APPENDIX 1

Alaska Rules of Professional Conduct & Supporting Caselaw

Rule 1.1 Competence (a) A lawyer shall provide competent representation to a client;

Rule 1.2. Scope of Representation. (a) A lawyer shall abide by a client's decisions concerning the objectives of representation... The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law & the lawyer's professional obligations;

Rule 1.3. Diligence. A lawyer shall act with reasonable diligence & promptness in representing a client. A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, & may take whatever lawful & ethical measures are required to vindicate a client's cause or endeavor;

Rule 1.4. Communication. (a) A lawyer shall keep a client reasonably informed about the status of a matter undertaken on the client's behalf & promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. A lawyer may not withhold information to serve the lawyer's own interest or convenience;

Rule 1.7. Conflict of Interest: General Rule. (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests... Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interest. The conflict in effect forecloses alternatives that would otherwise be available to the client. The lawyer's own interests should not be permitted to have adverse effect on representation of a client. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice;

Rule 3.1. Meritorious Claims & Contentions. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause;

Rule 3.3. Candor Toward the Tribunal. (a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal… (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence & comes to know of its falsity, the lawyer shall take reasonable remedial measures. (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, & apply even if compliance requires disclosure of information otherwise protected by Rule 1.6; Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities; Rule 4.1. Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person. A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of rele- vant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act;

Rule 8.1. Bar Admission & Disciplinary Matters. An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact; or (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct;

Rule 8.3. Reporting Professional Misconduct. (a) A lawyer having knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority. Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense;

Rule 8.4. Misconduct. It is professional misconduct for a lawyer to: (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

CASELAW

Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984):

“The Sixth Amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result...The court agreed that the Sixth Amendment imposes on counsel **a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options**... Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution" to which they are entitled. *Adams v. United States ex rel. McCann*, 317 U.S. 269, 275, 276 (1942); see *Powell v. Alabama*, supra, at 68-69... That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. [466 U.S. 668, 686] ... Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence **counsel owes the client a duty of loyalty**, **a duty to avoid conflicts of interest**. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties **to consult with the defendant on important decisions** and **to keep the defendant informed of important developments in the course of the prosecution**. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. See *Powell v. Alabama*, 287 U.S., at 68 -69. ... **The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's 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 particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the defendant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short**, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions**. See *United States v. Decoster*, supra, at 372-373, 624 F.2d, at 209-210. In *Cuyler v. Sullivan*, 446 U.S., at 345 -350, the Court held that **prejudice 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.** Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see, e. g., Fed. Rule Crim. Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest. Even so, the rule is not quite the per se rule of prejudice that exists for the Sixth Amendment claims mentioned above. Prejudice is presumed only if the defendant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan*, supra, at 350, 348 (footnote omitted). [466 U.S. 668, 693] … Some errors will have had a pervasive effect on the inferences to [466 U.S. 668, 696] be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect. … [I]t is often very difficult to tell whether a defendant convicted after a trial in which he was ineffectively represented would have fared better if his lawyer had been competent. Seemingly impregnable cases can sometimes be dismantled by good defense counsel. On the basis of a cold record, it may be impossible for a reviewing court confidently to ascertain how the government's evidence and arguments would have stood up against rebuttal and cross-examination by a shrewd, well-prepared lawyer. **The difficulties of estimating prejudice after the fact are exacerbated by the possibility that evidence of injury to the defendant may be missing from the record precisely because of the incompetence of defense counsel**."

U.S. Supreme Court United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984): An accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases "are necessities, not luxuries."[Footnote 7] Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be "of little avail,"[Footnote 8] as this Court has recognized repeatedly. "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.**" The special value of the right to the assistance of counsel explains why "[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." … 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 and the innocent go free." *Herring v. New York*, 422 U.S. 853, 862 (1975). It is that "very premise" that underlies and gives meaning to the Sixth Amendment. It "is meant to assure fairness in the adversary criminal process." *United States 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 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 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."** … Time has not eroded the force of Justice Sutherland's opinion for the *Court in Powell v. Alabama*, (1932): "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 be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense." Id., at 68-69. …"More specifically, the right to the assistance of counsel has 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." 422 U.S., at 857. "Whether a man is innocent cannot be determined from a trial in which, as here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented." *Betts v. Brady*, 316 U.S. 455, 476 (1942) (Black, J., dissenting).

