court of Appeals is a panel of 5 Judges & 3 sit here & 3 sit there so there's always a guy moving around ... I think Mannheimer's the swingman right now ... Mannheimer's a freaking Nazi ... I can't tell you off the top of my head who all 5 are ... I believe there's a panel out of Juneau."

At Osterman's request Haeg explains the Strickland criteria to him & explained that positive proof of a different outcome in Haeg's case is the difference between Zeller's sentence[15] & Haeg's own.[16]

> *Osterman* responds, "Which is – which is one of the issues we raised on appeal is that the - it may not be there –uh- per se but I think that it – that - that we – I know we discussed it with Joel & I thought that I saw some suggestion of it there but one of the issues..." *Haeg*, "**Well none of that's in there**".

Osterman agrees that the difference in sentences between Zellers & Haeg should be brought out "which is one of the issues we raised – it may not be there per se – I saw some suggestion of it". The concern Haeg has is there is not a single suggestion of this issue anywhere in his brief, or anything of the broken Rule 11 Plea Agreement that was broken & never sought to be upheld.

Haeg asked Osterman if they have to schedule oral arguments to be able to help lay out Haeg's case & Osterman tells Haeg that oral arguments are automatically scheduled when a brief is filed.

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[15] Zellers: co-defendant who, after the state broke the first Rule 11 Plea Agreement, the state offered a deal they would not offer to Haeg – even though both were guides, Zellers has a prior criminal history, and Haeg is the only one with a family and has no other income than guiding.

[16] Zellers was sentenced to a 6-month active suspension of his guide license, forfeiture of nothing, and 12 day in home confinement – Haeg's sentence was over 10 times as severe.

Haeg later looked at the Rules of Appellate Procedure it specifically states that oral arguments must be requested or they are waived.

Osterman told Haeg he never contacted Cole & the only time he contacted Robinson was to arrange to get Haeg's file. In every determination of an ineffective assistance of counsel (IAC) claim of appellate counsel it is IAC itself for an appellate attorney to not contact the former attorney(s) to see what their tactics were & the mistakes that they had knowledge of in their representation of the defendant.

When Haeg first hired Osterman he said he wanted to have Haeg involved because Haeg had very considerable knowledge in his case & he agreed that Haeg would be a very valuable asset in his appeal. Yet after Osterman had Haeg's money he refused to let Haeg talk to the attorney researching his case & in fact totally shut Haeg out of his case as Haeg can prove by taped conversations. According to *Appellate Advocacy College 2000 Judicial Council of California - How to Approach a Case/Issue Spotting* - J. Bradley O'Connell, Renee Torres - the number one most crucial step in every appellate case is to communicate with your client & the trial attorney. "An early call to trial counsel may avoid a lot of wheel spinning!" Osterman refused to do either one of these. "Talk to Trial Counsel - Since normal record doesn't include voir dire checking with counsel is only sure way to know whether there were any contested issues during jury selection." Osterman flat told Haeg many times he had not

contacted either of Haeg's fist two attorneys & that he was not going to contact Haeg's first two attorneys.

Osterman told Haeg on tape that it was best to hide your most powerful arguments until your reply brief. In *Appellate Advocacy College 2000 Judicial Council of California – Effective Argumentation* - Paula Rudman - it says to "put your best foot forward" & start with your strongest argument. Haeg has also found in the *Rules of Appellate Procedure* that you cannot bring up issues that were not presented in the main brief. Exactly why would Osterman want to hide Haeg's most powerful arguments until his reply brief where as Haeg reads it he will not even be allowed to present them? This is more direct evidence of Osterman's conflict of interest in willing to sacrifice Haeg for Cole & Robinson.

