**IN THE DISTRICT/SUPERIOR COURT OF THE STATE OF ALASKA**
**THIRD JUDICIAL DISTRICT IN HOMER**

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| DAVID HAEG, | ) |
| | ) |
| Applicant, | ) |
| | ) |
| vs. | ) |
| | ) POST-CONVICTION RELIEF |
| STATE OF ALASKA, | ) CASE NO. 4MC-09-00005 CI |
| | ) and 3HO-10-00064CI |
| Respondent. | ) |
| _____ | ) |

Trial Case No. 4MC-04-00024CR

**3-19-10 OPPOSITION TO MOTION TO DISMISS APPLICATION FOR POST-CONVICTION RELIEF**

VRA CERTIFICATION: I certify this document and 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 and disclosure of the information was ordered by the court.

COMES NOW Applicant, DAVID HAEG, in the above referenced case and hereby files this Opposition to Motion to Dismiss. Haeg again formally protests Judge Murphy ruling on this case, who, as Haeg's Motion to Disqualify for Cause proves, is a named defendant, is a material witness, and has a direct conflict of interest. This opposition is supported by the attached 9-19-08 Petition for Rehearing.

## I. Haeg's Application Is Not Deficient

The State's first claim is since Haeg failed to provide affidavits of counsel his application is deficient and must be dismissed. The State quotes the exact standards:

> "We have repeatedly held that a defendant asserting ineffective assistance of counsel must provide the court with an affidavit from the former attorney, addressing the various claims of ineffective representation, **or must explain why such an affidavit can not be obtained.**" Peterson v. State, 988 P.2d 109 AK (1999)
>
> "[A]n affidavit from the attorney in the underlying criminal case is an essential component of a prima facie case for post-conviction relief that alleges ineffective assistance of counsel. Without the required affidavit **(or an explanation of why an affidavit cannot be obtained)**, the superior court may dismiss the application for failing to plead a prima facie case." Puisis v. State, 2003 WL 22800620 (AK App. 2003)

Yet, incredibly, the State's motion to dismiss then states:

**"Haeg's affidavit merely states that he has no affidavits as the attorneys refused to provide them when asked."** [See also Haeg's PCR application affidavit]

This means Haeg irrefutably satisfied the very law the State cites that Haeg must meet to plead a "prima facie" case of ineffective assistance of counsel.

After stating under oath that the attorneys refused to provide an affidavit when asked, Haeg asked in the same affidavit:

> **"I, David S. Haeg, request a hearing so that I may subpoena attorneys and other witnesses, who have refused to provide affidavits, to prove facts in A through EEE. Nichols v. State, 425 P.2d 247 (AK 1967); Steffensen v. State, 837 P.2d 1123 (AK 1992)"**

See also State v. Jones, 759 P.2d 558 (AK App. 1988):

> "Jones' most notable omission in the present case was his failure to include an affidavit from his trial counsel. It will seldom be possible to decide whether an attorney made a sound tactical choice without knowing what motivated counsel's actions. Thus, in order to establish a *prima facie* case of ineffective assistance of counsel, it will ordinarily be necessary for the accused to submit an affidavit of trial counsel addressing this issue. **This requirement should not be enforced inflexibly.** In some cases, the accused may personally be aware of specific facts ruling out the possibility of sound tactical choice, or there may be other evidence available to rule out that possibility. **In other cases, trial counsel may be uncooperative; the accused should then be allowed to allege on information**

**and belief the absence of sound tactical choice, explaining why an affidavit of counsel cannot be filed and requesting an opportunity to compel counsel's testimony at a formal deposition."**

Haeg alleged on information and belief the absence of sound tactical choice by his attorneys and again asks he be provided his right to compel his attorneys and uncooperative witness testimony at a formal deposition so he may cross-examine them to prove (1) the absence of sound tactical choice, (2) conflicts of interest, and/or (3) erroneous advice about rights and clear points of law after specific inquiry. Haeg wasn't entitled to error free assistance – he was entitled to counsel free of a conflict of interest and/or that provided correct advice about rights and law after specific inquiry.

## II. Haeg Cited To The Record In Support Of His Allegations Of Ineffective Assistance Of Counsel

The State's second claim is that since Haeg failed to cite to the specific instances which he believes resulted in ineffective assistance his application is deficient and must be dismissed. Haeg's 43-page PCR memorandum, which supports the 57 paragraphs of facts, specifically, and in great detail, cites to the specific instances that support his allegations of ineffective counsel. There is absolutely no mistaking what paragraphs of facts apply to Haeg's ineffective counsel claim. [See Haeg's PCR memorandum]

Most telling is section III of the State's motion to dismiss:

**"Haeg appears to take issue with Cole's decisions and trial strategy as set forth in paragraphs G, H, M, T, and V. Haeg next appears to argue that Robinson's was ineffective in paragraphs W, Y, CC, EE, FF, GG, HH, II, KK, LL, MM, NN, and QQ.**

In other words the State first makes the claim in section II they cannot tell which paragraphs of fact support Haeg's ineffective assistance of counsel claim but then in section III claim they know exactly which paragraphs of fact support the ineffective assistance claim and know the exact attorney Haeg claims gave the ineffective assistance.

## III. Haeg's Allegations Of Ineffective Assistance Of Counsel Are NOT Tactical Decisions By Counsel And ARE Subject To Claims Of Ineffective Assistance.

The State's third claim is that all of Haeg's claims of ineffective assistance of counsel were "tactical" decisions by counsel. Haeg's claims are that his counsel had conflicts of interest and/or erroneously informed Haeg about rights and/or law after Haeg specifically inquired. Overwhelming caselaw proves that either a conflict of interest or erroneous advice after specific inquiry prevents claiming the decisions were "tactical".