<u>Cuyler v. Sullivan</u>, 446 U.S. 335 (U.S. Supreme Court 1980): "A state criminal trial, a proceeding initiated and conducted by the State itself, is an action of the State within the meaning of the Fourteenth Amendment. If a defendant's retained counsel does not provide the adequate legal assistance guaranteed by the Sixth Amendment, a serious risk of injustice infects the trial itself. … [E]xperience teaches that, in some cases, retained counsel will not provide adequate representation. The vital guarantee of the Sixth Amendment would stand for little if the often uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection. … **Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial**. … In *Glasser v. United States*, for [446 U.S. 335, 349] example, the record showed that defense counsel failed to cross-examine a prosecution witness whose testimony linked Glasser with the crime **and failed to resist the presentation of arguably inadmissible evidence**. Id., at 72-75. … Indeed, the **evidence of counsel's "struggle to serve two masters [could not] seriously be doubted**." Id., at 75. Since this actual conflict of interest impaired Glasser's defense, the Court reversed his conviction. … Once the Court concluded that Glasser's lawyer had an actual conflict of interest, it refused "to indulge in nice calculations as to the amount of prejudice" attributable to the conflict. **The conflict itself demonstrated a denial of the "right to have the effective assistance of counsel**." 315 U.S., at 76 . Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice [446 U.S. 335, 350] in order to obtain relief. See Holloway, supra, at 487-491. … [T]he Constitution also protects defendants whose attorneys fail to consider, or choose to ignore, potential conflict problems. Because it is 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 interests negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney. Moreover, **a showing that an actual conflict adversely affected [446 U.S. 335, 357] counsel's performance is not only unnecessary, it is often an impossible task**. As the Court emphasized in Holloway: **"[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."** 435 U.S., at 490 -491 (emphasis in original). Accordingly, in Holloway we emphatically rejected the suggestion that a defendant must show prejudice in order to be entitled to relief. For the same reasons, it would usually be futile to attempt to determine how counsel's conduct would have been different if he had not been under conflicting duties."