It's interesting that before Osterman gets the $12,000.00, ("**three to five thousand dollars per point**") which he said would complete the entire appeal process in the Court of Appeals, he stresses how unbelievable Haeg's first two attorney's conduct is & how great a case they have for not only reversing Haeg's conviction but for a huge malpractice claim. Then after Osterman has spent the $12,000.00 he then says it will be "**eight thousand dollars per point**" & that Haeg owes an additional $26,000.00 - even though the appeal is not done & he now does not want to affect Haeg's former attorney's "lives & livelihoods" by bringing up anything of their gross malpractice - even though this was the issue that he assured Haeg would get his conviction reversed

before Haeg had hired him. Osterman claims that he "changed his mind" about Robinsons points of appeal & now, after he has spent all of Haeg's money along with an "additional" $26,000.00, feels that Robinsons tactic of "the information not sworn to deprives the court of jurisdiction" is the only issue Haeg should appeal. Haeg sees Osterman's actions as not only an obvious & blatant ploy to illegally bankrupt Haeg but also part of the obvious, blatant & continuing ploy to protect Haeg's former attorneys.

Haeg, after being allowed to proceed pro se, obtained his file from Osterman. In reviewing the paperwork Haeg found, tucked in between some of the bound paperwork, a memorandum to Osterman from Joel Rothberg (Rothberg), the attorney who Osterman had review all documents & tapes in Haeg's entire case. The memorandum states "I think the strongest spotlight falls on Brent Cole for not trying to enforce the agreement that appeared to be in place as of the date of the arraignment." Osterman's draft brief, which Haeg fired Osterman after receiving, makes not one single mention of the fact that Cole had Haeg & his family do so much for a Rule 11 Plea Agreement & then Cole never even tried to enforce it & in fact lied to Haeg about his ability to enforce it. Yet Osterman, before Haeg hired him & gave him the entire fee upfront, had told Haeg this was one of the main issues – born out above in Rothberg's memorandum to Osterman. Haeg would like to point out this is an exact replica of what Robinson's investigator, Malatesta, told Robinson.

Haeg cannot believe that it was Prosecutor Roger Rom (Rom) who was assigned to "investigate" Haeg's complaint of troopers perjuring themselves in his case. How can Rom, who is defending the state's conviction against Haeg, be allowed to make the determination of whether the state's witnesses against Haeg are guilty of perjury or not in the same exact case?

Haeg has started writing for his ineffective assistance of counsel claim, his prosecutorial misconduct claim, & his judicial misconduct claim to show the magnitude of this fundamental breakdown in justice & the adversarial system. Because successive attorneys actively represented conflicting interests (protecting their relationship with the prosecution & each other) - compounded by aggressive prosecutors taking intentional, knowing, intelligent, illegal, & full advantage of this – the number of plain & unbelievably prejudicial errors have expanded exponentially. It is hard to believe so much could go wrong in one single case. Haeg is almost buried by the shear number & cumulative prejudice of these deliberate violations of his rights under constitution, law, statute, & rule. The incomplete briefs documenting this ongoing travesty include over 200 pages so far & are based almost entirely on facts & occurrences that exist outside the record.

The only official record so far of this carefully concealed & wide-ranging conspiracy is that developed during the representation hearing of August 15, 2006 in McGrath & the Alaska Bar Association Fee Arbitration proceedings concerning Haeg's

first attorney Brent Cole (Rom successfully opposed Haeg's first motion to make these proceedings public by arguing that Haeg had given no basis of why they should be made public – other than stating they were "absolutely essential for Haeg to make his case". Thus Haeg assumes he can explain what these proceedings recorded & why they should be made public). During sworn testimony a staggering amount came out: that Cole had been told by the prosecution, **before** Cole had Haeg give the prosecution an interview, that the prosecution was not going to honor any immunity agreements, the prosecution would put nothing in writing, & that there was going to be enormous pressure brought to bear on both the prosecution & the **judge** for a very severe sentence (Haeg wonders now if this same "enormous pressure" was brought to bear on Cole, Robinson, & Osterman); that the prosecution, in direct violation of Haeg's civil rights & only able to be waived in writing, had never informed Cole of Haeg's constitutional right to "notice & an unconditioned opportunity to contest the state's reasons for seizing the property" "within days, if not hours" of Haeg's property that he used as the primary means to provide a livelihood for his family of four[17]; that, according to Cole, Alaska did not have to comply with federal law that specifically requires **all** states to comply with[18]; that when you give the prosecution everything they ask for you are taking a "calculated risk" & are in a "position of