> **"[P]rejudice is presumed when counsel is burdened by an actual conflict of interest.** In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)
>
> **"[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel.** Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Because it is in the simultaneous representation of conflicting interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)
>
> "[I]n a case of joint representation of conflicting interests the evil – it bears repeating – is in what the advocate finds himself compelled to refrain from doing….It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but **even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the**

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

**"Defense counsel** must perform at least as well as a lawyer with ordinary training and skill in the criminal law and **must conscientiously protect his client's interest, undeflected by conflicting considerations."** Risher v. State, 523 P.2d 421 (AK 1974)

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

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

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

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

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

Haeg's application cannot be dismissed without evidentiary hearings to compel the attorneys' testimony to decide Haeg's claims of conflicts of interest and erroneous counsel after specific inquiry. The State, citing Steffensen v. State, proves this:

"[W]hen the superior court decides whether the defendant's [PCR] petition states a prima facie case for relief, **the superior court is obliged to view the factual allegations of the defendants' petition in the light most favorable to the defendant."** See also Lott v. State, 836 P.2d 371 (AK App. 1992)

More disturbing is that the State cites to the following quote from Valcarcel v. State, 2003 WL 22351613 (AK App. 2003) to support their argument:

> "[T]he decisions on what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and all other strategic and tactical decisions are the exclusive province of the lawyer **after consultation with the client."**

Haeg's claim is when his attorneys "consulted" with him they gave erroneous advice after specific inquiry and/or had conflicts of interest – advising that the State telling and inducing Haeg to do exactly what he was later charged with was "not a legal defense" (when it is); that nothing could be done about perjury on all warrants and at trial to falsify evidence to Haeg's guide area to support guide charges (when something could be done); that Haeg had no right to a hearing after the State seized the property Haeg used to provide a livelihood (when Haeg had a right to a hearing and one was even required "within days if not hours"); that the State could provide Haeg with immunity to compel a statement and then prosecute Haeg (when they can't); that the State could use the compelled statement against Haeg (when they can't); that nothing could be done when the State broke a plea agreement after Haeg had already given up a whole years income in reliance upon it (when something could have been done); that Haeg had to testify at trial because the State was going to present only the detrimental parts of Haeg's compelled statement (when the State could not use the statement but did); and that there was no way to enforce witness subpoenas (when there is). The forgoing directly destroyed the business Haeg and wife had put everything in life into. An evidentiary hearing including cross-examining the attorneys under oath will prove the forgoing.

Exactly what court or defendant would agree they were getting effective assistance of counsel if their own attorney were giving them false counsel? No one.

Exactly what court or defendant would agree they were getting effective assistance of counsel if their own attorney had an interest in direct conflict with theirs? No one.

The State is actually claiming it was a valid "tactic" for Haeg's own attorneys to have conflicts of interest, erroneously advise Haeg after specific inquiry, and/or to sabotage Haeg's case to help the State obtain a conviction and severe sentence. This is an incredibly dangerous and effective conspiracy because the only one who knows enough of law and rule to recognize the "sell out" are the attorneys who are in on the conspiracy.

## IV. Osterman Provided Ineffective Assistance and Harmed Haeg's Appeal

The State argues that attorney Osterman refusing to allow Haeg to participate in writing his brief and Osterman's fee structure changing did not impact Haeg's appeal as Haeg was allowed to conduct his appeal on his own. The State fails to discuss the main claims against Osterman: his conflict of interest and erroneous counsel after specific inquiry - and that this forced Haeg to conduct his appeal without an attorney.

Osterman first told Haeg that the "sellout" of Haeg by his first two attorneys (Cole and Robinson) "was the worst I have ever seen", "when the Court of Appeals sees the sellout they will immediately reverse your conviction", and that **"you didn't know your own attorneys were goanna load the dang dice so the State would always win."** Then, just before Haeg's brief is due, **"I can't put anything of the sellout in your brief because I can't do anything that will affect the livelihoods of your first attorneys."**

Haeg's inability to overturn his conviction on his own is irrefutable proof that his appeal was harmed by Osterman's conflict of interest in not conducting Haeg's appeal.

After spending $100,000 on three different attorneys who all sold them out who would have the trust and money to hire or accept a fourth? Osterman's actions irrefutably destroyed the last of Haeg's trust in attorneys and forced Haeg to conduct his appeal without one. Who would agree that, needing a heart operation, a patient received an effective operation if he operated on himself because he could not trust his doctors?

## V. Haeg Specifically Alleged how his Conviction and Sentence Resulted in Numerous Violations of U.S. and State Constitutions

The State claims Haeg failed to allege "specifically" how his conviction and sentence violated constitutional rights. Yet Haeg's application specifically states:

**"EEE.** A summary of the basic rights that Haeg's attorneys deprived him of when Haeg specifically asked to be advised of these basic rights and his attorneys affirmatively misinformed him**:**

(1) **The right to due process,** when Haeg's attorneys told him could be prosecuted for crimes referred to in his compelled statement; when Haeg's attorneys told him it was not a legal defense that the SOA told and induced him to do exactly what he was charged with; there was nothing he could do about the SOA testifying under oath evidence was found where Haeg guided when it was not – when this specific evidence location was their justification for the charges against Haeg; there was no right to a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood; there was no right to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted; that there was nothing that prevented hunting/guiding charges; there was nothing that could be done when the SOA broke the PA after Haeg had given a year of guiding for it; there was nothing Haeg could do about the SOA using his immunized statement to prosecute him; there was nothing Haeg could do about his attorneys not obeying subpoenas; and that Haeg could not appeal his sentence.

(2) **The right against unreasonable searches and seizures,** when Haeg's attorneys said nothing could be done about the SOA materially falsifying search and seizure warrants/affidavits and then using the false warrants to search Haeg's home and seize Haeg's property.

(3) **The right that no warrants shall issue, but on probable cause, supported by oath or affirmation,** when Haeg's attorneys told him the SOA could use false oaths to obtain warrants.

(4) **The right against self –incrimination,** when Haeg's attorneys told him that he could be prosecuted after being given immunity to compel a statement, when they told him the compelled and immunized statement could be used to prosecute him, and when Haeg's compelled and immunized statement was used to prosecute Haeg.