Arnold v. State, 685 P.2d 1261(Alaska 1984): "In order to render 'effective assistance' during a plea, 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. … Defendant receives ineffective assistance of counsel prior to his plea of no contest to charges against him where his attorney fails to adequately inform himself regarding relevant facts and law and defendant is prejudiced by being unable to knowingly and intelligently evaluate his situation** and enter an informed plea. … Arnold contends that his counsel provided him ineffective assistance in the following ways: Failure to request or review the extensive police and investigative reports; Failure to interview any witnesses including eyewitnesses, medical personnel, and police officers; Failure to make any pretrial motions or explain to the defendant his right to make pretrial motions challenging the indictment or seeking suppression of evidence; Failure to investigate critical facts including the manner of operation of the defendant's vehicle, the defendant's alleged level of intoxication, and the victim's level of intoxication; Failure to know the elements of manslaughter; Failure to know the lesser-included offenses of manslaughter; Failure to examine the evidence to determine whether it better fit manslaughter or one of the lesser-included offenses; Failure to review with the defendant his defenses and the weaknesses of the state's case. … The lawyer's duty to investigate is not discharged by the accused's admission of guilt to him or by his stated desire to enter a guilty plea. The accused's belief that he is guilty in fact may often not coincide with the elements which must be proved in order to establish guilt in law. In many criminal cases the real issue is not whether the defendant performed the act in question but whether he had the requisite intent and capacity. The accused may not be aware of the significance of facts relevant to his intent in determining his criminal liability or responsibility.... The basis for evaluation of these possibilities is the lawyer's factual investigation for which the accused's own conclusions are not a substitute. **The lawyer's duty is to determine, from knowledge of all the facts and applicable law, whether the prosecution can establish guilt *in law*, not in some moral sense**. An accused may feel a sense of guilt but his subjective or emotional evaluation is not relevant; an essential function of the advocate is to make a detached professional appraisal independent of a client's belief either that he is or is not guilty. … **The constitutional requirement is not satisfied upon a perfunctory appearance by counsel who does nothing whatever before or during trial to advise a client or to protect his rights** except to acquiesce with the client's wishes. Perfunctory or hand-holding representation is simply not consistent with the right to counsel. A client's professed desire to plead guilty is not the end of an attorney's responsibility. When a defendant convicts himself in open court the Constitution recognizes that the critical stage of adjudication has proceeded for the most part outside the courtroom. **That process contemplates the pursuit by counsel of factual and legal theories in order to reach a conclusion as to whether a contest would best serve the attorney's client's interest**…. It is not fatal to petitioner's claim that he may, indeed did, insist to his counsel that he wished only to plead guilty in exchange for a life sentence. The mere securing of the sought after bargain does not fulfill counsel's duty in such a case, for to so rule would be to reduce the role contemplated by the Constitution to that of a messenger, and to cast the responsibility for the fairness of the entire proceeding upon the individual defendant who the law recognizes is most in need of assistance. Reasonably effective assistance is an easier standard to meet in the context of a guilty plea than in a trial, but counsel still must render competent service. It is the lawyer's duty to ascertain if the plea is entered voluntarily and knowingly. He must actually and substantially assist his client in deciding whether to plead guilty. **It is his job to provide the accused an "understanding of the law in relation to the facts." The advice he gives need not be perfect, but it must be reasonably competent. His advice should permit the accused to make an informed and conscious choice.** In other words, if the quality of counsel's service falls below a certain minimum level, the client's guilty plea cannot be knowing and voluntary because it will not represent an informed choice. And **a lawyer who is not familiar with the facts and law relevant to his client's case cannot meet that required minimum level**. Had Vittone fully understood the facts and the applicable law, he may still have advised Arnold to plead no contest. He may not have found anything in the police reports that would have enabled him to challenge the indictment or obtain a more favorable disposition. Indeed, had he looked at the reports and listened to the grand jury testimony, he might have concluded that his client's decision to plead no contest was the only realistic course of action. The point is that Vittone was obligated to do more than he did regardless of the outcome. Without a fuller understanding of the facts and law, Vittone could not meaningfully advise Arnold regarding the case against him. Without such meaningful advice, Arnold could not give an informed consent to a plea of no contest. Consequently, we conclude that the two prongs of the *Risher* test are satisfied. The first prong, ineffective performance, is established by Vittone's failure to adequately inform himself regarding the relevant facts and the law. **Arnold's resulting inability to knowingly and intelligently evaluate his situation and enter an informed plea establishes prejudice** and therefore satisfies the second prong. The Alaska standard is one of minimal competency within the wide range of reasonable performance which can be expected of lawyers with reasonable training and skill in the criminal law. On this record we must agree with Arnold and with the state that Arnold was denied effective representation. The judgment of the superior court is REVERSED."