[17] *F/V American Eagle v. State*, 620 P.2d 657 (Alaska 1980).
[18] *Mapp v. Ohio*, 367 U.S. 643 (1961).

trust" & "are hoping that the cooperation that you provided will be duly noted" because this is "what the practice of law is all about"; "it's very infrequent that [detrimental reliance in enforcing a Rule 11 Plea Agreement] would find favor in the criminal justice system"; & that **a criminal defense attorney would never try to enforce a Rule 11 Plea Agreement, no matter how much detrimental reliance a defendant had on it, because this would make an "enemy" out of the prosecutor.** This sworn testimony, coupled with Cole's statements that he, "can't piss Leaders off because I have to make deals with him after you're finished" & his unbelievable actions in failing to advocate for Haeg even once, along with his lying to Haeg to cover up the opportunities Haeg could have advocated for himself, make an overwhelming case that there was a fundamental breakdown in the adversarial process in Haeg's case.

Cole ended up committing perjury at least 17 times in Alaska Bar Association proceedings while trying to avoid the liability of selling Haeg out to the prosecution along with lying to Haeg & the other witnesses at the time to keep them from finding this out. Recordings Haeg had secretly made of Cole while Cole was still representing Haeg, along with the subsequent transcriptions, proved this perjury. Haeg had started taping Cole after Haeg had expressed his fears of misconduct & malpractice to Dolifka, who confirmed them. The Alaska Bar Association allowed these items into evidence, with Cole himself acknowledging their accuracy.

Of interest also is that a large portion of this sworn & stunning testimony before the Alaska Bar Association is now missing – including all the sworn testimony concerning the fact that a criminal defense attorney would never try to enforce a Rule 11 Plea Agreement, no matter how much it cost a defendant, because this would make "an enemy out of the prosecutor". Haeg, who had taped all these proceedings with three (3) of his own tape recorders, wished to supplement these missing hours with his own recordings but was told by the Alaska Bar Association he could not – the many hours that were blank & missing would remain the "official" record. Maybe Cole had a hand in making this decision since he is a current attorney member of the Alaska Bar Associations Ethics Committee.

When the entire U.S. justice system, including all the individual states, is based on the "adversarial system" how fundamentally fair will the procedure or proceeding be when defense attorneys will not advocate for their client because this will make an "enemy" out of the prosecutor – who is aggressively seeking a "very severe sentence" for the defendant? How fundamentally fair will the procedure or proceeding be when each successive attorney is covering up & hiding the misconduct of the former attorney from his own client instead of advocating for his own client?

To say Haeg is a little concerned would be as understated as describing Krakatoa as a little island just west of Java.

Dolifka recently pointed out another interesting point – he said invariably the state prosecution encourages criminal defendants to proceed pro se, because a criminal defendant who represents himself without an attorney "has a fool for a client". Exactly why then did prosecutor Rom write a **fourteen** (14)-page document, including excerpts from approximately thirty cases, **opposing** Haeg's request to represent himself?

Haeg wishes to point out how important a functioning adversarial system is to fundamental fairness:

> The *Strickland* Court (U.S. Supreme) outlined certain basic duties that an attorney owes the criminal defense client. Among those is the duty to "bring to bear such skill & knowledge as will render the trial [or proceeding] a **reliable adversarial testing process**."[19] The Court noted that counsel's actions are often based on "informed strategic choices made by the defendant."[20] In decisions following *Strickland*, the Supreme Court has reaffirmed that the touchstone of the prejudice component is "whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair."[21] In *Nix v. Whiteside*, 475 U.S. 157, 175-76 (1986), the Court said that the "benchmark" of the right to counsel is the "**fairness of the adversary proceeding**;" see also, *US v. Morrison*, 449 U.S. 361, 364 (1981) (the right to counsel "is meant to assure fairness in the **adversary criminal process**"). The Court observed that plea negotiations between the state & the defendant offer a number of advantages to efficiently ensure the public's protection & the prompt disposition of criminal cases.[22] But, the Court cautioned, all of those advantages are premised on a plea negotiation rooted in fairness. "[A]ll of these considerations presuppose fairness in securing agreement between an accused & a prosecutor."[23]