(5) **The right to compel witnesses in your favor,** when Haeg's attorneys told him nothing could be done when Cole failed to appear when subpoenaed.

(6) **The right against double jeopardy,** when Haeg's attorneys told him the SOA did not have to give him credit for the year of livelihood given up after they had promised to give Haeg credit for it.

(7) **The right to be informed of the nature and cause of the accusation,** when Haeg's attorneys failed to tell Haeg the SOA, in order forfeit property, had to include the intent to forfeit property in the charging information - which was never done.

(8) **The right to the equal protection of the laws,** when Haeg's attorneys failed to tell Haeg that AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) prohibited Haeg from being prosecuted for crimes referred to in his compelled statement and when Haeg's attorneys told Haeg WCP law did not protect Haeg from hunting/guiding violations.

(9) **The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,** when Haeg's attorneys told him the SOA could do all of the above."

The above proves Haeg alleged "specifically" how his conviction and sentence violated constitutional rights. He also specifically alleged how the conflict of interest and erroneous advice after specific inquiry violated the right to counsel. [See PCR application]

The State claims Haeg offered nothing to support his claims. Haeg offered 310 pages of exhibits and eight affidavits to support his claims. [See PCR application] Also, to support his claims, Haeg must be given the opportunity to compel his attorneys' testimony at a formal deposition. See State v. Jones, 759 P.2d 558 (AK App. 1988)

The State claims the Court of Appeals rejected Haeg's claims of constitutional violations. Yet the Court of Appeals specifically stated:

> "Haeg claims that his attorneys provided ineffective assistance of counsel. We have consistently held that we will not consider claims of ineffective assistance for the first time on appeal because, in most instances, the appellate record is inadequate to allow us to meaningfully assess the competence of the attorney's efforts. **Haeg's case is typical - that is, the appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts. Haeg's claim of ineffective assistance must be raised in the trial court in an application for post-conviction relief under Alaska Criminal Rule 35.1."**

Ineffective assistance of counsel is a constitutional violation. McMann v. Richardson, 397 U.S. 759 (U.S. Supreme Court 1970) Thus the Court of Appeals has not rejected Haeg's claims of constitutional violations. Finding ineffective assistance almost always proves other constitutional violations. U.S. v. Cronic, (U.S. Supreme Court 1984) See list of rights above that Haeg claims were violated because of ineffective assistance.

The State claims the Court of Appeals rejected Haeg's claim the amended information was only possible due to Haeg's immunized statement - as there was sufficient probable cause charges without Haeg's statement because the State could use Zellers and Gibbens statements to provide the probable cause needed. But Haeg claims the ineffective assistance resulted in the forbidden use of Zellers and Gibbens' statements – that they were irrefutably tainted by, and/or obtained with, Haeg's statement. Zellers and his attorney Fitzgerald testified that the State, by using Haeg's immunized statement against Zellers, obtained Zellers statements and testimony. Gibbens was the officer who took Haeg's immunized statement – forever tainting him. In other words, if Haeg's statement was removed so must Zellers and Gibben's – leaving no probable cause for the

charges and proving ineffective assistance. In addition, prosecutor Leaders was impermissibly both the prosecutor who took Haeg's immunized statement and who later prosecuted Haeg – also proving ineffective assistance. See the following caselaw:

**State of Alaska v. Gonzalez, 853 P2d 526 (AK Supreme Court 1993)**

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

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

**First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial.** The second problem, however, is more troublesome. In a case such as North, **where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise.** Id. at 863. In such cases, a court would face the insurmountable task of determining the extent and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.

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

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

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that **"we**

**cannot escape the conclusion that the testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case."** McDaniel, 482 F.2d at 312. **This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.**

Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' **we conclude that use and derivative use immunity is constitutionally infirm**."

## United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

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

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

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

Current AS 12.50.101 and State of Alaska v. Gonzalez prove Haeg's attorneys were wrong – once Haeg's statement was compelled with immunity he could never be prosecuted. [See AS 12.50.101 and State of Alaska v. Gonzalez] Additionally, even if Alaska law did allow prosecution, use of Haeg's immunized statement was not allowed no matter how much other evidence or testimony there was:

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

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

## VI. Haeg's Newly Discovered Evidence Requires Vacating his Conviction and Sentence in the Interest of Justice

The State claims "Haeg advances nothing that begins to suggest he is entitled to relief under this [newly acquired evidence] standard" and that they have "no idea" what new evidence Haeg is referring to. Yet in his application Haeg stated under oath:

> **"O.** On November 8, 2004, over Cole's objection, Haeg submitted to the Court and SOA a written statement of what his PA testimony would be the next day in McGrath. This statement explained what the SOA had told Haeg just before Haeg's participation: that the WCP was in jeopardy of termination if more wolves were not taken; that Haeg had to take more wolves so this did not happen; that if Haeg took wolves outside the area to claim they were taken inside the area; that they could not believe people were not poisoning wolves; what kind of poison worked best, and where to obtain it. The statement also evidenced Haeg had done all required for the PA. [Exhibit 10]

**U. Sometime after November 8, 2004 Haeg's statement, documenting the SOA had told and induced him to do what they then prosecuted him for, was removed from the Court record while proof documenting it was submitted remained in the record.** [Exhibit 13] **Years after, when discovered, Haeg asked the Court of Appeals to reconstruct the record with the statement before his appeal brief was due. Although the SOA did not oppose, the Court of Appeals, for reasons never explained, failed to do so.**

## EVIDENCE TAMPERING AND PREJUDICE

### A. Facts

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

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

### B. Prejudice

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

## CUMULATIVE INEFFECTIVENESS AND PREJUDICE

### B. Cumulative Error and Prejudice

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

inconsequential to Haeg's life – as by law it could not affect his business – the conviction of hunting guide crimes destroyed Haeg's life.