Smith v. State, 717 P.2d 402 Alaska App.,1986**: [D]efense counsel who did not inform defendant of his right to persist in plea of not guilty to second charge provided defendant was ineffective assistance of counsel**; and counsel was ineffective for not withdrawing or making disclosure to the court of defendant's desire to continue with his plea of not guilty. … In *Risher v. State,* 523 P.2d 421 (Alaska 1974), the Alaska Supreme Court spoke of the right to effective assistance of counsel in the following words: 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,* 523 P.2d at 424 (footnotes omitted). **We believe it self-evident that an indispensable component of the guarantee of effective assistance of counsel is the accused's right to be advised of basic procedural rights, particularly when the accused seeks such advice by specific inquiry. Without knowing what rights are provided under law, the accused may well be unable to understand available legal options and may consequently be incapable of making informed decisions.** *See, e.g., Arnold v. State,* 685 P.2d 1261, 1267 (Alaska App.1984). Here, **Smith's inquiry to his counsel was a request for legal advice concerning the availability of a fundamental procedural right. We believe that the constitutional guarantee of effective assistance of counsel entitled Smith to an answer explaining the options that were open to him as a matter of law**. **Smith was entitled to advice concerning his legal rights that was "undeflected by conflicting considerations."** … To the extent that this precluded Smith's counsel from fully advising his client of the options legally open to him, however, **the concern of Smith's counsel with his own ethical and moral dilemma was squarely at odds with his duty to "conscientiously protect his client's interest, undeflected by conflicting considerations."** *Risher v. State,* 523 P.2d at 424. **We are particularly troubled by the apparent failure of both Smith's counsel and counsel for the state to disclose the substance of the negotiated plea agreement to the trial court** during Smith's change of plea hearing. **Similarly disturbing is the failure of Smith's counsel to disclose to the court the fact that Smith had expressed qualms about following through with this agreement**. Even in the absence of withdrawal by defense counsel, **such disclosures would at least have enabled the trial court to inquire on the record into Smith's understanding of the agreement and to give appropriate advice concerning the extent to which the agreement limited Smith's procedural options**.

State v. Sexton, 709 A.2d 288 (1998): "Counsel ineffective in murder/manslaughter case. The state knew or should have known, however, that the gun was registered to the victim's grandmother. The state failed to disclose this evidence and the defense failed to pursue the evidence even though they were on notice that the gun may have belonged to the grandmother and present it to the jury. **Court found both prosecutorial misconduct and ineffective assistance which created the "real potential for an unjust result"**.

***State v. Scott*,** 602 N.W.2d 296 (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."**

United States v. Marshank, 777 F. Supp. 1507 (N.D. Cal. 1991). Government's collaboration with defendant's attorney during investigation and prosecution of drug case violated defendant's Fifth and Sixth Amendment rights and required dismissal of the indictment. Counsel advised him to provide some incriminating information as a showing of good faith when the government had not even been aware of the information. Ultimately, defendant retained separate counsel. The court held that **the government's conduct created a conflict of interest between defendant and counsel and 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 and the court are unaware."** *Id.* at 1519. Moreover, the government here assisted in efforts to hide the conflicts from defendant. "In light of the astonishing facts of this case, it is beyond question that [counsel's] representation of [defendant] was rendered completely ineffectual and that the government was a knowing participant in the circumstances that made the representation ineffectual." *Id.* at 1520

Nixon v. State, 572 So. 2d 1336, "The United States Supreme Court has stated that "[o]f 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. … Similarly**, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable.** No specific showing of prejudice was required in *Davis v. Alaska*, 415 U.S. 308 (1974), because the petitioner had been "denied the right of effective cross-examination" which "'would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.' " Id., at 318 (citing *Smith v. Illinois*, 390 U.S. 129, 131 (1968), and *Brookhart v. Janis*, 384 U.S. 1, 3 (1966). … **[T]he Supreme Court has made it**

clear that the defendant, not the attorney, is the captain of the ship. See Jones; Brookhart. Although the attorney can make some tactical decisions, **the ultimate choice as to which direction to sail is left up to the defendant**. **The question is not whether the route taken was correct; rather, the question is whether Nixon approved of the course. Nixon himself must bear the responsibility for that decision**. *Cf. Faretta*, 422 U.S. at 834 ("The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction … And **although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of 'that respect for the individual which is the lifeblood of the law.'"**) (quoting *Illinois v. Allen*, 397 U.S. 337, 350-51 (1970) (Brennan, J., concurring.) … **A defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction or death sentence suffers from an obvious conflict of interest. Such an attorney, like unwanted counsel, " 'represents' the defendant only through a tenuous and unacceptable legal fiction."** 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 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.