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[19] 466 U.S. at 688 (citations omitted).
[20] Id. at 691.
[21] *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993).
[22] Id. at 261.
[23] *Cuyler v. Sullivan*, 446 U.S. 335, 349-50 (1980) (presumption of prejudice to defendant where his attorney labored under an actual conflict of interest that negatively affected his performance).

> In *Osborn*, the Tenth Circuit commented as follows: "A defense attorney who abandons his duty of loyalty to his client & effectively joins the state in an effort to attain a conviction... suffers from an obvious conflict of interest. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous & unacceptable legal fiction."[24] Faretta v. California , 422 U.S. 806, 821, 95 S.Ct. 2525, 2534, 45 L.Ed.2d 562 (1975). In fact, an attorney who is burdened by a conflict between his client's interests & 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 & the defendant are necessarily in opposition."

Haeg is also stunned that all record is missing of the letters he & Jackie had written, & demanded be presented in his defense, explaining & documenting how the state, in direct violation of many sections of it's own constitution (Articles 1.1, 1.7, 8.2, 8.4, 8.5, 8.10, 8.16, & 8.17, & Alaska Statute 16.05.020(2)) had sabotaged one of Alaska's greatest & most relied upon renewable resources – moose, caribou, & sheep – by refusing to manage predation by wolves (Haeg, through Robinson, requested official documentation of this from Fish & Game but never received it because of the opposition filed by the state). This documentation shows that because wolves populate much faster than ungulates they will, unless managed, reduce & keep ungulates (& necessarily the wolves themselves) in "low level equilibrium" – otherwise known as a "predator pit" – where both wolves & ungulates are very scarce. With management there is always far more wolves because there is far more food – without management

[24] *Osborn v. Shillinger*, 861 F.2d 612 at 629 (10th Cir. 1988).

there can be no human use.[25] The only problem is keeping the wolves from reaching levels where they eat more ungulates than are born each year. It is also a fact that humans cause approximately 7% of yearly mortality while other predation (primarily from wolves) causes at least 65%.[26] (Senate Resources Minute – SB 155-Predator Control/Airborne Shooting – April 30, 2003 states 86% ungulates harvested by predators, 10% are dying of natural mortality, starvation or disease, & 4% are being harvested by humans). Haeg & his wife had documented that for years Haeg had been testifying at virtually every Alaska Board of Game meeting concerning this devastating event which was inexorably stripping them of everything they had worked their entire lives for – even to the extent of flying to Juneau & talking to legislators about it. Haeg & his wife documented how large portions of the guides in their area have already been bankrupt & forced out of business because of this fact[27]. Haeg & his wife documented that it was the state who called Haeg while he was at a Pennsylvania hunting show to see if he would be willing to help "because the program [wolf control] has been going for months & if we don't get some wolves it will probably be shut down". Haeg & his wife documented that Board of Game members, at their Fairbanks meeting Haeg was testifying at before

[25] *Investigation of Wolf Population Response to Intensive Trapping in the Presence of High Ungulate Biomass* - Alaska Department of Fish and Game Division of Wildlife Conservation.
[26] *Koyukuk River Moose Management Plan 2000-2005* – Alaska Department of Fish and Game Division of Wildlife Conservation.
[27] See Master Guide Jim Harrowers open letters to Governor Knowles

going out to help, told Haeg "the program is already well over half finished & we have only taken 4 of the 55 wolves needed", "it is more important for someone as good as you to be out there killing wolves than to be here testifying", "because so few have been taken there is a good chance the program will seen as ineffective & stopped" & "if you end up killing wolves outside the area just make sure you mark them inside the area".