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

The most compelling evidence of conspiracy in Haeg's prosecution - other than Robinson and Cole working together to avoid Cole's subpoena, **everyone working together to falsify evidence locations and removing evidence out of the court record** … "Truth is best discovered by powerful statements on both sides of the question." U.S. Supreme Court, United States v. Cronic. (1) Haeg's attorneys allowed the SOA, unchallenged, to make the powerful and false statement that Haeg took wolves where he guides so he must be charged and convicted of guiding violations. **(2) Haeg's attorneys falsely told Haeg he could not make the powerful and truthful statement that the SOA told and induced him to take wolves outside the area but claim they had been taken inside the area…**

**Haeg's own attorneys and the SOA worked hand in hand to destroy and conceal true evidence;** to manufacture and publish false evidence; to systematically strip Haeg of numerous basic constitutional defenses and weapons…"

As the above shows Haeg advanced a great deal that he is entitled relief under the newly discovered evidence standard and that it is perfectly clear what the "new evidence" is – new evidence that a "complete" defense to the charges Haeg faced had been irrefutably removed out the official record, upon which Haeg's case was decided and appealed. See PCR exhibits 10, 13, and caselaw below:

**U.S. Supreme Court SORRELLS v. U.S., 287 U.S. 435 (1932)**

**"When the criminal design originates, not with the accused, but is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor.**

The protection of its own functions and the preservation of the purity of its own temple belongs only to the court. It is the province of the court and of the court alone to protect itself and the government from such prostitution of the criminal law. **The violation of the principles of justice by the entrapment of the unwary into crime should be dealt with by the court no matter by whom or at what stage of the proceedings the facts are brought to its attention.**

**Proof of entrapment, at any stage of the case, requires the court to stop the prosecution, direct that the indictment be quashed, and the defendant set at liberty."**

**U.S. Supreme Court JACOBSON v. UNITED STATES, 503 U.S. 540 (1992)**

"The prosecution failed, as a matter of law, to adduce evidence to support the jury verdict that Jacobson was predisposed, independent of the Government's acts and beyond a reasonable doubt, to violate the law by receiving child pornography through the mails. In their zeal to enforce the law, **Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute.**

Because the Government overstepped the line between setting a trap for the "unwary innocent" and the "unwary criminal," Sherman v. United States, 356 U.S. 369, 372 (1958), and, as a matter of law, failed to establish that petitioner was independently predisposed to commit the crime for which he was arrested, we reverse the Court of Appeals' judgment affirming his conviction.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, and with whom JUSTICE SCALIA joins except as to Part II, dissenting.
**[Keith Jacobson] needed no Government agent to coax, threaten, or persuade him; no one played on his sympathies, friendship, or suggested that his committing the crime would further a greater good. In fact, no Government agent even contacted him face to face."**

**U.S. Supreme Court. Mathews v. United States, 485 U.S. 58 (1988)**

"Even if the defendant in a federal criminal case denies one or more elements of the crime, **he is entitled to an entrapment instruction whenever there is sufficient evidence from which a reasonable jury could find entrapment -- a defense that has the two related elements of Government inducement of the crime, and a lack of predisposition on the defendant's part to engage in the criminal conduct.**

**As a general proposition, a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor.** *Stevenson v. United States*, 162 U. S. 313 (1896)

This right is so important that the failure to allow a defendant to present a theory of defense which is supported by sufficient evidence is reversible error. United States v. Felsen, 648 F.2d 681, 685-86 (10th Cir.), Reversed and remanded."

**Supreme Court of Alaska. Grossman v. State** 457 P.2d 226 Alaska 1969.

"It is plain enough that the underlying basis of entrapment is found in public policy, as discerned and announced by the courts. As Judge Learned Hand perceptively observed in United States v. Becker, 62 F.2d 1007, 1009 (2d Cir. 1933), **'The whole doctrine derives from a spontaneous**

**moral revulsion against using the powers of government to beguile innocent, though ductile, persons into lapses which they might otherwise resist.'**

In Sorrells v United States, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932), the majority opinion viewed entrapment as an implied statutory condition that one who has been entrapped shall not be convicted of violating the statute.

**It held that the determination in each case should focus on whether the particular defendant was predisposed to commit the crime or was an otherwise innocent person who would not have erred except for the persuasion of the government's agents. This permits a searching inquiry into the conduct and motivations of both the officers and the defendant, including the past conduct of the defendant in committing similar crimes, and the general activities and character of the defendant.**

Reversed and remanded."

**Supreme Court of Alaska. Batson v. State** 568 P.2d 973 Alaska 1977.

**"In Alaska we have recognized entrapment as a defense in criminal prosecutions.**

Under the Federal 'implied exception' theory, an entrapped defendant cannot be convicted and punished because what he did was not a crime; that is, he did not violate any statute because he comes within an implied exception to that statute. **From a procedural standpoint, once the defense of entrapment is raised, the prosecution must prove non-entrapment because it is only by so doing that the prosecution can prove that the defendant did not come within the implied exception and hence that he has committed a crime. Since application of the statute to the defendant is an essential element which must be proven to establish guilt, it follows in both logic and law that the standard of proof which must be satisfied on the issue of non-entrapment is the same as for any other essential element of the offense; proof beyond a reasonable doubt. Therefore, the 'Federal rule' provides that once the issue of entrapment has been raised, either by the defendant or in any other way, the defendant has met his burden and thereafter the burden is on the prosecution to disprove entrapment beyond a reasonable doubt."**

The removed court record specifically evidenced that Haeg, who had no criminal history whatsoever, was personally told by government officials just before he participated: (1) the first experimental Wolf Control Program was likely going to be shut down because it was so far it was ineffective; (2) that if this happened no other Wolf Control Programs would be started and that Alaska's moose resource, upon which many

Alaskans depended for food, would be jeopardized; (3) that Haeg, whom they told was one of the very best pilots and hunters, had to take more wolves so this didn't happen; and (4) that if Haeg had to take wolves outside the Wolf Control Program area to do this he should just mark them as being taken inside the Wolf Control Program area (exactly as Haeg was charged with doing). In other words the government told Haeg he was the "knight in shining armor" who had to single-handedly save the moose resource upon which so many Alaskans depended – "to further a greater good". See PCR exhibit 10.