It should be pretty clear that someone like Haeg & his wife, who had invested everything they had into guiding to put food in their family's mouth, was under ever increasing pressure as bankruptcy & loss of their lodge, hunting camps, airplanes & livelihood loomed closer & closer because of the wolf mismanagement. Haeg is human & is capable of making mistakes, just as is every other person on this planet, especially when the ability to provide for a family is directly threatened. What is of interest to Haeg is that in his more recent research he found two more defenses, one called entrapment & the other called outrageous conduct. Both defenses essentially hold that a person induced to commit a crime by the actions of the government & not predisposed to commit that same crime (no prior history of that crime), cannot be found guilty of that crime because of due process/fundamental fairness concerns. If this is true how can Haeg be convicted when the state first sabotaged, by removing management of wolves, the very resource upon which he & his wife had built a business with everything they had in life & then sent

him out to "cure" the problem by killing enough wolves so the program would be seen as effective & not halted?

The defense of outrageous conduct is distinct from the defense of entrapment in that the entrapment defense looks to the state of mind of the defendant to determine whether he was predisposed to commit the crime for which he is prosecuted.[28]

Batres-Santolino, 521 F.Supp. 752 government "went about putting persons into the business of crime for the first time".

> "Very large financial inducements by government agents have also amounted to sufficient affirmative coercion to contribute to an outrageous conduct holding".[29]

Haeg is 40 years old & has made his entire livelihood to date by hunting, trapping, fishing & guiding. Before this case he has not had one violation of any regulation relating to any of these activities – in fact he has no criminal convictions whatsoever.

How could asked for participation in a state sponsored wildlife management program to correct a problem caused by the state violating it's own constitution, that could not affect Haeg's business because it was intentionally "independent of all other means restrictions in AS 16 (all Fish & Game) & this title" (5 AAC 92.039(h)), cost Haeg & his wife their business, into

[28] See *Jacobson v. U.S.*, 503 U.S. 540, 112 S.Ct 1535, 1540, 118 L.Ed.2d 147 (1992). The outrageous conduct defense, in contrast, looks at the government's behavior. See *U.S. v. Gamble*, 737 F.2d 853, 858 (10th Cir. 1984). The inquiry appears to revolve around the totality of the circumstances in any given case. See *U.S. v. Bogart*, 783 F.2d 1428, 1438 (9th Cir.) "Ultimately, every [outrageous conduct] case must be resolved on it's own particular facts." Conduct must violate "fundamental fairness". *U.S. v. Russell*, 411 U.S. 423 (1973), 93 S.Ct at 1643. See also *Greene v. U.S.*, 454 F.2d 783, 787 (9th Cir. 1971): reversing on ground of non-entrapment government conduct, although not using "outrageous conduct" label.

[29] See *U.S. v. Mosley* 965 F.2d 906 (1992).

which they had put everything they have both acquired in their lives to date? The wolves the state say Haeg took is not even a single days bag limit for a non-resident **alien**. How could he be convicted of a Big Game Guiding offense when there was no client, no contract, & no money paid? It took Haeg a good many sleepless nights reading in his brand new law library to figure it out but, when no matter what his attorneys advised him everything kept getting worse & worse & worse, he knew there must be a reason. Haeg has found the reason. The state of Alaska & his own attorneys have been lying to him about the rules of the "game" since the very beginning, the state to illegally get his airplane, equipment & a huge, public & harsh conviction of a "rogue master guide", the attorneys to illegally get nearly $100,000.00 in fees along with an "atta boy" & probable consideration from the state for helping them strip another ignorant defendant of everything he & his family have in life. From the evidence recorded it is obvious at least Cole thought Haeg should not only be convicted of Big Game Guiding offenses but that he should receive a sentence that would end his life as he knew it forever. Haeg wonders just how long this little "arraignment" between defense attorneys & state prosecutors has been going on & how much money has been illegally pocketed so far.

As Haeg reads, learns, & understands more he can see how very important the concepts outlined by the courts below really

are. Haeg understands how not adhering to the formal adversarial process can unbelievably skew fundamental fairness.

Haeg feels *U.S. v. Marshank*, 777 F. Supp. 1524 (1991) is the closest parallel to his case he has yet to find:

> "Government's collaboration with defendant's attorney during investigation & prosecution of drug case violated defendant's Fifth & Sixth Amendment rights & required dismissal of indictment. The court held that the government's conduct created a conflict of interest between defendant & counsel & the government took advantage of it without alerting the defendant, the court, or even the "oblivious" counsel to the conflicts. 'While the government may have no obligation to caution defense counsel against straying from the ethical path, it is not entitled to take advantage of conflicts of interest of which the defendant & the court are unaware.'" [30]

The importance of the adversarial system has also been clearly explained in the following U.S. Supreme Court cases:

> *U.S. v. Cronic*, 466 U.S. 648 (1984): "The substance of the Constitution's guarantee of the effective assistance of counsel is illuminated by reference to its underlying purpose. "[T]ruth," Lord Eldon said, "is best discovered by powerful statements on both sides of the question." This dictum describes the unique strength of our system of criminal justice. "**The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted & the innocent go free**." *Herring v. New York*, 422 U.S. 853, 862 (1975). It is that "very premise" that underlies & gives meaning to the Sixth [466 U.S. 648, 656] Amendment. It "**is meant to assure fairness in the adversary criminal process**." *U.S. v. Morrison*, 449 U.S. 361, 364 (1981). Unless the accused receives the effective assistance of counsel, "a serious risk of injustice infects the trial itself." *Cuyler v. Sullivan*, 446 U.S., at 343.
> Thus, **the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate**." *Anders v. California*, 386 U.S. 738, 743 (1967). The right to the

[30] *Id.* at 1519.

> effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted - even if defense counsel may have made demonstrable errors - the kind of testing envisioned by the Sixth Amendment has occurred. **But if the process loses [466 U.S. 648, 657] its character as a confrontation between adversaries, the constitutional guarantee is violated**. 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 a sacrifice of unarmed prisoners to gladiators**." U.S. ex rel. *Williams v. Twomey*, 510 F.2d 634, 640 (CA7)."[31]

Haeg was told by his trusted advocate Cole to not pick up & use the mighty weapon & shield that the state had used extremely prejudicial & misleading perjury (pointed out to counsel by Haeg & his wife on the same day they hired Cole) to obtain the search warrants & to also shift the entire focus of the case from a possible Wolf Control Program violation to a Master Big Game Guide committing same day airborne guiding violations. The difference in the sentences between these could hardly be greater for Haeg & his family. In not having Haeg pick up this weapon & shield Cole allowed the state gladiators to pick up & use this same mighty weapon & shield against Haeg. Cole made the same plain error in not holding the state to the **unbreakable** due process guarantees of "notice & an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is

[31] *U.S. v. Cronic*, 466 U.S. 648 (1984).

urgent"[32] when the state **never** gave Haeg or his wife these absolute & undeniable rights after seizing their property, used as the primary means to provide a livelihood for their family of four. Cole told Haeg if he gave the state two more kingly gifts – the **constitutional** right against self-incrimination & along with the mighty punishment of giving up an entire years income from both Haeg & his wife, while still having to pay for all the guiding insurance, bonding, state leases, state permits, & continuing to provide for their two daughters, Haeg would not have to go out in the ring & do battle with the gladiators. Haeg thought long & hard on this, because to him this was unacceptable, but in the end Cole & Haeg's wife prevailed, & he accepted the deal.