On his own Haeg met the exact requirements for raising an entrapment defense according to the caselaw above. If the evidence had not been removed the State could not have prosecuted Haeg without first proving, beyond a reasonable doubt, they did not tell and induce Haeg to do what he was charged with doing - or that Haeg was predisposed with prior convictions. The State could not do either of these – but never had to because the evidence was removed - after Haeg, over his attorneys "counsel" it was not a legal defense and couldn't be used, placed it in the record anyway.

This is not "classical" newly discovered evidence that was never part of the record – this is newly finding that the official record was corruptly altered to remove a defense after it has been entered into evidence by a defendant who trusts it will remain there to protect him – who has no choice but to trust that the record will not be tampered with. In other words Haeg did all he was required to make this impregnable defense to the court – thereafter it was the courts duty to protect this defense upon which Haeg relied. If this defense was not protected Haeg's conviction must be overturned, primarily to punish the court for allowing Haeg's defense and the court record to be corrupted.

This is such shocking evidence of corruption there is no caselaw addressing the proper remedy when the official court record itself is altered to completely eliminate all trace of a mighty defense. The closest available:

> **Brady v. Maryland, 373 U.S. 83 (U.S. Supreme Court 1963)**
>
> "**Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.**
>
> In Pyle v. Kansas, we phrased the rule in broader terms:
> 'Petitioner's papers are inexpertly drawn, but they do set forth allegations **that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him.** These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody.'
>
> We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.
> **The principle of Mooney v. Holohan is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused.** Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." **A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant.** That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals."

> **Fajeriak v. State, 520 P.2d 795 (AK Supreme Court 1974)**
>
> **"The intimidation of defense witnesses so infects a subsequently procured conviction with unreliability that the practice has long been condemned as a transgression of constitutional proportions remediable by post-conviction relief. The facts as alleged require an evidentiary hearing in order to ascertain whether such intimidation occurred.**
>
> Pyle v. Kansas, 317 U.S. 213 S.Ct. (1942); Wagner v. United States, 418 F.2d 618 (9th Cir. 1969). Indeed, **the mere failure to disclose exculpatory witnesses' statements**

**deprives a criminal defendant of due process, and entitles him to post-conviction relief;** Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Guerrero v. Beto, 384 F.2d 886 (5th Cir. 1967); See generally Brady v. Maryland, 373 U.S. 83 S.Ct. (1963) **(holding that the deliberate suppression of material evidence favorable to the defense denies due process)**

[C]ourts have agreed that **proof of deliberate eavesdropping upon attorney-client communications automatically invalidates a conviction.** The United States Supreme Court implicitly adopted this rule in Black v. United States, where, upon learning that the defendant's conviction may have been procured in part by the use of information obtained during electronic eavesdropping upon the defendant's conversations with his attorney, the Court vacated the conviction, declining the government's invitation to remand to the District Court to determine whether the defendant had been prejudiced by these activities.

In light of this imposing array of authority, ordinarily a new trial will be a matter of right once the eavesdropping is proved.

**There will also have to be a new trial if the facts adduced at the evidentiary hearing confirm that the state intimidated potential material defense witnesses and prevented them from testifying. Any verdict so procured would be irremediably suspect, and could not therefore be allowed to stand. There can be no argument here that appellant must demonstrate prejudice, for there would be no possible way to gauge how the jury might have reacted to the testimony of the excluded witnesses."**

Evidence that should have prevented Haeg's prosecution, and even if prosecution were allowed, would have prevented devastating guide charges, **WAS REMOVED OUT OF THE OFFICIAL RECORD AFTER IT HAD BEEN PROPERLY ADMITTED.** It is more then possible Judge Murphy herself removed the evidence – intentionally and maliciously. This is a far greater injustice then mere prosecutors just intimidating **potential** witnesses or eavesdropping on attorney/client conversations. And what are the odds of Haeg's attorneys erroneously advising it wasn't a legal defense, and in the one instance Haeg overcame their false counsel and went ahead anyway with formally presenting the defense, it mysteriously disappears from the court record anyway? Anyone

reasonable would agree there must be a conspiracy involving Haeg's attorneys, prosecution, and/or court.

The State claims Haeg's application is barred by AS 12.72.020(1), which states that a PCR claim may not be brought if it is based upon the admission or exclusion of evidence. However, Haeg is not claiming evidence was admitted or excluded unjustly after a court considered arguments from both parties. Haeg's claims are ineffective assistance of counsel and that long after trial he "newly discovered" that his entrapment evidence, that had already been properly admitted and that was critical to his defense, had been corruptly removed out of the court record without his knowledge –preventing the court from considered it when deciding his trial, sentence, and/or appeal - when he had an absolute right to the irrefutable protection the evidence would have provided.

The State claims Haeg's application is barred by AS 12.72.020(2), which states a PCR claim may not be brought if the claim was, or could have been but was not, raised in a direct appeal from the proceeding that resulted in the conviction. Yet the Court of Appeals specifically held Haeg's claim of ineffective assistance of counsel could not be brought on direct appeal and must be brought up during PCR. And Haeg "newly discovered" the official record had been altered long after this could have been presented to the Court of Appeals – meaning neither claim was ever raised, and could not be raised, during direct appeal. These are Haeg's only PCR claims (other then his conviction and sentence violates the constitution – which is proven if he proves either of the other two claims), thus Haeg's application cannot be barred by AS 12.72.020(2)

The State claims Haeg's application is barred by AS 12.72.020(5), which states a PCR claim may not be brought if the claim was decided on its merits or on procedural grounds in any previous proceeding. As shown Haeg's claims were not, and/or could not, be decided on their merits or procedurally in a previous proceeding.

## VII. The Specific Facts Alleged in Support of Haeg's Claim for Relief Were Not Previously Addressed by the Court of Appeals in regard to Haeg's PCR Claims

The State claims that Haeg's PCR application contains 57 paragraphs of facts and that "[m]ost of these issues were previously raised during Haeg's appeal and rejected by the Court of Appeals which again makes it impossible to figure out what specific factual allegations support Haeg's claim for post-conviction relief." The State goes on to cite factual paragraphs they claim are similar to facts Haeg presented to the Court of Appeals – making the fantastic claim Haeg can no longer use these facts to prove other claims. Yet the exact same facts may be used to prove entirely different claims, as Haeg is now doing – or they that may prove something after the required testimony and cross-examination of counsel – which Haeg is seeking.

### 1. The State claims the Court of Appeals "dealt" with the falsified wolf kill locations.

What the Court actually stated is that:

> "Haeg claims that Gibbens lied when he said in his affidavit that he found evidence in unit 19C that Haeg had taken wolves. **But Haeg [actually Haeg's attorneys] did not challenge the search warrant affidavit prior to trial. Because of this, his claim is forfeited."**

Yet if Haeg claims that he asked his attorneys before trial what could be done about the false affidavits and Haeg's attorneys erroneous told him "nothing" and did nothing, as Haeg's PCR application claims, the never addressed falsified evidence locations are now incredibly potent evidence of ineffective assistance of counsel.

In addition, Haeg's main claim about the falsified evidence locations, that Trooper Gibbens knowingly falsified the evidence locations during his testimony to Haeg's judge and jury, and that this alone required Haeg's conviction to be overturned, was disturbingly never "dealt" with by the Court of Appeals – even after Haeg filed a Petition for Rehearing. See Court of Appeals decision and Haeg's attached 9-19-08 Petition for Rehearing. In other words the Court of Appeal never "dealt" with the fact the State knowingly falsified evidence locations and, in any event, this cannot prevent Haeg from using the same facts to prove ineffective assistance of counsel.

**2. <u>The State claims the Court of Appeals "addressed" the fact the State did not give Haeg a hearing "within days if not hours" of airplane seizure.</u>**

The Court of Appeals disturbingly failed to apply the primary caselaw Haeg claimed supported this claim of error, <u>Waiste v. State</u>, 10 P.3d 1141 (AK Supreme Court 2000) – even after Haeg again asked they do so in a Petition for Rehearing. See Court of Appeals decision and Haeg's attached 9-19-08 Petition for Rehearing.

Thus the Court of Appeal never "addressed" the fact the State did not provide a hearing after plane seizure and, in any event, this cannot prevent Haeg from using the same facts to prove ineffective assistance. Haeg claims he asked if he could get a postseizure hearing to protest the false warrants and being put out of business before

being charged and his counsel advised the law did not allow one – when one was not only allowed but was required "within days if not hours". Waiste v. State The fact Haeg never received a hearing is now incredibly compelling proof of ineffective assistance.

**3. The State claims the Court of Appeals "dealt" with the fact that even if Haeg's immunized statement were not used Zellers and Gibbens' statements could still have been used to convict Haeg.**

As shown above in section V., if Haeg's compelled statement could not be used neither could Zellers or Gibbens' - making Haeg's attorneys' advice nothing could be done, after specific inquiry, ineffective counsel. The Court of Appeals also ruled "Haeg did not raise this issue at trial" and later that, when Haeg's attorneys, in a reply brief, protested the use of Haeg's statement this was not allowed, holding:

> **"A trial court can properly disregard an issue first raised in a reply to an opposition. If Haeg wanted a ruling on this issue, he was obligated to file a new motion asking for one. Because he did not ask for a ruling, he [Haeg's attorneys] has waived his claim."**

The Court of Appeals clearly indicates that when Haeg's attorneys protested his immunized statement use in a "not allowed" reply brief, Haeg's attorneys gave him ineffective assistance. In addition, as shown above in section V., the law does not allow Haeg to be prosecuted after being compelled to give a statement and, even if it did, his statement could not be used no matter how much other evidence or testimony there was.

In other words the Court of Appeal never correctly "addressed" the fact the State prosecuted Haeg after he was compelled to give a statement – and then irrefutably used his statement to do so. And, even if they did, this cannot prevent Haeg from using the same facts to prove ineffective assistance of counsel, as Haeg claimed he asked if his

compelled statement could be used against him and his counsel told him it could – when Haeg couldn't even be prosecuted let alone have his statement, or those tainted by his statement, used to do so. The fact that Haeg's, Zellers, and Gibbens' statements were all used against Haeg is now incredibly compelling proof of ineffective assistance.

**4. The State claims the Court of Appeals "ruled" against Haeg's claim that he could not be prosecuted for guiding violations.**

As explained above, Haeg's discovery of the sabotage to the court recorded "complete" defense to all charges, especially to guide violations, only occurred after it was far to late for the Court of Appeals to consider or rule on it. So how could the Court of Appeals have "ruled" against Haeg when Haeg's claim had yet to be discovered?

**5. The State claims the Court of Appeals "found" that Haeg was killing wolves with an "intent" to eliminate them within his guide use area.**

As already explained above, Haeg's discovery of the sabotage to his defense to all charges, which specifically evidenced Haeg's "intent" in killing the wolves was, at the governments suggestion and inducement, to make the Wolf Control Program effective so it would not be shut down permanently, only occurred after it was far to late for the Court of Appeals to rule on it. So how could the Court of Appeals have correctly "found" that Haeg was killing wolves with "intent" to eliminate them within his guide area when they were corruptly deprived of incredibly powerful and pertinent evidence? Especially when this corruption is combined with the corruption that the State admitted their trial testimony to prove Haeg's "intent", that Haeg took wolves in his guide use area to benefit his guide business, was false? After this corruption no one could have "found" the truth.