The state scheduled the deal to be executed in McGrath on the morning of November 9, 2004, after the fishing, hunting & guiding season was over because until then they were "busy". At 1:00 p.m. on November 8, 2004 state prosecutor Scot Leaders "changed his mind" & changed the charges that had **already** been filed in accordance with the deal. The "new" charges would require at least a 3-year guide license suspension with the possibility of guide license revocation for life. David Haeg, Jackie Haeg, Kayla Haeg, Cassie Haeg, Tom Stepnosky, Drew Hilterbrand, Jake Jedlicki, & Tony Zellers, all traveling to McGrath for this deal (Drew from Silver Salmon & Tony arriving from Illinois that afternoon), found out about this breach at

[32] See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980)

3:00 p.m. on November 8, 2004 – after arriving at Cole's office in Anchorage where he showed them a fax from Leaders & said he "just received the bad news" (documents obtained later, written & signed by Cole, prove Cole & Leaders had discussed changing the charges at least five (5) days earlier).

Cole told **everyone** "that's the way it is" & "there is nothing I can do except call Leaders boss" (he never does this, even though asked by Haeg over a dozen times in the next weeks) before telling Haeg & everyone "Leaders will give you the same deal again if you sign over your plane". Yet when Tom Stepnosky asked what was on everyone's mind, "What is to keep Leaders from amending the charges again?" [if Haeg gives him the plane] Cole cannot answer (taped conversation). At this point Haeg realizes he is effectively being held hostage by Leaders & Cole – who both know Haeg & his wife have already given up the preceding guide season & will probably be too financially devastated to consider fighting & going to trial. They also know that it will likely be a slam–dunk case because no one has complained (except during the tape recorded interview Leaders & Gibbens required for the deal) about the unbelievably prejudicial perjury in moving everything from the Wolf Control Program game management unit to Haeg's guiding game management unit. Cole makes not a single protest when Leaders, at the arraignment that happened on November 9, 2004, uses all Haeg's statements, corrupted by Trooper Gibbens perjury, as the only probable cause for over half the charges filed against Haeg in violation of the Rule 11

Plea Agreement & as the only direct probable cause in all others. Haeg asks Cole what Leaders thinks of him not caving in & thinking of going to trial & Cole responds, "He thinks I don't have good client control".

You cannot imagine Haeg's surprise, when, after he has lost at trial, been convicted & sentenced to five (5) more years of guide license suspension (which will seal the loss of everything Haeg & family have), two years in jail, forfeiture of the plane, $19,500.00 fine, along with paying another $75,000.00 to other attorneys, he reads that **all** courts have held that when a defendant puts as little as $200.00 "detrimental reliance" on a Rule 11 Plea Agreement deal with the prosecutor (or given any information to the prosecution) **the deal must be upheld.**

In other words, **after** Haeg's trusted advocate has stripped him of every weapon & defense, & given them to the gladiators by first promising Haeg he would not have to go out in the ring & do battle with the gladiators, the trusted advocate (Cole) thrusts Haeg into the ring to do battle, locks the gate, &, as the now formidably armed gladiators close in on the unarmed prisoner, walks off. Haeg once tried to, but could not, write of the frustration, bitterness, helplessness, betrayal & anger of finally realizing it was an unbelievably unfair, intentional, undeserved, illegal, & unconstitutional process orchestrated by the coordinated efforts of both his attorneys & the state that has aged his wife 15 years in two & caused them to lose everything they had built up for their family in their entire

combined life. A good friend of Haeg's, looking at the unfinished notes, commented, "What you are trying to write has already been eloquently expressed in a document called the Declaration of Independence of the United States". Haeg humbly asks this court not fall into the same trap that others have – that you not underestimate the will, resolve, & naked determination of those who must fight injustice to keep their family from being swept off the precipice.

In light of this gross & fundamental breakdown in justice & the adversarial process, the likes of which have rarely, if ever, seen the light of day, Haeg respectfully asks this court, without delay, to grant the included motions in the order best suited to keep Haeg & his family from further harm.

RESPECTFULLY SUBMITTED this _____ day of _____.

By: _____
David S. Haeg, Pro Se Appellant

I HEREBY CERTIFY that a copy of the foregoing was served on:

Roger B. Rom, Asst. Attorney General
310 K. Street, Suite 308
Anchorage, AK 99501 907-269-6250
by mail on _____.

By: _____