If the Court of Appeal never properly "found" that Haeg took wolves with intent to eliminate them within his guide area how can this prevent Haeg from using the same facts to prove ineffective assistance of counsel? Haeg (with no criminal history) asked if he could use the fact government officials told and induced him to take wolves outside the Wolf Control Program area but claim they had been taken inside, exactly as he was later charged with doing - and his counsel told him this was not a legal defense – when it irrefutably was. The fact the Court of Appeals specifically "found" that Haeg's "intent" was to kill wolves in his guide area is now incredibly compelling evidence Haeg's case needs to be overturned because of the newly found evidence and because of the ineffective assistance of Haeg's attorneys erroneously advising him that the government telling and inducing him was not a legal defense.

**Haeg's Testimony at Trial**

The State claims Haeg's testimony that he killed wolves outside the Wolf Control Program area "is sufficient to uphold Haeg's conviction and deny this application."

Haeg, under the "newly discovered evidence" rule, claims that a defense, which prevented him from being convicted even if he took wolves outside the Wolf Control Area, was corruptly removed out of the record after it had been admitted and before it could be considered by either trial or appellate court, now making Haeg's subsequent trial testimony incredibly compelling evidence Haeg's conviction should be overturned.

Haeg claims that, after specific inquiry, his attorneys told him only the detrimental parts of his immunized statement would be used against him at trial and Haeg had to testify at trial to bring in the good parts. This false advice after specific inquiry makes

Haeg's subsequent trial testimony incredibly compelling evidence of ineffective assistance of counsel - instead of evidence negating it.

After Haeg was given immunity to compel a statement AS 12.50.101 and State of Alaska v. Gonzalez prevented him from being prosecuted, when his attorneys told him he could be – proving ineffective assistance of counsel and proving the State's claim false.

The argument for devastating guide charges was Haeg's taking wolves where he guided proved "intent" to benefit his guide business. Yet afterward the State admitted falsifying all wolf kills to Haeg's guide area to support guide charges instead of entrapment or Wolf Control Program violations. Haeg's actions were no crime because of what the State told him and, even had they not, could only have been a Wolf Control Program violation without the State's false testimony. Haeg never testified he was guilty of guide charges. It's not first-degree murder just because a State Trooper admits killing someone– "intent" may prove justification, self-defense, accident, entrapment, etc.

## CONCLUSION

Every single reason the State has given for dismissing Haeg's application has been proven to be completely false. Haeg's PCR application cannot be dismissed at this point in the proceedings because he has proved a prima facie case – his claims of conflict of interest and/or erroneous advice of counsel after specific inquiry, if true, are by all ruling courts automatic ineffective assistance of counsel. [See Strickland, Cuyler, Holloway, Risher, Kimmelman, Smith, Beasley, Wiggins, and Arnold above] Although Haeg has not provided affidavits of counsel he provided the required alternative, he explained why he could not get affidavits of counsel – counsel refused to provide affidavits when asked.

Haeg then asked for the required opportunity to compel counsels' testimony at a formal deposition. Haeg's claims of ineffective assistance and newly discovered evidence were never addressed by the Court of Appeals; the State's motion itself proves they know which facts support Haeg's claims; and the new evidence requires a new trial.

Unlike the State's claim, Haeg's application is not required to prove or demonstrate at this stage in the proceedings that his counsel was ineffective [see Lott and Jones]. Haeg only need make claims that, if true, would prove his counsel was ineffective, as he has. It is during the next stage in the proceedings, the evidentiary hearings, that Haeg is required to prove his claims and the State can refute. [See AK Rule of Crim. Proc. 35.1(g)] Haeg specifically cited to the record to support his claims.

See also Alaska Rule of Criminal Procedure 35.1(f)(1):

> **"In considering a pro se application the court shall consider substance and disregard defects of form…"**

All courts have held that without hearing from the attorneys it is virtually impossible to prove if their decisions and actions were "tactical" or ineffective. If Haeg is denied his constitutional right to compel the witnesses in his favor (the attorneys) it is likely it will be ruled he didn't prove his case. In other words the State is capitalizing on the refusal by Haeg's attorneys to provide affidavits to perversely claim Haeg's case should be dismissed before Haeg can present the attorney evidence and testimony most needed to make his case – after the State successfully argued on Haeg's direct appeal the current record was too "limited" to decide and the Court of Appeals agreed:

> **"[T]he appellate record is inadequate to allow us to meaningfully assess the competence of Haeg's attorneys' efforts."**

The State now unbelievably argues the exact opposite of their prior successful argument – that the record, which remains unchanged since the Court of Appeals decided is was not developed enough to do so, is now developed enough to dismiss Haeg's ineffective assistance claim - so the record will not be developed with further testimony. The State is giving conflicting testimony to impermissibly end Haeg's case before Haeg can require the attorneys to develop, with their testimony, adequate proof of an incredible and hard-to-prove injustice: That Haeg's attorneys gave him erroneous advice after specific inquiry to "waive" or deprive Haeg of nearly every constitutional right and/or their interests were in conflict with Haeg's. The State is covering up this fundamental breakdown in justice by baldly claiming, without any proof, it was all legitimate "tactics" by Haeg's counsel – to prevent any inquiry into why Haeg's counsel acted as they did.

Alaska Supreme Court in Lanier v. State, 486 P.2d 981 (AK 1971):

> "The United States Supreme Court has been chary in finding waivers of fundamental constitutional rights. On the issue of whether counsel could effectively waive the right, the Court said:
>
> The classic definition of waiver enunciated in Johnson v. Zerbst -**'an intentional relinquishment or abandonment of a known right or privilege'-furnishes the controlling standard.** If a habeas applicant, **after consultation with competent counsel** or otherwise, **understandingly and knowingly (waived his rights), then it is open to the federal courts on habeas to deny him all relief.**
>
> **The implication is quite strong that, as between the attorney and the client, the client must understandingly and knowingly waive the right involved."**

Did Haeg knowingly "waive" the following fundamental constitutional rights?

**(1) The right to due process,** when Haeg's attorneys told him could be prosecuted for crimes referred to in his compelled statement; when Haeg's attorneys told him it was not

a legal defense that the SOA told and induced him to do exactly what he was charged with; there was nothing he could do about the SOA testifying under oath evidence was found where Haeg guided when it was not – when this specific evidence location was their justification for the charges against Haeg; there was no right to a prompt hearing to contest the seizure and deprivation of property he used as the primary means to provide a livelihood; there was no right to bond out the property, that he used as his primary means to provide a livelihood, before being charged, prosecuted, or convicted; that there was nothing that prevented hunting/guiding charges; there was nothing that could be done when the SOA broke the PA after Haeg had given a year of guiding for it; there was nothing Haeg could do about the SOA using his immunized statement to prosecute him; there was nothing Haeg could do about his attorneys not obeying subpoenas; and that Haeg could not appeal his sentence.

**(2) The right against unreasonable searches and seizures,** when Haeg's attorneys said nothing could be done about the SOA materially falsifying search and seizure warrants/affidavits and then using the false warrants to search Haeg's home and seize Haeg's property.

**(3) The right that no warrants shall issue, but on probable cause, supported by oath or affirmation,** when Haeg's attorneys told him the SOA could use false oaths to obtain warrants.

**(4) The right against self –incrimination,** when Haeg's attorneys told him that he could be prosecuted after being given immunity to compel a statement, when they told him the compelled and immunized statement could be used to prosecute him, and when Haeg's compelled and immunized statement was used to prosecute Haeg.

**(5) The right to compel witnesses in your favor,** when Haeg's attorneys told him nothing could be done when Cole failed to appear when subpoenaed.

**(6) The right against double jeopardy,** when Haeg's attorneys told him the SOA did not have to give him credit for the year of livelihood given up after they had promised to give Haeg credit for it.

**(7) The right to be informed of the nature and cause of the accusation,** when Haeg's attorneys failed to tell Haeg the SOA, in order forfeit property, had to include the intent to forfeit property in the charging information - which was never done.

**(8) The right to the equal protection of the laws,** when Haeg's attorneys failed to tell Haeg that AS 12.50.101 and State of Alaska v. Gonzalez, 853 P2d 526 (1993) prohibited Haeg from being prosecuted for crimes referred to in his compelled statement and when Haeg's attorneys told Haeg WCP law did not protect Haeg from hunting/guiding violations.

**(9) The right that no state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal**

**protection of the laws,** when Haeg's attorneys told him the SOA could do all of the above.

**(10) The right to assistance of counsel,** when Haeg's attorneys gave him erroneous advice after specific inquiry to deprive Haeg of the fundamental constitutional rights above.

It is obvious that when the false counsel Haeg received is considered he did not understandingly, knowingly, and/or intelligently "waive" the above rights and thus did not receive a constitutional trial. Removing evidence that the State asked and induced Haeg and replacing it with false evidence that Haeg took wolves where he guides **completely** changed the evidentiary picture from the State was fraudulently falsifying data needed to justify the Wolf Control Program to Haeg was a rogue guide out to feather his own nest.

Haeg's third attorney Osterman put it best, before he said he could not do anything that would affect the livelihoods of Haeg's first two attorneys: **"You didn't know your attorneys were goanna load the dang dice so the State would always win."**

One time Haeg overcame his "sell out" and, over his attorneys' objections it wasn't legal and couldn't be done, placed in the record evidence he had been told and induced by the State to do what he was then charged with doing – to make the Wolf Control Program seem effective and continued. Yet even though he prevailed over his attorneys false counsel the court record was then altered, in effect doing the same exact thing as the false counsel unsuccessfully attempted – hiding that the State was intentionally and actively falsifying the Wolf Control Program data to justify its existence. This was exactly what the animal rights activists were trying, in vain, to prove

in court. The same evidence that Haeg's attorneys said could not be put in the record, and that was later removed out of the official court record anyway, was the "smoking gun" animal rights activist needed to stop the Wolf Control Program. It is clear Haeg's prosecution was "rigged" because of, and to protect, the Wolf Control Program.

> McCracken v. State**,** 518 P.2d 85 (AK Supreme Court 1974): "When accused of a crime, or, as here, when seeking relief from a conviction resulting in imprisonment, the opportunity to determine whether to present one's own case or to be represented by appointed counsel is of paramount importance to the individual. **Under some circumstances, he may indeed be the only person who will forcefully advance arguments in an unpopular cause. Alaska has been and is endowed with courageous attorneys who have zealously represented those accused of crime, but such dauntless representation may not always be available to one who is the object of opprobrium."**

Government agents testified they received numerous death threats from animal rights extremists because they ran the Wolf Control Program. Haeg's case itself generated numerous other death threats from extremists. "Opprobrium" isn't even a strong enough term to describe the feelings toward Haeg at the time. Haeg's attorneys testified, "The State brought enormous pressure to bear in Haeg's case to make an example of him." Attorneys then testified that the State was going take it out on Haeg's attorneys if they advocated for Haeg. It is clear all these threats and pressure placed a great conflict of interest upon Haeg's attorneys. Yet this is exactly when Haeg needed a zealous attorney and his constitutional rights the most.

What has occurred in Haeg's case is no less then a direct attack on the United States and Alaska Constitutions by a conspiracy of elements within the Alaska Department of Law, State Troopers, and Haeg's three different law firms. This attack,

against which literally millions have sworn an oath to defend, will continue to be met with ever increasing force, determination, bravery, and numbers until justice prevails.

**"The recovery of freedom is so splendid a thing that we must not shun even death when seeking to recover it."-- Marcus Tullius Cicero**

I declare under penalty of perjury the forgoing is true and correct. Executed on March 26, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.

David S. Haeg
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**Certificate of Service:** I certify that on March 26, 2010 a copy of the forgoing was served by mail to the following parties: Andrew Peterson, O.S.P.A and the United States Department of Justice.

By: