IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

DAVID HAEG,	)
	)
Applicant,	)
	)
v.	) POST-CONVICTION RELIEF
	) Case No. 3KN-10-01295CI
STATE OF ALASKA,	) (formerly 3HO-10-00064CI)
	)
Respondent.	)
_____	)

(Trial Case No. 4MC-04-00024CR)

3-19-12 INEFFECTIVE ASSISTANCE OF COUNSEL MEMORANDUM

COMES NOW Applicant, David Haeg, and hereby files this ineffective assistance of counsel memorandum.

Incorporation of Original PCR Application and Memorandum

In the interested of keeping this memorandum as short as possible Haeg incorporates and relies upon his original PCR application, especially its supporting 43-page memorandum, and the supporting exhibits and affidavits (all filed on November 21, 2009) to establish why the attorney conduct meets both Risher standards –especially the prejudice requirement. *See* Risher v. State, 523 P.2d 421 (AK Supreme Ct 1974).

Prior Proceedings

On November 21, 2009 Haeg filed a 19-page post-conviction relief (PCR) application; a 43-page memorandum detailing the specific instances, dates, proof,

and prejudice requiring PCR; 310-pages of exhibits proving Haeg must be granted PCR; and 9 affidavits proving Haeg must be granted PCR.

(1) On January 3, 2012 (over 2 years after Haeg filed for PCR) Superior Court Judge Carl Bauman ruled that Haeg had not made a "prima facie" case of ineffective assistance of counsel; dismissed most of Haeg's claims as too weak (including claims of corruption and conspiracy already certified as true by Superior Court Judge Stephanie Joannides); gutted the substance of those that remained; and ordered Haeg, by February 29, 2012, to depose Cole and to file a second PCR memorandum "detailing (a) the alleged ineffective assistance of counsel Cole, with citations to the record and to the deposition, addressing both Risher standards, (b) alleged ineffective assistance of Robinson, with citations to the record and to the deposition, addressing both Risher standards, and (c) the Haeg claims that the sentence imposed by Judge Murphy was improper by virtue of alleged improper contact with Trooper Gibbens." (When Haeg never claimed the Judge Murphy and Trooper Gibbens' corruption only affected his sentence – Haeg claimed it affected his entire prosecution – including trial.)

(2) On January 13, 2012 Haeg filed a motion that Judge Bauman must be disqualified for corruption and that his orders must be stricken from the record – and provided irrefutable proof Judge Bauman was not only corruptly covering up for those already criminally implicated in Haeg's prosecution but was also falsifying sworn affidavits to corruptly delay the resolution of Haeg's now 8-year-long case.

(3) On January 23, 2012 Haeg filed a motion to supplement the evidence against Judge Bauman with proof that Judge Bauman, only after he knew he had been caught falsifying sworn affidavits, started backdating official court orders to illegally and corruptly exonerate himself. Also on January 23, 2012 Haeg filed felony criminal and judicial conduct complaints against Judge Bauman regarding the forgoing and included these in his motion to supplement the record.

(4) On February 3, 2012 Judge Bauman denied Haeg's motion that Judge Bauman must disqualify himself and strike his own January 3, 2012 orders.

(5) On February 3, 2012 Kenai Superior Court Judge Anna Moran was assigned to review Judge Bauman's decision not to disqualify himself for cause. Haeg was only given notice of this assignment nearly a month later (on March 2, 2012) - after he filed a motion for an evidentiary hearing and oral argument on Judge Bauman's refusal to disqualify himself for cause.

(6) On March 12, 2012 Judge Moran upheld Judge Bauman's refusal to disqualify himself for cause except for Haeg's claim regarding the felony criminal complaint and judicial conduct complaint Haeg filed against Judge Bauman.

(7) On March 14, 201 Judge Bauman ruled that the felony criminal complaint and judicial conduct complaint Haeg filed against him would not affect him and he could be fair and impartial toward Haeg.

Discussion

Although Haeg provides below the requested references to the depositions and record it is irrefutable that Haeg has already made a "prima facie" case against

his former attorneys – which would then require an evidentiary hearing (trial by judge) in which Haeg could call witnesses and present evidence to prove his claims and in which the state could call witnesses and present evidence to defend.

To make a "prima facie" case of ineffective assistance all Haeg must do is claim facts that, if true, would entitle Haeg to relief and to ask his attorneys to provide an affidavit responding to these claims. Haeg has done both.

> "[I]f the application – whether in its original form or as augmented following notice of intent to dismiss – sets out facts which, if true, would entitle the applicant to the relief claimed, then the court must order the case to proceed and call upon the state to respond on the merits." State v. Jones, 759 .2d 558 (AK 1988).

> "It is true that, for purpose of determining whether a claim of ineffective assistance of counsel may be rejected summarily, without affording the defendant an opportunity for an evidentiary hearing, this court must provisionally accept as true any facts asserted by the defendant." Lott v. State, 836 P.2d 371 (AK 1992)

Among other claims just as compelling, Haeg claimed he had been given immunity to compel a statement about every aspect of the case against him, his attorneys lied to him so that could he be prosecuted when by law he could not be, and so that his statement could be used to do so.

Alaska law states that if you are given immunity to compel a statement you cannot ever be prosecuted for the events talked about in the statement – no matter what other evidence there is. *See* AS 12.50.101 and State of Alaska v. Gonzalez, P.2d 526 (AK Supreme Court 1993).

If the law prevented Haeg's prosecution and Haeg's attorneys lied to allow this to happen, it is clear that, on this issue alone, not only were Haeg's attorneys

deficient there was no doubt that this deficiency contributed to the outcome in Haeg's case. *See* Risher v. State, 523 P.2d421 (AK Supreme Court 1974)

Haeg provided an affidavit that he asked his attorneys for affidavits refuting this and other claims and his attorneys refused to do so - yet Judge Bauman claims Haeg has not shown what efforts were made to obtain affidavits.

Brent Cole Deposition

On February 7, 2012 Haeg's first attorney Cole was deposed (sworn under oath to tell the truth under penalty of perjury) at the Office of Special Prosecutions and Appeals, 310 K Street, Anchorage Alaska, 99501. At times during the deposition Cole's hands shook so hard he could hardly hold anything.

(1) In violation of Civil Rule 30(c), Cole, backed up by state attorney Peterson, refused to answer numerous questions – even when Haeg stated Cole was required to. Just some of which Cole refused to answer are: ever been arrested (for what); ever been convicted (for what); ever been sued (for what); did he meet with the state before the deposition (along with how many times, where they occurred, how long they lasted, and what was talked about); what he did to prepare for the deposition; if he talked to the state attorney or anyone else before the deposition (and what they talked about); did he read, or did anyone else read to him, anything to prepare (and what it was); had he ever been sanctioned as a lawyer (for what); anything about meetings with the U.S. Department of Justice concerning Haeg's case; etc; etc.

All of the questions above are legitimate, could produce compelling evidence of Cole's motivations for the actions he took to represent Haeg, are asked in virtually all depositions, and are so common they are listed by numerous law schools as "must ask" deposition questions. It is irrefutable that Cole was required to answer them. His refusal to do so, when he was required to, unjustly crippled Haeg's ability to expose what motivated Cole. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed. Cole and the state working together to unjustly deprive Haeg of a fair deposition is additional proof they worked together to deprive Haeg of a fair prosecution while Cole represented Haeg.

(2) Cole testified he did not know of anything that would lead him to believe that the U.S. Department of Justice was investigating Haeg's case. Yet Cole has provided discovery to the state that includes letters proving Cole has been providing evidence of what occurred in Haeg's case to the U.S. Department of Justice. See attached letters. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(3) Cole refused to answer additional questions involving the U.S. Department of Justice – preventing Haeg from answers that by Cole's own admission during discovery was material to Haeg's case - and could have exposed

compelling motivations for Cole's actions. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(4) State attorney Peterson objected to Cole answering questions about Cole's prior testimony about how and why he (Cole) represented Haeg as he did. Peterson flat told Haeg that Cole would not answer Haeg's questions. This intervention by Peterson, who was not allowed to intervene because he was not Cole's attorney, prevented Haeg from getting answers to questions critical to proving Cole gave Haeg defective representation and then took actions to cover this up. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(5) Cole testified that he had no idea if the state bent over backwards to make an example of Haeg for political reasons. Yet Haeg has recordings of Cole testifying that the state was bending over backwards to make an example of Haeg. See Haeg's PCR exhibits. This proves Cole's conflict of interest, that his sworn testimony is irrefutably false and proven perjury, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(6) When Haeg asked if Cole ever made the statement "the state bent over backwards to make an example of me [Haeg] for political reasons" Cole

testified that he never represented Haeg. Yet Haeg has a contract with Cole that proves Cole was supposed to be representing Haeg from April 11, 2004 to December 9, 2004 and that during this time Haeg paid Cole $200 per hour. See attached contract. In addition the court record proves that Cole was supposed to be representing Haeg during this time. *See* court record. If, as Cole testified under oath was the case, he was not representing Haeg this explains why his representation of Haeg was deficient (non-existent in fact) and explains why Cole never advocated for Haeg and instead told Haeg it was not a legal defense that the state told Haeg it was for the greater good of the people for Haeg to take wolves wherever he could but claim they were taken in the open Wolf Control Program area; why Cole told Haeg there was nothing that could be done about the state falsifying all evidence locations to Haeg's guide area and then using this false evidence locations to destroy Haeg's only livelihood; why Cole told Haeg he had to give a 5-hour statement to the state prosecution because he had been given immunity – and then told Haeg he could be prosecuted – and that the state could use Haeg's own statements to do so; why Cole told Haeg there was no hearing to protest the false warrants used to seize the airplane Haeg used to conduct provide a livelihood; why Cole told Haeg there was nothing Haeg could do to get the airplane back; why Cole told Haeg to give up a year of guiding for a plea agreement; why Cole told Haeg that there was nothing Haeg could do to enforce the plea agreement after the guide year was past and the state broke the plea agreement; and why Cole never obeyed the subpoena to Haeg's sentencing to

explain all of the forgoing. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(7) Cole testified that the state had agreed to give Haeg credit for the guide year given up before Haeg was convicted. Yet when Haeg demanded Robinson subpoena Cole to make sure he got credit for this year, Cole failed to appear in response to an airline ticket and subpoena and Haeg never received credit for this year. *See* Haeg's PCR exhibits. At the time Robinson told Haeg there was nothing Haeg could do about it but has since testified (at his deposition) that he decided that Cole did not have appear – yet never told any of this to Haeg who had absolutely demanded Cole testify, paid for Cole's subpoena, paid to have it served, paid for Cole's airline ticket, and then never got credit for the guide year because the state testified, UNOPPOSED, that they had no idea why Haeg had given up guiding for a whole year. *See* court sentencing record. This proves Cole and Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(8) Cole testified that Haeg had agreed to a forfeiting the PA-12 airplane on November 8, 2004. Yet Haeg has recordings of Cole while Cole was representing Haeg, along with numerous witnesses proving Haeg never agreed to forfeit the PA-12 airplane. See Haeg's PCR exhibits. This proves Cole's sworn

testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(9) Haeg asked if the state filed lesser charges, then backed out of the deal by filing harsher charges (*See* court record), if Cole protested that, and Cole testified "no" – and testified the reason why was that "it didn't make any difference". Yet to Haeg the difference was the preservation of his livelihood or the destruction of his livelihood. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(10) Cole testified he thought there was a "deal" on the night of November 8, 2004. Yet Haeg has tape recordings of Cole at the time, along with numerous witnesses, proving Cole knew there was no deal on the night of November 8, 2004. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(11) Cole testified everybody was "happy" on the night of November 8, 2004. Yet Haeg has tape recordings of Cole at the time where Cole states

everybody, including himself, were so angry they were “burning”. See Haeg’s PCR exhibits. This proves Cole’s sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg’s original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(12) Cole testified he told Haeg he could enforce the open sentence plea agreement. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, along with numerous witnesses, proving that Cole never told Haeg he could enforce the plea agreement – that the only thing he could do was “call Leaders boss”. See Haeg’s PCR exhibits. This deprived Haeg of plea enforcement, proves Cole’s sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg’s original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(13) Cole, backed up by Peterson, refused to answer questions regarding Kevin Fitzgerald – who Cole has testified he worked closely with on Haeg’s case. *See* court record and Haeg’s PCR exhibits. This means there must be a hearing at which Haeg is allowed to question Cole on this matter and until this hearing takes place Haeg’s PCR cannot be dismissed.

(14) Cole testified he had testified truthfully about Haeg's case in the past. This means Cole's testimony that Haeg had been given immunity in return for a statement is true – meaning Haeg could not be prosecuted for anything talked about in the statement. *See* Haeg's PCR exhibits. Yet not only did Cole let Haeg be prosecuted, he let the state use Haeg's statement to do so. *See* court record. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(15) Cole testified that Haeg had been given immunity and required to give a statement - meaning Haeg could not be prosecuted for anything talked about in the statement. *See* Gonzalez and North below. Yet Cole on tape told Haeg he could be prosecuted for everything Haeg had talked about after he had been given immunity and that Haeg's statement could be used to do so – incredible harm to Haeg. *See* Haeg's PCR exhibits. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(16) Cole testified that after Haeg was given immunity for his statement, Haeg could be prosecuted and that the immunized statement could be used to do so. This is exactly what Cole told Haeg when Haeg (while Cole was still representing him) asked how the state could use the immunized statement to prosecute Haeg. *See* Haeg's PCR exhibits. Yet in Alaska once you are given

immunity for a statement you cannot ever be prosecuted for what you talk about – let alone have your statement used to do so. *See* Gonzalez below. This proves Cole knowingly falsified his testimony under oath (perjury) to cover up that he let Haeg be prosecuted after the law prevented this – incredible harm to Haeg. Not only this, he let Haeg's statement be use to do so – another incomprehensible constitutional violation and harm to Haeg. This is deficient performance as an attorney; deficient performance that allowed Haeg to be prosecuted when the law prevented this, irrefutably proving the deficient performance affected the outcome of Haeg's case. In addition virtually all evidence used against Haeg was tainted by Haeg's immunized statement – rendering the prosecution "violated and corrupted". *See* caselaw below. This also proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

State of Alaska v. Gonzalez, 853 P.2d 526 (AK Supreme Court 1993):

> "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.

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

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

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

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

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

Even the state's utmost good faith is not an adequate assurance

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

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

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

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

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

> it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.
>
> Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984)
>
> 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.
>
> Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [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, 910 F.2d 843 (D.C.Cir. 1990)
>
> "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972).

Even Haeg's jurors were undoubtedly tainted by Haeg's statement as the state, before trial, published Haeg's statement in every major Alaskan newspaper – including the Anchorage Daily News (*See* Haeg's PCR exhibits.)– and, even more bizarre, is it was the same prosecutor and Trooper who took Haeg's immunized statement as prosecuted and testified against Haeg at trial – and presented the map they required Haeg to make against Haeg at trial – and before trial they recorded

themselves using Haeg's map to prepare the state's other trial witnesses against Haeg - violating Haeg's right against self-incrimination. *See* Haeg's PCR exhibits.

> **"**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)

This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(17) Cole testified he did not know what law or rule allowed Haeg's statement to be used against Haeg – proving deficient performance (not knowing the law would protect his client from prosecution) and proving this harmed Haeg when he let Haeg be prosecuted and let Haeg's statement be used to do so when it could not. *See* charging informations, trial record, Gonzalez, North, and Kastigar above and Haeg's original PCR memorandum and exhibits.

> "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)

> "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)

(18) When Haeg asked what kind of immunity was allowed to be given in Alaska, Cole testified that "transactional" immunity was the only immunity allowed to be given in Alaska.

> "Transactional immunity" affords immunity to the witness from prosecution for the offense to which the compelled testimony relates. *See* Black's Law Dictionary (9th Ed.2009).
>
> Transactional immunity – a grant of immunity to a witness by a prosecutor that exempts the witness from being prosecuted for the acts about which the witness will testify. *See* Webster's New World Law Dictionary, copyright 2010.

It is irrefutable that Cole allowing Haeg to be prosecuted when the law prevented prosecution absolutely meets Risher's deficient performance requirement and absolutely meets Risher's prejudice (harm to Haeg) requirement – as Haeg was convicted and sentenced to nearly 2 years in jail, fined $19,500, total destruction of the business that supported both he and his wife, and to the forfeiture of approximately $100,000 in business property. *See* court record and Haeg's original PCR application, memorandum, and exhibits for additional proof.

> "A mistake made out of ignorance rather then from strategy cannot be later validated as being tactically defensible." *See* 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." *See* Smith v. State, 717 P.2d 402 (Ak 1986)

(19) Cole testified, “it didn’t make any difference” when asked why he let Haeg’s immunized statement be used to justify the charges against Haeg in every information filed. Haeg’s statement was quoted in every charging information for just about the only evidence for most of the charges filed against Haeg and as primary evidence for the rest. *See* charging informations. Zellers (whose statement was also quoted in the information) and Zeller’s attorney Kevin Fitzgerald have testified under oath that Zellers cooperation and statement was a direct result or “fruit” of Haeg’s statement. *See* court record and Haeg’s PCR exhibits. This proves Cole let Haeg be prosecuted in violation of Haeg’s right against self-incrimination, with an invalid charging information, that Cole’s sworn testimony is irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg’s original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(20) Cole testified that he exercised Haeg’s right not to have Haeg’s statement used against Haeg. As proven by every information filed against Haeg, including the one forcing Haeg to trial, this is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be prosecuted this way. *See* charging informations and Haeg’s original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(21) Cole testified that Haeg's immunized statement was allowed to be used to justify the charges against Haeg. Gonzalez, North, and Kastigar above proves this is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be prosecuted this way. *See* Gonzalez and North above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(22) Cole testified that Haeg made a map during his statement and that he didn't think the state could use this map against Haeg. Yet this map was irrefutably used to taint the state's witnesses against Haeg and as the state's main exhibit against Haeg at trial. *See* Haeg's PCR exhibits, court record, exhibit #25. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(23) Haeg asked Cole why he let the state release his statement to the media and be published in the Anchorage Daily News and all major Alaska newspapers. Cole testified that he was not Haeg's attorney then. Yet the Anchorage Daily News published Haeg's statement on November 10, 2004 and the most other papers published it within 2 days of this. *See* Haeg's PCR exhibits. Haeg hired Cole on April 11, 2004, gave the immunized statement on June 11, 2004, and fired Cole on December 7, 2004 – irrefutably proving Cole was Haeg's attorney when the state released Haeg's statement and it was published in the

newspapers. *See* Haeg's PCR memorandum and exhibits. This proves Cole let Haeg be prosecuted in violation of his right against self-incrimination, that Cole's sworn testimony is irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(24) In regard to the use of Haeg's immunized statement Cole testified he had no control over what Scott Leaders or the Troopers did; asked Haeg, "What could I do? Tell me what I could do?"; Haeg replied, "could you have filed a motion to suppress?"; and Cole testified, "No." Yet Criminal Rule 12, Pleadings and Motions Before Trial – Defenses and Objections states:

> (b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial: (1) Defenses and abjections based on defects in the institution of the prosecution; (2) Defenses and objections based on defects in the indictment or information; (3) Motions to suppress evidence on the ground that it was illegally obtained.
>
> (d) Effect of Failure to Raise Defenses or Objections. Failure by the defendant to raise defenses or objections or to make request which must be made prior to trial….. shall constitute waiver thereof….
>
> "'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress…" U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's

original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(25) Cole testified that he could not file a motion suppress because it had to be filed at trial and he did not represent Haeg at trial. Yet Criminal Rule 12, Pleadings and Motions Before Trial – Defenses and Objections states:

> (c) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Any or all of the following shall be raised prior to trial: (1) Defenses and abjections based on defects in the institution of the prosecution; (2) Defenses and objections based on defects in the indictment or information; (3) Motions to suppress evidence on the ground that it was illegally obtained.
>
> (e) Effect of Failure to Raise Defenses or Objections. Failure by the defendant to raise defenses or objections or to make request which must be made prior to trial….. shall constitute waiver thereof….

This proves Cole's sworn testimony that the motion had to wait until trial to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole should have filed motions to suppress on Haeg was exempt from prosecution, Haeg's statement use, and the false evidence locations and its use on all the affidavits supporting the search and seizure warrants. In addition, the fact that if you wait until trial you "waive" your right to raise the defense irrefutably proves the incredibly harm Cole caused by not protesting Haeg's statement use before trial – as this would have irrefutably ended Haeg's prosecution. *See* Gonzalez, North, and Kastigar above.

(26) When Haeg asked if his statement could be used by the state to go and find other evidence before trial Cole testified, "I think that's a hypothetical….I don't know the answer to that." When asked if he should have known this when he was representing Haeg Cole testified,

> "That's a very complex question that is not easily discernable just sitting here." "You know as lawyers we like to think we know all the answers but there is just a lot of issues out there that I cannot give a definitive answer on that as we speak" "I don't know as I sit here right now what the answer to that question is."

Yet when Haeg specifically asked Cole about this when Cole was his attorney and Cole told him the state could use the statement before trial to find other evidence and that there was nothing Haeg could do about this. *See* Haeg's PCR exhibits.

> "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)

This proves Cole harmed Haeg by letting the state obtain Zellers to use against Haeg (see Haeg's PCR exhibits), proves Cole's sworn testimony to be irrefutably false and proven perjury, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to

client. *See* Gonzalez, North, and Kastigar above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(27) Cole testified that Haeg objected to him about the state using his statement and that the reason he (Cole) didn't do anything about it was that he thought the state could use Haeg's statement. Gonzalez, North, and Kastigar above prove Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as because of his erroneous belief in law Cole let Haeg's statement be used against him – violating Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "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).

(28) Cole testified that he could not have filed a motion of prosecutorial misconduct. Yet all caselaw holds this motion could have been filed:

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

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

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

Santobello, Surina, and Scott prove Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – since Cole never filed this motion because of his mistaken belief of the law. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(29) Cole testified he didn't know why the state used Haeg's map (the primary trial exhibit against Haeg) against him at trial. It is proven by the Rules and caselaw above and described in Haeg's original memorandum the reason is prosecutorial misconduct combined with the ineffective assistance of no one filing a motion to suppress on Haeg's behalf. This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this was a violation of Haeg's right against self-incrimination. *See* Gonzalez, North, and Kastigar above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(30) Cole testified that when he was Haeg's attorney, paid $200 per hour, that he told Haeg of his rights of what he could do. Yet Haeg has tape recordings, while Cole was still his attorney, of Cole telling Haeg nothing could be done about the state using Haeg's statement against him; that there was no way to protest the false evidence locations on all the warrants seizing evidence and Haeg's business property; that it was not a legal defense that the state told Haeg it was for the greater good to take wolves wherever he could and claim they were taken inside the wolf control area; and the state could break the plea agreement after Haeg had already given up a year of his only livelihood for it. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as all Haeg's forgoing defenses were stripped away. *See* caselaw above and below and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(31) Cole testified that while he was representing Haeg he had no idea if Haeg's statement was being used to build the case against Haeg. Yet Haeg has tape recordings of Cole proving that Cole knew the state was using Haeg's statement to build the case against Haeg. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate

Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(32) Cole testified that Haeg's statement was not used to force Tony Zellers to cooperate. Yet Haeg has sworn testimony from both Zellers and Zellers attorney Kevin Fitzgerald that Zellers cooperated because of Haeg's statement – and Zellers was one of the state's main witnesses against Haeg at trial. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(33) When Haeg asked Cole why Chuck Robinson testified it was Cole's duty to file a suppression motion Cole testified,

> *Cole*: "Whyyy….meeee ha. I wasn't your attorney. You fired me. I couldn't…..ask Chuck Robinson about that."
> *Haeg*: "I have. He said it's your duty."
> *Cole*: "Well, then you should have kept…"
> *Haeg*: "Are you testifying it was his duty to file the motion?"
> *Cole*: "Yes. He was the one….he was the trial attorney."

Yet Rule 12 proves this motion was required to be filed before trial – and thus it was both Cole's and Robinson's duty to file it for Haeg before trial – as Gonzalez, North, and Kastigar above prove it was illegal to prosecute Haeg by using his statement in any way. And it is virtually certain that Haeg's statement

had tainted just about every last stitch of evidence the state had – even ignoring the fact that Gonzalez flat prevented Haeg from being prosecuted at all. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(34) Cole testified that the state did not use Haeg's statement to build the case against Haeg. Yet the charging informations and newspapers alone prove they were using Haeg's statement in everyway imaginable to build the case against Haeg. *See* charging informations and Haeg's original PCR memorandum/exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client - – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(35) Cole testified that it was possible that because of enormous public and political fallout substantial pressure was brought to bear on Haeg's prosecutor and judge to give Haeg a very serious sentence. This is additional evidence Haeg had a biased judge and Cole didn't do anything about it. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and

harm to client - – as Cole let the state violate Haeg's right to an unbiased judge. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(36) Cole testified that it was a concern of his that if he advocated for Haeg by filing motions to suppress or enforcing the plea agreement that this would "piss Leaders off" and that filing a motion against prosecutor makes an enemy out of the last person you want to make an enemy of.

> "[Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967)
> "Counsel had advised defendant that he, the attorney, would have to work with the federal people in the future and that, therefore, it was best not to make waves when there was little if any chance of fighting Federal Prosecutors." REVERSED AND REMANDED" United States v. Ellison, 798 F.2d 1102 (7th Cir. 1986).
>
> "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980).
>
> "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process…to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)
>
> "[T]he right to the assistance of counsel had been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact finding process that has been constitutionalized in the

> Sixth and Fourteenth Amendments." U.S. v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)
>
> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, (U.S. Supreme Court)
>
> "Defense counsel … must conscientiously protect his client's interest, undeflected by conflicting consideration." Risher v. State (Alaska Supreme Court)

The caselaw above proves Cole's concern that he would "piss Leaders off" by advocating for Haeg was automatic ineffective assistance of counsel without Haeg having to prove prejudice. Yet the prejudice is proven – this explains why Cole did not file motions to suppress because of the state's use of Haeg's statement and false evidence locations; why he told Haeg it was not a legal defense when the state told Haeg it was for the greater good of the people to do exactly what the state then charged Haeg with doing; why Cole never enforced Haeg's plea agreement; and why Cole never showed up to testify in response to a subpoena. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Cole actively represented his own interests that were in conflict with Haeg's interests. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(37) Cole testified that he never told Haeg about what Haeg could do to oppose the state's prosecution. As this is exactly what Haeg hired Cole for and

specifically asked him about this is clear ineffective assistance of counsel. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's rights to counsel, against self-incrimination, to due process, against unreasonable searches and seizures, to the equal protection of the law, etc. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg. *See* also all caselaw above and below.

(38) Cole testified Haeg was concerned about spending money. Yet Haeg has tape recordings of conversations between Cole and Haeg while Cole was representing Haeg and the issue of money never once was mentioned. *See* Haeg's PCR exhibits. In addition Haeg went on to hire 2 more attorneys after Cole and paid them nearly $100,000 more then he paid Cole. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this violated Haeg's right to counsel along with nearly ever other right Haeg had. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(39) Cole testified that he told Haeg that he could file a motion to suppress Haeg's statement. Yet Haeg has tape recordings of Cole, while he was representing Haeg, stating that nothing could be done about the state using Haeg's statement. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be

irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* above testimony and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(40) Cole testified he told Haeg that he could file a motion to suppress evidence because of the false information on the search warrant. Yet Cole has testified under oath in prior proceedings that he never told Haeg he could file a motion to suppress because of the false warrants. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole could have suppressed very nearly every stitch of evidence the state had. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(41) Cole testified that a motion to suppress is not a viable motion. Yet Criminal Rule 12 above proves this false. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole allowed the state to violate Haeg's right against self-incrimination and against unreasonable searches and seizures because of this. *See*

Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(42) Cole testified he remembered seeing only one search warrant issued in Haeg's case. Yet there were 5 search warrants issued in Haeg's case and Cole could have had very nearly all the evidence in Haeg's case suppressed. *See* court record and Haeg's original PCR memorandum/exhibits. This proves Cole's complete lack of investigation and knowledge of Haeg's case and meets both Risher standards of deficient attorney performance and harm to client – as had Cole investigated he would have realized very nearly every stitch of evidence against Haeg could have been suppressed. *See* above and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(43) Cole testified he thought there was false information on only one search warrant. But the false information (claiming the evidence was found in the Game Management Unit in which Haeg guided when the state's own GPS coordinates proved this was false – a false location which the state specifically used at trial to justify convicting Haeg) was located on ever single one of the 5 search warrants used to seize Haeg's business property and evidence used against Haeg. This proves Cole's complete lack of investigation and knowledge of Haeg's case harmed Haeg's defense and ability to make a livelihood and meets both Risher standards of deficient attorney performance and harm to client – as had Cole investigated he would have realized very nearly every stitch of evidence

against Haeg could have been suppressed. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(44) Cole testified he didn't think the falsehood on the search warrant was material. Yet the state used the false location (the Game Management Unit in which Haeg was allowed to guide) as the specific reason for the charges against Haeg and for their argument at trial that Haeg should be convicted of guiding crimes – arguing that Haeg's motive in taking wolves in his guide area was to benefit his guide business - because if Haeg took wolves where he guided they would not eat the moose Haeg sold hunts for. As further proof of how material this falsehood was is that Haeg's sentencing judge specifically cited the false location as the justification to sentencing Haeg (who had absolutely no prior criminal history) to nearly 2 years in jail, fine of $19,500, forfeiture of $100,000 in property, and complete destruction of Haeg's guide business. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state convict Haeg with materially false evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(45) Cole testified that the state telling Haeg it was in the best interest of the state for Haeg to take wolves outside the area was not a defense – just as Cole told Haeg on tape while he was representing Haeg.

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

The U.S. Supreme Court caselaw above proves that Haeg being told it was in the best interest of the state to take wolves outside the area was a defense – especially since Haeg had not prior criminal history of anything whatsoever – and especially when the state falsified all the evidence locations to corruptly manufacture a false motive. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's mistake of the law deprived Haeg of an irrefutable defense. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

46) Cole testified that a suppression motion would only extend to the evidence seized with the search warrants – not to the field evidence whose location was falsified to Haeg's guide area. Yet it is indisputable that any evidence that is falsified is subject to suppression whether it was seized with search warrant or not. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as had Cole

understood the law correctly very nearly all evidence against Haeg could have been suppressed. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(47) Cole testified that the state falsifying the evidence to Haeg's guide area would not help them make a guide case against Haeg. Yet at trial the state's argument was this location proved Haeg's motive was to benefit his guide area and not help the Wolf Control Program – for which Haeg had a permit to shoot wolves from the air. And the effectiveness of this falsification was when Judge Murphy specifically cited the false locations as the specific reason for Haeg's devastating sentence. If Haeg's judge specifically used the false information to sentence Haeg it is clear Haeg's jury used the false information to convict Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state use false material evidence to convict Haeg. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

48) Cole refused to answer if he had an obligation to protest the state using evidence that had been falsified to Haeg's guide area. This requires a hearing during which Cole is required to answer this question and Haeg's PCR cannot be dismissed until this occurs.

(49) Cole testified that Leaders never told him he (Leaders) was not going to honor Haeg's immunity – and that it was not possible Leaders had ever told him that. Yet Cole called attorney Kevin Fitzgerald to testify on Cole's behalf at a prior proceeding and Fitzgerald testified under oath while he and Cole worked on Haeg's case Cole had told him that Leaders had told Cole that he (Leaders) would not be honoring Haeg's immunity. Cole accepted this sworn testimony from Fitzgerald and made no attempt to refute it. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as had Cole informed Haeg that Leaders was going to knowingly violate Haeg's right against self-incrimination Haeg would have demanded his prosecution be terminated and had Leaders thrown in jail. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

50) Cole testified that he could not say yes or no as to whether an attorney and client should discuss the materiality of anything that could be suppressed. Yet this is exactly why a client hires an attorney. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole failed to inform Haeg of the rights that would have irrefutably protected Haeg – when Haeg had hired Cole for this

specific purpose. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

51) Cole testified that while he represented Haeg he discussed with Haeg the materiality of anything that might have been able to be suppressed. Yet Haeg has recordings of Cole, while Cole represented Haeg, along with witnesses proving this is false. *See* Haeg's PCR exhibits. In addition Cole has testified under oath in prior proceedings that he never told Haeg he could file a motion to suppress. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(52) Cole testified that the reason he and Haeg didn't go to McGrath on November 9, 2004 was because the case had been resolved. Yet Haeg has recordings of Cole just after November 9, 2004, while Cole was still representing Haeg, along with numerous witnesses, proving this is false. *See* Haeg's PCR exhibits.This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves he has a conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(53) Cole testified that Leaders greatly increasing the severity of the charges at the last minute to also get the plane was not the reason he, Haeg, and all the witnesses did not go to McGrath on November 9, 2004. Cole also testifies that he never told Haeg this. Yet Haeg has tape recordings of Cole, while he still represented Haeg, along with numerous witnesses, proving this was the case and that he told Haeg this. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole violated Haeg's due process right to enforce the plea agreement and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(54) Cole testified that Leaders did not renege on a deal after Haeg had placed reliance on it. Yet Haeg has tape recordings of Cole, while he still represented Haeg and just after he represented Haeg, along with numerous witnesses, proving Leaders reneged on a deal after Haeg had relied on it. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole violated Haeg's due process right to enforce the plea agreement and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(55) Cole testified that he never told Haeg that what Leaders did was all about the airplane. Yet Haeg has tape recordings of Cole, while he still represented Haeg and just after he represented Haeg, along with numerous witnesses, proving Cole told Haeg what Leaders did was all about the airplane. *See* Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(56) Cole testified that an entrapment defense required someone to either hold a gun to Haeg's head or be threatening Haeg's family.

Grossman v. State, 457 P.2d 226 (Alaska Supreme Court 1969):

> "It is plain enough that the underlying basis for 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 (2nd 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'

A similar notion was expressed in Butts v. United States, 273 F. 35, 38 (8th Cir. 1921), where the court said,

> '(I)t is unconscionable , contrary to public policy, and to the established law of the land to punish a man for the commission of an offense of the like of which he had never been guilty, either in thought or in deed, and evidently never would have been guilty of if the officer of the law had not inspired, incited, persuaded and lured him to attempt to commit it.'

> The court emphasized that entrapment applies only when the criminal conduct is 'the product of the creative activity' of the government agents. 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 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.

Haeg, from childhood to when he was prosecuted at age 38, made his entire livelihood by fishing, hunting, trapping, and guiding – without any criminal history of anything whatsoever. Just before he participated in the wolf control program Haeg testified at an Alaska Board of Game (the state agency who created and ran the wolf control program) meeting in Fairbanks about the devastating effect uncontrolled wolf numbers were having on ungulates. At this meeting Board of Game member Ted Spraker (who had previously flown with Haeg out to survey the enormity of the wolf problem) told Haeg how important it was to the state that the wolf control program was not shut down; that the control program was likely going to be shut down because so far it was ineffective; that Haeg had to take more wolves to make sure the control program was not shut down; that it was far more important for Haeg to be killing wolves then testifying; and that if Haeg ended up taking wolves outside the control program area to mark them as being taken inside the control program area. Spraker also told Haeg that he was surprised that people were not poisoning wolves and explained exactly what kind of poison worked best and how and where to obtain it.

Haeg was then prosecuted for doing exactly as the state told and induced him to do. The state falsified all evidence locations to Haeg's guiding area and specifically used this to justify filing guiding charges against Haeg – stating Haeg's intent in taking the wolves outside the wolf control program area was to benefit his hunting guide business by removing the wolves that were killing the moose he offered to clients. In newspaper articles the state claimed Haeg was just "a bad apple" and that the state had nothing to do with Haeg taking wolves outside the control area and claiming they had been taken inside. As proven by the Alaska Supreme Court caselaw Grossman above someone did not have to hold a gun to Haeg's head or threaten Haeg's family to entrap Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(57) Cole testified that, while he represented Haeg, he told Haeg that the law did not allow the seized airplane to be bonded out.

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within

> days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier... The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

The caselaw above proves Haeg could have legally bonded the airplane out so he could have continued making a livelihood for the years before he was convicted – meaning Cole had lied to him. This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have been able to make a livelihood had Cole informed him of his rights as Haeg hired him to. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(58) Cole refused to answer Haeg's question if the state could use the map Haeg made during his statement to find other evidence. This requires a hearing during which Cole is required to answer this question and Haeg's PCR cannot be dismissed until this occurs.

(59) Cole testified that, while he represented Haeg, Haeg protested the state's use of Haeg's statement against Haeg and that after this he (Cole) didn't do anything about the state using Haeg statement against Haeg. This is irrefutable

proof of ineffective assistance of counsel, as had Cole done this it would have ended Haeg's prosecution. *See* Gonzalez, North, and Kastigar above.

> "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).

See Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(60) Cole testified that he cannot control the state releasing Haeg's immunized statement and that it didn't matter anyway. As shown in Gonzalez, North, and Kastigar above, Cole could have controlled the state releasing the statement by filing a motion to suppress, which would have effectively ended Haeg's prosecution – meaning it mattered a great deal to Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as had Cole knew he could do something Haeg's prosecution would have ended. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(61) Cole testified the state's use of Haeg's immunized statement was not a violation of Haeg's right against self-incrimination. Gonzalez, North, and Kastigar above prove this was a direct violation of Haeg's constitutional right

against self-incrimination. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate Haeg's right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(62) Cole testified that the state could use Haeg's immunized statement against Haeg as long as it wasn't at trial. Gonzalez, North, and Kastigar above prove this is not the case. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state violate his right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(63) Immediately after Cole testified the state could use Haeg's statement against Haeg as long as it wasn't at trial, Cole testified that "as a practical matter" the state should not have used Haeg's statement to justify the charges against Haeg – proving Cole affirmatively knew the state was violating Haeg's rights but did nothing about it except lie to Haeg then and now lie under oath during his deposition. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let

the state violate his right against self-incrimination. *See* court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(64) Immediately after Cole admitted the state used Haeg's statement to justify the charges against Haeg Cole testified that the state did not use Haeg's statement against Haeg in the charging information the state wanted Haeg to plea to. Yet every one of the 3 charging informations ever filed against Haeg during his prosecution – including those the state wanted Haeg to plea to – specifically quoted Haeg's statement as justification for the charges against Haeg. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client - as Cole let the state violate his right against self-incrimination.. *See* court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and for how this harmed Haeg.

(65) Cole testified he there was no plea agreement when Haeg gave his statement and that the state used Haeg's statement to justify the charges they wanted Haeg to plea to. This is automatic ineffective assistance of counsel as with Haeg's statement they were able to over double the charges filed against Haeg (see charging informations):

> Wayrynen v. Class 586 N.W.2d 499 (S.D. 1998) Counsel ineffective for identifying client to police and having her confess to 15 arson charges without any prior attempt to negotiate a deal with the state.

(66) Cole testified that he has never stated that the state wanted Haeg's statement quickly because they wanted to go get more evidence. Yet Cole has previously testified under oath that this was the case. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(67) Cole refused to answer if the state knew why Haeg had given up guiding for a year before he was convicted. (Cole had told Haeg to give up a year of guiding for a plea agreement the state afterward broke). This means there must be a hearing during which Cole is required to answer and Haeg's PCR cannot be dismissed until this happens. Then Cole testified that Haeg was not going to get credit for the guide year given up. This is automatic ineffective assistance of counsel - for an attorney to tell his client to give up a whole year of his livelihood while not making sure he got something for it. (Haeg never got anything for the guide year he gave up in reliance on Cole's advice – proving both Risher standards of deficient attorney performance and harm to client.). *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(68) Cole testified that he never told Haeg the number of charges initially filed was "kind of overwhelming". Yet Haeg has tape recordings of Cole telling Haeg this. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(69) Cole testified that, before he had Haeg give a statement, he never told Haeg that the state could use Haeg's statement to justify the charges they wished Haeg to plea to. This is automatic ineffective assistance of counsel.

> Wayrynen v. Class 586 N.W.2d 499 (S.D. 1998) Counsel ineffective for identifying client to police and having her confess to 15 arson charges without any prior attempt to negotiate a deal with the state.

This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(70) Cole testified that Haeg's statement did not increase the number of charges that the state wanted Haeg to plea to. Yet the charging informations prove that this is false. *See* charging information. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let the state use Haeg's immunized statement against Haeg. *See*

Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(71) Cole testified that it was allowed for the state to use uncharged, unproven allegations to enhance Haeg's sentence by 3 times. At the time Cole told Haeg there was nothing he could do about this, agreed to let the state do this, and because of Cole's agreement the state successfully asked the court for and was able to do this at Haeg's sentencing after trial. See court record. Yet this is not allowed:

> Smith v. State, 531 P.2d 1273 (Alaska Supreme Court 1975)
> "[R]eferences to accusations or arrests which did not lead to convictions are not proper considerations in sentencing.

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as the state presented uncharged, unproven allegations. *See* court record, Haeg's original PCR memorandum, exhibits, and affidavits for evidence and how this harmed Haeg.

(72) Cole testified that he didn't tell Haeg he could get the airplane back "because it wasn't your [Haeg's] only means." Yet Haeg has tape recordings of him telling Cole, while Cole was representing Haeg, that the airplane was the single most important item for Haeg to make a livelihood. This means Cole was placing his opinion of what was important in Haeg's life over what Haeg thought was important in Haeg's life – without telling Haeg he was doing this and without telling Haeg he could get the airplane back. This meets both Risher standards of

deficient attorney performance and harm to client – as Cole deprived Haeg of the single most important item for Haeg's livelihood. *See* Haeg's original PCR memorandum/exhibits for additional evidence and how this harmed Haeg.

(73) Cole testified that Haeg had asked him about going to trial because of entrapment and that Cole told him he shouldn't because the thought Haeg would lose on this issue. Yet Haeg has recordings of Cole, while Cole was representing Haeg, proving this never happened – with Cole stating entrapment was not a legal defense. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole deprived Haeg of a defense. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(74) Cole testified that on November 8 and 9 of 2004 Haeg was "celebrating" and "very happy" with the deal. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, stating that everyone was so angry on November 8 and 9, 2004, that they were "burning" and that there was no deal. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and how this harmed Haeg.

(75) Cole testified that Haeg had never told him that he (Haeg) was unhappy because Leaders had broke the deal and wanted the airplane to boot. Yet Haeg has tape recordings of himself telling Cole, while Cole was representing Haeg, that this was the case. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of the plea agreement that the state broke to get more. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(76) Cole testified that he told Haeg prior to November 8, 2004 that the state was going to increase the severity of the already filed charges. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, that Cole told Haeg on November 8, 2004 that the state was going to increase the severity of the already filed charges. See Haeg's PCR exhibits. In addition, Haeg has numerous witnesses, and a letter from Cole himself, proving Cole first told Haeg of this on November 8, 2004. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to be informed of the violation as soon as Cole knew about it. *See* Haeg's original PCR

memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(77) Cole testified that he never told Haeg that the only thing he could do to enforce the plea agreement was to call Leaders boss. Yet Haeg has tape recordings of Cole, while Cole was representing Haeg, along with many witnesses, that Cole told Haeg this. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of his plea agreement and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(78) Cole testified that there was no reason to call Leaders boss after November 9, 2012 because the case had been negotiated. Then Cole testified there would not have been any conversations after that date in which Haeg brought up contacting Leaders. Yet Haeg has tape recordings of himself, well after November 9, 2012 and while Cole was still representing Haeg, asking Cole if he had talked to Leaders boss yet. (Cole responded that he had left a message.) See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's

perjury proves his conflict of interest. See Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(79) Cole testified it was not deficient performance to tell Haeg that the only thing he could do to enforce the plea agreement was to call Leaders boss.

> "When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).
>
> "The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)
>
> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v, U.S., 442 F.3d 177 (3d. Cir. 2006)
>
> "Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor… to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)
>
> "Where an accused relies on a promise… to perform an action that benefits the state, this individual…will not be able to "rescind" his or her actions. … In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. …courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair

> to allow the prosecution to withdraw from a plea agreement. Closson v. State, 812 P.2d 966 (Ak. 1991)
>
> "Detrimental reliance may be demonstrated where the defendant performed some part of the bargain; for example, where the defendant provides beneficial information to law enforcement." Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999)
>
> "Counsel ineffective for failing to move to compel the state to comply with pretrial agreement and failing to advise the defendant of this option." State v. Scott**,** 602 N.W.2d 296 Wis. 1999

The caselaw above proves that Cole could have filed a motion with the court to enforce the plea agreement for which Haeg had already given up a whole year of this livelihood. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of his plea agreement. See Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(80) Cole testified that he knew the return of the airplane was the only thing that would have made Haeg happy. Cole also testified that he never told Haeg he could legally get the airplane back. This is ineffective assistance of counsel.

> "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).

This proves Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole prevented Haeg from the use of the primary property by which he provided a livelihood. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(81) Cole testified that after November 9, 2004, and while he was still representing Haeg, he was "ecstatic" with what Leaders had done. Yet Haeg has tape recordings after November 9, 2004, while Cole was still representing him, in which Cole states he was "burning" about what Leaders had done and Cole stated that Leaders "wanted to be a dick and it pisses me off." See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest.. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(82) When asked if it was true that he never discussed a motion to suppress with Haeg because he (Cole) never felt it was a good option, Cole testified "no". Yet Cole has previously testified under oath that he never discussed a motion to suppress with Haeg because he didn't think it was a good option. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false,

proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(83) Cole testified that he discussed a motion to suppress with Haeg. Yet Haeg has tape recordings of Cole, while Cole was still representing him, along with sworn testimony from Cole, proving this false. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(84) Cole testified that he did not remember Haeg, during the immunized statement Haeg gave, telling Cole, Leaders, and Trooper Gibbens that the evidence locations had been falsified. Yet Haeg has a tape recording of the immunized statement proving that, during his immunized statement, he told Cole, prosecutor Leaders, and Trooper Gibbens that the evidence locations had been falsified to his guide area. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had due process right not to be prosecuted with known false

evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(85) When Haeg asked if Cole, Leaders or Gibbens had a duty to look into the false evidence locations once it was pointed out to them, Cole testified that Haeg was "asking the wrong person" – even though Haeg had asked if Cole himself had a duty to do something about the false evidence location. Cole then testified that since the Trooper who had falsified the locations was right there in Cole's office (Trooper Gibbens) that Cole thought he would remember Haeg telling him that he had falsified the evidence locations. Yet Haeg has a tape recording of himself getting into an argument with both Gibbens and Leaders about where the evidence was found – and Cole was sitting right there as Haeg's "statement" was given in Cole's own office. See Haeg's PCR exhibits. More importantly, at trial Trooper Gibbens continued to testify falsely about the evidence locations – and it was only because Haeg flat demanded he be forced to tell the truth did he admit that he knew the evidence locations were false when he testified – proving that all along he had known the evidence locations were false but continue to falsify them anyway. See court record. The state continued to argue that Haeg took the wolves where he guides (which was where the evidence had been falsified to). And the proof of the effectiveness of the false testimony is the fact Judge Murphy specifically cited the false evidence locations as the reason for Haeg's severe sentence (see sentencing record) – even after Gibbens had admitted the locations were false. (This is the same judge who had issued all the

warrants years before based on Gibbens affidavits falsifying the evidence locations and the same judge who Gibbens chauffeured full time during Haeg's trial and sentencing.)

> "[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)
>
> "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)
>
> "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)
>
> "Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)
>
> "'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress…" U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991).

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right not to be prosecuted with false evidence and evidence seized with false warrants. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(86) Cole testified that if a prosecutor knows that something is intentionally false he has a duty under ethical rules to correct that. Yet in Haeg's case no one, not prosecutor Leaders, Trooper Gibbens, or Haeg's own attorneys, did anything to correct the evidence locations that they all knew had been falsified to Haeg's guide area. Even after Trooper Gibbens admitted on the stand in front of Haeg's jury that he had knowingly falsified the locations did anyone let Haeg's judge or jury know that this meant the wolves were not taken in Haeg's guide area – and prosecutor Leaders continued to argue that Haeg's took the wolves where he guide to benefit his guide business. This means that not only was there prosecutorial misconduct but that there was ineffective assistance of counsel:

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

(87) Cole testified that only Haeg's trial counsel (Robinson), and not himself, had an obligation to correct the falsified evidence locations. This is exactly why Haeg hired Cole and paid him $200 per hour.

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

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and

free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

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

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

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

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

“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).

This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted with known false evidence and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(88) Cole testified he didn't see any benefit in correcting the false evidence locations. As shown above and in Haeg's original PCR memorandum/exhibits/ affidavits the false location was devastating – providing the state with a false and compelling motive for Haeg's actions that would support a guide conviction even though Haeg had a permit to take wolves and was just doing as he had been told. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted with known, false, and material evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(89) Cole testified that it was concern of his that the state was going to make an example of Haeg because of the harm Haeg had caused the wolf-hunting

program. Then Cole testified that it was not possible that the state falsified the evidence locations to help make an example of Haeg. Yet because of what happened at Haeg's trial it is clear the state knew the evidence locations were false, pressed ahead with using the false locations anyway, and used it so effectively that Judge Murphy specifically cited the false locations to justify Haeg's severe sentence. See court record. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be subject to prosecutorial misconduct and be prosecuted with known, false, and material evidence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(90) Cole testified that while representing Haeg, he told Haeg that if he wanted to fight he would have to put up more money. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving this is false. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, proven perjury by Cole, is an attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(91) Cole testified that he knew of no reason why prosecutor Leaders and Trooper Gibbens could not prosecute Haeg after they took Haeg's immunized statement. Yet this is strictly forbidden.

State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993):

> "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.
>
> 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.
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> This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.
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> When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy

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

This proves Cole’s sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted in violation of his right against self-incrimination. *See* Haeg’s original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(92) Cole testified that the state didn’t use Haeg’s statement to get Zellers to cooperate with the state. Yet Zellers and Zellers attorney Fitzgerald have testified under oath in front of Cole that this was the case. This proves Cole’s sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole let Haeg be prosecuted

in violation of his right against self-incrimination. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(93) Cole testified that Haeg gave up his right to go to trial. This is obviously false. *See* court record. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(94) Cole testified that he got a subpoena and airline ticket to Haeg's sentencing but didn't show up because Robison told him he did not have to show up. Yet Cole also testified he had been subpoenaed by Haeg to make sure Haeg got credit for the guide year he had given up. As a result of Cole not showing up Haeg never got credit for the guide year he had already given up at Cole's advice. This proves Cole and Robinson's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum/exhibits/affidavits for added evidence and how this harmed Haeg.

(95) Cole testified that it wouldn't make any difference for Haeg to get credit for year of guiding Haeg had already given up. This is obviously false, proves Cole's sworn testimony to be irrefutably false, more perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards

of deficient attorney performance and harm to client – as Haeg never got credit for a whole year of his livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(96) Cole testified that it was Haeg's fault he didn't get credit for the guide year given up and it was Haeg's fault that Haeg was not told he would not get credit for the guide year already given up. This is obviously false and proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for a whole year of his livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(97) Cole testified that he told Haeg that he might loose credit for the guide year given up if Haeg went to trial. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving this is false. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for a whole year of his livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(98) Cole testified that he never told Haeg what was to keep Leaders from breaking any new deal after Leaders broke the first deal. This is ineffective assistance of counsel as this caused Haeg to believe he could never enforce any deal ever made with Leaders, no matter how much detrimental reliance was place on it.

(99) Cole testified that, while he was representing Haeg, Haeg might have told him that because of what Leaders did Haeg no longer trusted Leaders.

(100) Cole testified that after what Leaders did on November 8 and 9, 2004 he was "obviously" going to be more careful with his dealings with Leaders in the future.

(101) Cole testified that, while he represented Haeg, it was not his job to tell Haeg he could bond the seized airplane out. This is obviously false, ineffective assistance of counsel, and proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(102) Cole testified that even after Haeg made the airplane a central issue he (Cole) had no duty to tell Haeg he could bond the airplane out. This is obviously false, ineffective assistance of counsel, and proves Cole's sworn

testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(103) Cole testified that even after Haeg told him that the airplane was important for Haeg's livelihood Cole had no duty to tell Haeg he could bond it out. This is obviously false, ineffective assistance of counsel, and proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(104) Cole testified that Haeg would never get the plane back. Yet Waiste above proves this is not true. This is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for added evidence and how this harmed Haeg.

(105) Cole testified that even after Haeg told him he was thinking of going to trial Cole did not have a duty to tell Haeg he could bond the airplane out. This is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(106) Cole testified that if Haeg wanted to fight he should have told him he wanted to fight. Yet Haeg has tape recordings of himself and Cole, while Cole was still representing him, proving he told Cole many times he wanted to fight. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(107) Cole testified that he never told Haeg about his right to a prompt postseizure hearing "because it never came up." Yet Cole irrefutably knew Haeg wanted the plane back, Haeg had hired Cole to tell him about his rights, and a prompt postseizure hearing was the legal way to ask for the plane back. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by

Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for added evidence and how this harmed Haeg.

(108) Cole testified that Haeg had given him "no options as far as defenses." As shown above in Haeg's original PCR memorandum/exhibits/ affidavits this is irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(109) Cole testified that the reason he did not tell Haeg about being able to get the airplane back was because Haeg was almost comatose he was so depressed about the state taking the airplane. This is incredibly chilling and disturbing testimony by Cole, obviously ineffective assistance of counsel, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(110) Cole testified that even if Haeg were so comatose about the state taking the property it would not be a good idea to tell Haeg how to get the property back. Again this is incredibly chilling and disturbing testimony by Cole, obviously ineffective assistance of counsel, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(111) State attorney Peterson prevented Cole from answering Haeg's question to Cole of why it would not be a good idea to tell comatose Haeg how to get the property back. This means there must be a hearing for Cole to be required to answer this question and this prevents Haeg's PCR from being dismissed.

(112) Cole testified it was reasonable for him, regardless of how much Haeg wanted the plane back and regardless of how depressed Haeg was to have the state take it, not to tell Haeg how to get the airplane back. Again this is incredibly chilling and disturbing testimony by Cole, obviously ineffective assistance of counsel, and meets both Risher standards of deficient attorney performance and harm to client – as this deprived Haeg of the use of the plane that was his primary means to provide a livelihood and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "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)

(113) Cole again testified that while he was Haeg's attorney he told Haeg that he could file motions to suppress his statement. Yet Haeg has tape recordings of Cole, while Cole represented Haeg, proving this is false. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(114) Cole testified he never told Haeg that the state could use Haeg's statement against Haeg. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving that Cole told him the state could use his statement against him. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(115) Cole testified that while he represented Haeg he might have told Haeg "that the state changed the rules" and that "it's ethical for them (the state) to change the charges, demand we give them the plane, and then 'you can have your day in front of the judge'" Yet Goodrich, Garcia, Santobello, Stolt-Nielson, Surina, Closson, Reed, and Scott above prove this is not ethical or allowed. This proves Cole's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a due process right to enforcement of his plea agreement. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(116) Cole testified that by not trying to enforce Haeg's plea agreement he was protecting his own interest (Cole's interest) in being able to make deals with the state after Haeg's case was over. This proves Cole had a conflict of interest with Haeg and that this conflict of interest affected how Cole represented Haeg. This is automatic ineffective assistance of counsel- without needing to show prejudice. Yet Cole not enforcing Haeg's plea agreement positively shows prejudice.

> "Counsel had advised defendant that he, the attorney, would have to work with the federal people in the future and that, therefore, it was best not to make waves when there was little if any chance of fighting Federal Prosecutors. REVERSED AND REMANDED" United States v. Ellison, 798 F.2d 1102 (7th Cir. 1986)

> "[T]he conflict itself demonstrated a denial of the right to have the effective assistance of counsel. Thus, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Because it is in the simultaneous representation of conflicting

> interests against which the Sixth Amendment protects a defendant, he need go no further than to show the existence of an actual conflict. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980)
>
> "[I]n a case of joint representation of conflicting interests the evil – it bears repeating – is in what the advocate finds himself compelled to refrain from doing….It may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks, but even with a record of the sentencing hearing available it would be difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)
>
> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)
>
> "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
> "[Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967).

(117) Cole testified that Haeg was in the "mood to negotiate" and not in the "mood to fight" while he represented Haeg. Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving that this is completely false and that Haeg wanted to fight in any way possible. See Haeg's PCR exhibits. This

proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(118) Cole testified that it was his impression while he represented Haeg that it was Haeg who broke the plea agreement. Yet Haeg has tape recordings of Cole, while Cole was still representing him and immediately after, along with numerous witnesses, proving that this is false and that it was the state that broke the plea agreement. See Haeg's exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(119) Cole testified he didn't put Haeg's plea agreement or immunity in writing because "was there was no need to…. we were working alone." Yet Haeg and Cole were not working alone – they were working with state prosecutor Leaders who Cole claims had immense pressure put on to make an example of Haeg - and who Cole no longer trusts.

There is no better way to secretly make an example of Haeg then to (a) lie to Haeg that it wasn't a legal defense that the state told and induce Haeg to do

exactly what the state charged him with doing; (b) lie to Haeg that he could not protest the evidence being falsified to his guide area; (c) lie to Haeg that he has to give a statement because the state gave him immunity; (d) lie to Haeg that the state can use Haeg's statement against him; (e) lie to Haeg that he can't get the airplane back; (f) lie to Haeg he has no right to a postseizure hearing to protest the false search and seizure warrants; (g) lie to Haeg that he has a plea agreement that does not include giving up the airplane but does include giving up a year of guiding; (h) lie to Haeg that he will get credit for a guide year if he gives it up before being sentenced; (i) lie to Haeg that the state can break the plea agreement after the guide year is past and demand the airplane be thrown in to boot – and then claim all the forgoing was Haeg's fault as there is nothing in writing to prove otherwise. It is only because Haeg and others made their own tape recordings at the time that there is evidence proving that Cole and Leaders lied and conspired to strip Haeg bare and are now lying under oath to cover it up.

> "From counsel's function as assistant to the defendant derive… the more particular duties to consult with the defendant on important decisions and to keep the defendant informed…The reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's …litigation decisions." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984).

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both

Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(120) Cole testified that Haeg put his whole family at risk because he had to go out and kill wolves in an airplane. Yet Haeg was told by the state it was in the best interest of the state for Haeg to go out and kill wolves in an airplane where ever he could find them; given a permit by the state for a "game management" program that was specifically excluded from hunting or guiding – and so any violation of could not affect Haeg guide business. And to strip Haeg of the protection of the program (maximum $5000 fine for a violation – and by law no guide conviction) Cole and Robison let the state manufacture false evidence Haeg was not under the protection of the program, was a rogue guide, and hid the evidence Haeg was doing exactly as he had been told to make the program a success. That is what put Haeg's family at risk and why Haeg will go as far as it takes to get justice. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(121) Cole testified he didn't think the state ever gave Haeg a full copy of the statement he made and when Haeg asked Cole why he didn't record it Cole

testified that it wasn't his job to record it. Yet this is exactly why Haeg hired Cole. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(122) Cole testified that since the recording of Haeg's statement is missing this "was good for you [Haeg]" because "they had an obligation. They were the ones conducting the investigation and if they lost the tape that's bad on them….then they got to come in and defend what they're doing." Yet when Haeg asked Cole why they were never forced to do this Cole stated Haeg "didn't want to go down that avenue." Yet Haeg has tape recordings of Cole, while Cole was still representing him, proving that he specifically wanted to protest the use of his statement. See Haeg's PCR exhibits. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

Yet Cole was correct it is very bad for the state to have lost the recordings of Haeg's statement – for now they cannot certify Haeg's statement was "canned" and didn't "taint" their evidence - and Haeg can already

affirmatively prove his statement tainted the charging informations; the state's main witnesses; prosecutor Leaders; the main exhibits used against Haeg at trial; and forced Haeg himself to testify at trial:

> "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.
>
> 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.
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> This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.
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> When compelled testimony is incriminating, the prosecution can "focus its investigation on the witness to the exclusion of other suspects, thereby working an advantageous reallocation of the government's financial resources and personnel." With knowledge of how the crime occurred, the prosecution may refine its trial strategy to "probe certain topics more extensively and fruitfully than otherwise." Id. These are only some of the possible nonevidentiary advantages the prosecution could reap by virtue of its knowledge of compelled testimony.

Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

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

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

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

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing

contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984)

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.

"Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

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

(123) When Haeg asked if Cole ever went over with Haeg what it takes for a trial Cole testified "I ….I can't remember…*I never wanted a trial with you in the first place*." Cole testifying under oath that he never wanted a trial with Haeg proves Cole had a conflict of interest with Haeg and explains why Cole pursued a plea agreement only and never told Haeg of all the rights that Haeg could fight the state's case with. It explains every single thing Cole has done. And Alaska

caselaw proves why Cole is willing to lie under oath to help the state defeat Haeg's postconviction relief application:

> "[A] convicted criminal defendant must obtain post-conviction relief as a precondition to maintaining a legal malpractice claim against his or her attorney. [T]he legal standards for ineffective assistance of counsel . . . and for legal malpractice in this action are equivalent." Shaw v. Dept. of Administration, Public Defender Agency, 816 P 2d 1358 (Ak 1991)

If Haeg does not obtain post-conviction relief he is prevented from suing Cole. If he obtains post-conviction relief on ineffective assistance of counsel it is the same as proving malpractice – an incredibly potent motive for Cole to do lie under oath to cover up his sellout of Haeg to the state.

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

(124) Cole testified that a defendant does not have everything to gain and nothing to lose by filing a motion to suppress. Yet this is not true:

> "[Defendant] 'has everything to gain and nothing to lose' in filing a motion to suppress…" U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991). This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(125) Cole testified that the state could not necessarily make money out of property they seized from Haeg. Yet the state has falsified the law to the court and the court itself has broken the law in order to modify the judgment against Haeg just so the state can sell the airplane they seized from Haeg – proving Cole wrong. And caselaw proves the state making money from a defendant is of great concern:

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(126) Cole testified that he didn't know if anyone involved with Haeg's prosecution was exposed to Haeg's immunized statement. Yet prosecutor Leaders and Trooper Gibbens were prosecuting Haeg and they were the very people who took Haeg's immunized statement in Cole's office with Cole himself helping do it.

The people prosecuting Haeg were not allowed to be exposed to his immunized statement:

> "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." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole let the state violate Haeg's right against self-incrimination and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(127) Peterson objected to Haeg asking Cole how Alaska v. Gonzalez applied to his case and Cole then refused to answer. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(128) Peterson objected to Haeg asking Cole if Leaders was required to justify the increasing the severity of the charges and Cole refused to answer. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(129) Cole testified that Haeg's actions did jeopardize the wolf control program; that he (Cole) had a "personal" interest in seeing the wolf control program continued; and that people across the state shared his view but that he

(Cole) "could set those interests aside and get you the best deal that I could." Yet when Haeg and Haeg's wife Jackie met with Cole before hiring him Cole claimed he had no conflicts of interest and placed a statement that he had no conflicts of interest in the contract he gave Haeg to represent him for $200 per hour. *See* attached contract. In other words Cole lied in the contract he provided Haeg so he could act as a double agent for the state and help crucify Haeg so the wolf control program would not be jeopardized – explaining why he filed no motions, never investigated, and never advocated for Haeg:

> "[A] defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. An actual conflict of interest negates the unimpaired loyalty a defendant is constitutionally entitled to expect and receive from his attorney." Cuyler v. Sullivan, 446 U.S. 335 (U.S. Supreme Court 1980).
>
> "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process…to assess the impact of a conflict of interests on the attorney's options, tactics, and decisions in plea negotiations would be virtually impossible." Holloway v. Arkansas, 435 U.S. 475 (U.S. Supreme Court 1978)
>
> "[T]he right to the assistance of counsel had been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact finding process that has been constitutionalized in the Sixth and Fourteenth Amendments." U.S. v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)
>
> "[P]rejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense

> of representation corrupted by conflicting interests." Strickland v. Washington, (U.S. Supreme Court)
>
> "Defense counsel … must conscientiously protect his client's interest, undeflected by conflicting consideration." Risher v. State (Alaska Supreme Court)
>
> [Defendant] has a right to an attorney who wants to protect the defendant's 'rear end', not the attorney's." Anders v. California, 386 U.S. 738 (U.S. Supreme Court 1967)

(130) When Haeg inquired of Cole if the exposing the state fraudulently running the wolf control program would jeopardize it, attorney Peterson jumped in and objected, claiming this had nothing to do with Haeg's PCR. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(131) Peterson claimed Haeg could only ask Cole questions about a defense and not about Cole's conflict of interest. Yet as proven by all caselaw above a proven conflict of interest is an absolute defense.

(132) Cole testified that he believed Haeg had given him a letter, explaining what the state had told Haeg, to give to the judge for her consideration and Cole sent the letter to the judge. Yet all that remains of this letter in the official court record is Cole's cover letter stating "comes now David Haeg, by and through counsel, and hereby submits his letter for the court's consideration" – with Haeg's letter nowhere to be now found in the official court record. See court record. This letter laid out the specific facts of who, why, when, where, and how Haeg had been told and induced by the state to take the exact actions he was then

prosecuted for taking. See Haeg's PCR exhibits. Haeg only found the official court record had been destroyed after he could no longer even bring this up on appeal – so this evidence that was removed out of the official record and destroyed harmed Haeg during both trial and appeal. *See* court record for proof and Haeg's original PCR memorandum/exhibits/affidavits for additional evidence and how this harmed Haeg.

(133) When Haeg asked Cole if it was true that Cole's tactic for Haeg was "falling on his sword" Cole testified "that was your decision" and then Peterson immediately jumped in and testified that Cole had "repeatedly" answered this question "without using that phrase." Yet Cole had never told Haeg anything about "falling on his sword." Cole had told Haeg the state telling him he had to take the very actions they prosecuted him for was no defense; there was nothing that could be done about the false evidence locations; that the state had given him immunity and he had to give a statement; nothing that could be done about the immunized statement use; that nothing that could be done about the breaking of plea agreement; that there was no way to get the airplane back; etc; etc; etc – nothing about "falling on his sword."

An analogy would be like Haeg was a Jew in 1943 and being told by Cole, 'hey, get on this train so you can be relocated for work' – when in fact Cole meant 'hey, get on this train so you can go to Auschwitz to be gassed and burned**.'** To Cole and Peterson the phrases "you can't do anything about the false evidence locations" (when this was being used to frame Haeg for guiding violations); "you

have to give an immunized statement" (when this meant confess to everything so we can hammer you); "this isn't a legal defense" (when it was and would prevent prosecution), "you can't get the airplane back" (so you go broke before we even charge you), or "make a plea agreement" (so the state can get you to give up a whole year of guiding, bankrupting you before trial, without ever giving you anything) may mean the same as "falling on your sword." But to ignorant Haeg had they used the term "falling on your sword" instead of the others he would have know exactly what was in store for him and bolted. Just as the Jews would have bolted had they been told "hey, get on this train so you can go to Auschwitz to be gassed and burned" instead of "hey, get on this train for work." Cole and the state are now claiming everything was "Haeg's" decision when they lied to him to make him believe there were no other options and what he was being led to do would do no harm. The realty was that Haeg's attorneys worked hand-in-glove with the state to mislead Haeg and destroy everything Haeg, his wife, and their two daughters has in life – just as the Jews were misled to destroy their lives.

(134) Haeg asked what the phrase "falling on your sword" means and Cole testified,

> Cole: "That means you……admit your guilt in order for leniency from the state……you fall on your sword."
>
> Haeg: "How come you never told me I was doing that?"
>
> Cole: "I did….you knew it from the beginning….we've gone over this……multiple times David."
>
> Haeg: "<u>Really? And…..so…..there was no immunity then?"</u>

Cole: "Its….it…..it….."

Peterson: "Its…..its asked and answered" (this had never been asked or answered)

Cole: "…….its asked and answered."

Peterson: "……we've talked about the agree……the plea agreement."

Haeg: "So……let me just get this clear…….tell me exactly what the term of your…the description you gave for my tactic of 'we were falling on our sword.' Just tell me that again."

Cole: "I already did."

Haeg: "One more time please."

Cole: "No, I already did…..I'm not repeating things."

The above exchange proves that Cole had agreed behind Haeg's back to let the state use Haeg's statement against Haeg while telling and testifying under oath to Haeg and everyone else that Haeg had "immunity" for his statement – and that he never told Haeg any of this at the time. An attorney intentionally lying to his own client to deprive that client of the basic constitutional right against self-incrimination (and then committing perjury to cover this up) is gross ineffective assistance of counsel and a felony crime. Especially when Haeg specifically asked how the state could use the statement and the evidence that Haeg incriminated himself shows up everywhere in the state's case – in the charging informations, in Zellers and Fitzgerald's testimony, in the map presented to Haeg's jury (exhibit #25), etc, etc. See charging informations and court record.

Martin v. State, 517 P2d 1399 (AK 1974): "Denial of a constitutional right affects substantial rights. Plain error requiring reversal will be deemed present unless the defect is harmless beyond a reasonable doubt."

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

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

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

Counsel ineffective in murder case for failing to investigate circumstances of taking of first confession prior to moving to suppress, for questioning the defendant in the presence of the police officers concerning the first confession, for encouraging the

defendant to go with police officers to find car and murder weapon, questioning the defendant during that trip to make incriminating statements which resulted in a second taped confession. All of this help to the police occurred without a deal and court presumed prejudice. Bess v. Legursky, 465 S.E.2d 892 (W. Va. 1995)

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

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

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

"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)

(135) Haeg asked if he must obtain post-conviction relief before he could pursue an action for legal malpractice against an attorney and Peterson stopped Cole from answering by objecting it had nothing to do with Cole's representation. Yet Haeg had every right to ask questions to prove that Cole had a powerful motive to help the state keep Haeg convicted.

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

(136) Cole testified that he was not surprised that Haeg did not file motions to suppress at trial. Yet Haeg has a letter by Cole stating that he was surprised no motions to suppress were filed at trial. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(137) Cole refused to answer when questioned if he thought the court should have been informed the state had told Haeg it was for the greater good of the state for him to do exactly as he was charged with doing. This means there

must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(138) Cole refused to answer when questioned if he thought the court should have been told that the state had falsified all evidence locations to Haeg's guide area and then used the false locations as the justification for guide charges. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

(139) Cole testified that Robinson could not blame him (Cole) for not filing all the motions to suppress, etc. (Robinson has testified under oath that it was Cole's responsibility to have filed the motions protesting all the constitutional violations.) This proves Cole and Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had aright fro one of his attorneys to file these motion in his defense. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(140) Cole testified he didn't know if it was legal, ethical, and appropriate for two attorneys, one before trial and one at trial, to blame each other for not filing the motions to protect the same client both attorneys had.

(141) Cole testified that after he got the subpoena to Haeg's sentencing he called Robinson and said it would not good for him to testify and that Robinson told him "we don't need you." Yet Haeg has emails and letters proving he flat demanded Robinson subpoena and question Cole all about how Cole sold Haeg

out, with 56 written questions that Haeg had prepared, that Haeg paid Robinson to subpoena Cole and to buy him an airline ticket– and it is irrefutable it was Haeg's right for his demands be followed:

> *Jones v. Barnes*, 463 U.S. 745 (U.S. Supreme Court 1983) & *Brookhart v. Janis*, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "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 is correct; rather, the question is whether [the defendant] approved the course."… "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 individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

This is irrefutable proof Cole and Robinson were conspiring to cover up Cole's sellout of Haeg to the state, proves Cole and Robinson's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(141) Peterson prevented Haeg from additional attempts to establish Cole and Robinson worked together to deprive Haeg of constitutional rights to help the state frame Haeg. This means there must be a hearing at which Cole is required to answer this and until this is done Haeg's PCR proceedings cannot be dismissed.

Cole Deposition – Peterson Examining

(142) Peterson asks Cole to confirm the immunity Haeg received was against using Haeg's statement at trial and Cole answers, "Yep" but then says:

> "and arguably more….I mean…..ssss….in my opinion the state…..erred by not putting it out there."

Yet it is irrefutable that the state could not use Haeg's statement in any way – and not just at trial. And in Alaska the only immunity allowed is transactional immunity – which Cole testified Haeg received – and transactional immunity prevents any and all prosecution for the actions and events discussed:

> One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use immunity.
>
> First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise. Id. at 863. In such cases, a court would face the insurmountable task of determining the extent and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.
>
> The second basis for our decision is that the state cannot meaningfully safeguard against nonevidentiary use of compelled testimony. Nonevidentiary use "include assistance in focusing the investigation, deciding to initiate prosecution, refusing to plea-bargain, interpreting evidence, planning cross-examination, and otherwise generally planning trial strategy." United States v. McDaniel, 482 F.2d 305, 311 (8th Cir.1973). Innumerable people could come into contact with the compelled testimony, either through official duties or, in a particularly notorious case, through the media. Once persons come into contact with the compelled testimony they are incurably tainted for nonevidentiary purposes.
>
> This situation is further complicated if potential jurors are exposed to the witness' compelled testimony through wide dissemination in the media.
>
> Even the state's utmost good faith is not an adequate assurance

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

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

"[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.

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d

> 727, 734 (9th Cir.1984) Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the [information or trial] becomes indistinguishable from the constitutional and statutory transgression.
>
> This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.
>
> Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

Petersons theory that Haeg's statement can be used everywhere but at trial is nothing but a smoke screen to cover up the fact the state unconstitutionally prosecuted Haeg when he could not e prosecuted; used Haeg's statement to convict Haeg – and this is proven by the fact the law in Gonzalez, Kastigar, and North specifically and repeatedly states Haeg's statement may not be used in anywhere – not just at trial – and may not be use to find other evidence; to justify charges, to coerce witnesses into testifying; to get maps to use at trial; etc; etc. Gonzalez and North specifically state an immunized statement may not be used to: "prepare witnesses" or "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." All of these happen BEFORE trial. In addition and as already pointed out, in Alaska there can be no prosecution after being given immunity. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole let the state violate Haeg's right against self-incrimination and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(143) Peterson asks Cole that because Haeg testified at trial this meant Haeg's immunity was "irrelevant" and Cole agreed. Yet after being given immunity no prosecution was valid and Haeg was told by Robinson the state was already using Haeg's statement against him, was going to present only the bad parts of it against Haeg at trial, and that for the jury to hear the "good" parts of the statement Haeg had to testify at trial. Robinson has testified under oath he told Haeg this. In other words Haeg's immunized statement itself was used to force Haeg to testify at trial – and now the state claims this cures all the use they made of it. This is like arguing that because Jews "willing" entered the gas chamber, because they were told if they didn't they would be shot, it was the Jews own fault they were gassed to death. What were they supposed to do, refuse to go in and

hope they didn't get shot? Haeg could not refuse to testify and just hope the state didn't use his statement against him when Robinson told him they were.

And caselaw holds that as soon as Haeg's immunized statement was used in anyway the rest of the prosecution is null and void:

> Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)

In other words as soon as the state used Haeg's statement against Haeg it didn't matter what Haeg or anyone else may or may not have done afterward – the process was "violated and corrupted" and from that moment on Haeg's trial became "indistinguishable from the constitutional and statutory transgression.

And all this ignores the fact that only "transactional" immunity can be given in Alaska – as Cole himself testified. And transactional immunity prevents any prosecution for what is discussed in the immunized statement:

> "Transactional immunity" affords immunity to the witness from prosecution for the offense to which the compelled testimony relates. Black's Law Dictionary (9th Ed.2009)

> Transactional immunity – a grant of immunity to a witness by a prosecutor that exempts the witness from being prosecuted for the acts about which the witness will testify. Webster's New World Law Dictionary, copyright 2010

Yet now everyone is claiming that not only can Haeg be prosecuted after being given transactional immunity, his statement can be used to do so. This is so bizarre and completely corrupt it boggles the mind. What happened is everyone took the chance that Haeg could be railroaded and would never open up a law book to check up on what happened to him. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole let the state violate Haeg's right against self-incrimination and Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

Cole Deposition – Haeg Re-Direct

(144) Cole testified that Haeg agreed to a plea agreement in which all terms were negotiated and which included giving up the airplane. Yet Haeg has tape recordings of Cole, while Cole was still representing him and immediately after, proving that this is completely false. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(145) Cole testified that the reason the state could use his statement before trial is because "that's not the time when your guilt or innocence is proven." As shown in Gonzalez, North, and Kastigar above this is false. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Cole's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, affidavits for additional evidence and how this harmed Haeg.

(146) Cole testified he didn't know how to stop the state from using Haeg's statement before trial. Yet Gonzalez, North, and Kastigar above prove you ask for a hearing to suppress and require the state to show that they are complying with the law – something that Cole, the attorney Haeg hired for his counsel, is required to know. This proves Cole's sworn testimony to be irrefutably false, more proven perjury by Cole, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as it is irrefutable that the state used Haeg's statement and map against him. *See* court record, charging informations, and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

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

"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)

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

Owens v. United States 387 F.3d 607 (7th Cir. 2004)
Counsel was ineffective in drug case for failing to adequately move to suppress evidence seized pursuant to a search of the defendant's house. The evidence was seized pursuant to a warrant based on a barebones affidavit, signed by a detective, that stated that an informant had bought some crack from the defendant at the house three months earlier. There was no indication of the quantity of crack or the reliability of the informant.

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

"a fortiori ... a failure to seek enforcement of this constitutional right is unfair and constitutes prejudice to the defendant". State v. Paske, 121 Wis. 2d 471, 360 N.W.2d 695 (Ct. App. 1984)

Wayrynen v. Class, 586 N.W.2d 499 (S.D. 1998) Counsel ineffective for identifying client to police and having her confess to 15 arson charges without any prior attempt to negotiate a deal with the state.

Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "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 is correct; rather, the question is whether [the defendant] approved the

course."… "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 individual which is the lifeblood of the law.'" (Quoting People v. Malkin, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

State v. Jones 759 P.2d 558 Alaska App.,1988: The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions.... [W]hen 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. Of course, a mistake made out of ignorance rather than from strategy cannot later be validated as being tactically defensible.

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

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

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

"[Counsel] so abandoned his overarching duty to advocate the defendant's cause that the state proceedings were almost totally non-adversarial. [T]he record supports the district court's finding that defense counsel turned against [defendant], and that this conflict in loyalty unquestionably affected his representation. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous and unacceptable legal fiction. A defense attorney who abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction… suffers from an obvious

> conflict of interest. In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition. The performance of [defendant's] counsel was constitutionally unreasonable, but more importantly, the evidence presented overwhelmingly established that his attorney abandoned the required duty of loyalty to his client. [Defendant's] attorney did not simply make poor strategic choices; he acted with reckless disregard for his clients best interests and, at times, apparently with the intention to weaken his client's case. Prejudice, whether necessary or not, is established under any applicable standard." Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988)

Arthur Robinson Deposition

On September 9, 2011 Haeg's second attorney was deposed (sworn under oath to tell the truth under penalty of perjury) at the Office of Special Prosecutions and Appeals, 310 K Street, Anchorage Alaska, 99501.

(1) Robinson testified that he never told Haeg that nothing could be done about what Cole (Haeg's first attorney) had done. Yet Haeg has recordings of Robinson, along with affidavits and witnesses, proving Robinson told Haeg nothing could be done about what Cole had done and that it was all "water under the bridge." See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(2) Robinson testified that he told Haeg he could try to enforce the plea agreement that Cole had made. Yet Haeg has recordings of Robinson, along with affidavits, witnesses, and documents from Robinson proving that Robinson told Haeg they could not enforce the plea agreement. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(3) Robinson testified that it was Haeg that wanted to pursue going to trial. Yet Haeg has recordings of Robinson, along with affidavits and witnesses, proving that it was Robinson who wanted to pursue trial. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(4) Robinson testified that there was a defect in the information because it was never sworn to under oath by either the police officers or the prosecutor. Yet Rule 7 holds an information only has to be signed by the prosecutor unless an

arrest warrant is issued - and the information charging Haeg was signed by prosecutor Scott Leaders and an arrest warrant was never issued in Haeg's case - he voluntarily showed up in court. *See* court record and Rule 7(c)(1):

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney.
>
> *See* also Albrecht v. United States, 273 U.S. 1 (U.S. Supreme Court 1927):
>
> The claims mainly urged are that, because of defects in the information and affidavits attached, there was no jurisdiction in the District Court and that rights guaranteed by the Fourth Amendment were violated.
>
> As the affidavits on which the warrant issued had not been properly verified, the arrest was in violation of the clause in the Fourth Amendment, which declares that 'no warrants shall issue but upon probable cause, supported by oath or affirmation.' *See* Ex parte Burford, 3 Cranch, 448, 453; United States v. Michalski (D. C.) 265 F. 839. But it does not follow that, because the arrest was illegal, the information was or became void.

Judge Murphy, in denying Robinson's motion, used the indisputable rule and law above. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(5) Robinson testified that the district court did not have subject-matter jurisdiction over Haeg's case. Yet subject-matter jurisdiction is established by

statute and it is indisputable that the district court had subject-matter jurisdiction over Haeg being charged with misdemeanors.

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

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

Further proof of Robinson's ineffectiveness is that Robinson originally told Haeg that the court would not have "personal" jurisdiction. But when Haeg proved this false Robinson stated, "well, they may have personal jurisdiction but the would not have subject-matter jurisdiction."

(6) Robinson testified that the he filed a motion to dismiss the information because it was not sworn to, the court denied the motion, and then the court allowed Leaders to amend the information which cured the defect. Yet Robinson never told Haeg the defect had been cured and continued to represent Haeg as if he still thought it was valid, and even filed an appeal based entirely on it. See court record and Haeg's PCR exhibits. This is incredible proof of Robinson's ineffectiveness, deceit, and sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson was

pursuing a "tactic" he knew was not valid and not pursing those that were valid. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(7) Robinson testified that the state had not falsified the evidence locations to Haeg's guide area, they had only "miss numbered" them. Yet the "miss numbering" was of the Game Management Unit (GMU) in which they were found – a "miss numbering" that them put them in the same GMU number as where Haeg guided and the state specifically pointed this out affidavits seizing all the evidence and property. See court record and Haeg's PCR exhibits. Then the state presented to Haeg's judge and jury the false GMU numbers and argued that because Haeg was taking wolves where he guided to benefit his guide area he must be convicted of guide crimes. And to irrefutably prove the effectiveness of this Judge Murphy specifically cited the falsified GMU number to justify Haeg's devastating sentence. See court sentencing record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted with material evidence the state knew was false and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(8) Robinson testified that it wasn't true that he had told Haeg nothing could be done about the all the search and seizure warrants that falsified the

evidence location to Haeg's guide area. Yet Haeg has recordings and witnesses proving Robinson told him nothing could be done about the false warrants. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(9) Robinson testified that it wasn't true that he never told Haeg that he didn't have a right to a prompt post seizure hearing. Yet Haeg has recordings and witnesses proving Robinson never told him he had a right to a prompt post seizure hearing. See Haeg's PCR exhibits. In addition Robinson never asked for the plane or other property back because Haeg was never given a prompt post seizure hearing – even though Robinson admits that Haeg was adamant in getting the plane back so he could work. *See* Haeg's PCR exhibits and Waiste below. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of hearing required by due process and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier... The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing."

(10) Robinson testified that since Haeg's plane was like the "cases concerning boats for commercial fishermen [who] use their boats for a livelihood" Haeg should have been able to get the plane back that he used to guide with. Yet it was Haeg who found the commercial fisherman cases that required property, used as the primary means to provide a livelihood, to be allowed to be bonded out so a person was not financially devastated before even being charged or taken to trial. *See* Waiste directly above. The proof that it was Haeg who found this caselaw is the fact Robinson when he finally filed a motion for Haeg to bond out the plane, never put in a single citation to the clear caselaw that required Haeg to be allowed

to bond the plane out – and never protested when the state falsely claimed the law did not allow the plane to be bonded out. And finally, when Judge Murphy never ruled on Haeg's motion to bond out the plane - ever- Robinson did nothing about it. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his property he needed as his primary means to provide a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(11) Robinson testified that before he could pursue the fact that the state told and induced Haeg to take wolves outside the area but claim they were taken inside he needed a witnesses to corroborate. Yet at the time he told Haeg that this was not a legal defense and could not be pursued. See Haeg's PCR exhibits. And there were two witnesses. Haeg himself was a witness and also Ted Spraker, a sitting member of the Alaska Board of Game (the state agency who created and ran the Wolf Control Program) - the one who told Haeg. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of defense and Robinson's perjury proves his conflict of interest. *See* Haeg's original

PCR memorandum/ exhibits/affidavits for additional evidence and how this harmed Haeg.

(12) Robinson testified that he could not ask Spraker at Haeg's trial if he (Spraker) told and induced Haeg to take wolves outside the area "because it'd seem almost like he was admitting to the jury that he had in fact took them outside." Yet Robinson had Haeg himself get up in front of the jury and had Haeg himself admit he took wolves outside the area. So Robinson's excuse for not asking Spraker this is COMPLETELY invalid. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of a defense and Robinson's perjury proves his conflict of interest. *See* the court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg. In other words Robinson sabotaged all defenses Haeg had to devastating guide charges – by having Haeg admit to taking wolves outside the area, never refuting the state's claim he was taking them in is guide area and thus must be found guilty of guiding crimes (when the state's own GPS coordinates proved they had falsified the evidence to Haeg's guide area); and by never exposing how the state itself was responsible for Haeg's action's and motive. This changed the entire evidentiary picture from Haeg was a knight in shining armor charging in to save the Wolf Control Program at the state's request to Haeg was an outlaw guide out to benefit his business.

(13) Robinson testified that even though Haeg specifically asked he never discussed with Haeg that he was not going to ask Spraker if Spraker told and induced Haeg to take wolves outside the area but claim they were taken inside. Yet all caselaw holds it is the attorney's duty to discuss this with a client:

> "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).

This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of a defense and Robinson's perjury proves his conflict of interest. *See* the court record and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg

(14) Robinson testified that he never said Haeg could not tell anyone that the state had told and induced him to take wolves outside the area but claim they were taken inside. Yet Haeg has recordings and witnesses proving Robinson told him he could not tell anyone. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of a defense and Robinson's perjury proves his conflict of interest. *See* the court record

and Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(15) Robinson testified that he never said that Haeg could not get anything for all he had done for the failed plea agreement (year of guiding given up, witnesses flown in from around the country, etc). Yet Haeg has recordings and witnesses proving Robinson told him he could get nothing for all he had done for the failed plea agreement and it "was all water under the bridge." See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of plea agreement enforcement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(16) Robinson testified he never said nothing could be done about enforcing the plea agreement. Yet Haeg has recordings and witnesses proving Robinson told said nothing could be done about enforcing the plea agreement and it "was all water under the bridge." See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of plea agreement enforcement and Robinson's perjury proves his

conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(17) Robinson testified that he didn't know if Haeg knew that if he went to trial he could not force the state to honor the plea agreement. Yet the ruling caselaw makes it perfectly clear Robinson was required to inform Haeg of this.

> "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)

This deprived Haeg of plea agreement enforcement. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(18) Robinson testified that he never told Haeg that his statement could be used against him. Yet Haeg has recordings and witnesses proving Robinson told Haeg that this statement could be used against him and was being used against him. See Haeg's PCR exhibits. In addition Robinson own reply states that the state "should not" use Haeg's statement, not that the state "could not" use Haeg's statement. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-

incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(19) Robinson testified that he told Haeg that his statement could not be used because it was part of a plea agreement. Yet as Haeg already proved above this is not what Robinson told Haeg – backed up by the fact Robinson himself wrote a reply brief stating it "should not" be used (which is permissive) instead of "could not" be used (which is not permissive).

> Evidence Rule 410(a), Inadmissibility of Plea Discussions in Other Proceedings proves this distinction: "Evidence of…. statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding**…..**

See court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(20) Robinson testified that he argued he argued at trial that Haeg's statement could not be used against Haeg. The court record of Haeg's trial irrefutably proves this is false. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up

his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(21) Robinson testified that Leaders did not use Haeg's statement against Haeg in the state's case in chief. Yet Haeg's statement could not be used ANYWHERE by the state, not just in its case in chief. *See* Gonzalez, North, and Kastigar above and Evidence Rule 410(a):

> "Evidence of…. statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding…..

And it is indisputable that Leaders, in the state's case in chief, presented to the jury the map that Leaders required Haeg to make during his statement. See court record, exhibt #25. When Haeg later cross-examined Robinson on this Robinson admitted Haeg's map was used by the state in its case in chief. This proves Robinson knowing testified falsely about the state not using Haeg's statement against Haeg during its case in chief – by definition felony perjury. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves

his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(22) Robinson testified that he advised Haeg the risk of taking the stand, that Haeg wanted to testify, and that he did not recommend Haeg taking the stand. Yet Haeg has recordings and witnesses proving Robinson never told Haeg of the risks of taking the stand and that Haeg did not what to take the stand. See Haeg's PCR exhibits. In addition Haeg has recordings and witnesses proving Robinson told Haeg that he had to take the stand because the state was going to present only the "bad" parts of Haeg's statement to the jury and for the "good" parts to be heard Haeg had to testify. On cross-examination Robinson admitted this was the case. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(23) Robinson testified that he never said Haeg would lose at trial because Cole had given the state everything. Yet Haeg has recordings and witnesses proving Robinson told Haeg that he would lose at trial because Cole had given the state everything. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney

performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(24) Robinson testified that Cole could not have done anything about Zellers being used by the state against Haeg. Yet overwhelming caselaw proves this is not true – as Cole has testified Haeg was given immunity for his statement, affirmatively presented Haeg's statement to Zellers, used Haeg's statement to force Zellers to cooperate, and Zellers (and Zellers attorney Fitzgerald) have testified under oath that this was the case.

> State of Alaska v. Gonzalez, 853 P.2d 526 (AK Supreme Court 1993) "We do not doubt that, in theory, strict application of use and derivative use immunity would remove the hazard of incrimination. Because we doubt that workaday measures can, in practice, protect adequately against use and derivative use, we ultimately hold that [former] AS 12.50.101 impermissibly dilutes the protection of article I, section 9.
>
> Procedures and safeguards can be implemented, such as isolating the prosecution team or certifying the state's evidence before trial, but the accused often will not adequately be able to probe and test the state's adherence to such safeguards.
>
> One of the more notorious recent immunity cases, United States v. North, 910 F.2d 843 (D.C.Cir.) modified, 920 F.2d 940 (D.C.Cir.1990) illustrates another proof problem posed by use and derivative use immunity.
>
> First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial. The second problem, however, is more troublesome. In a case such as North, where the compelled testimony receives significant publicity, witnesses receive casual exposure to the substance of the compelled testimony through the media or otherwise. Id. at 863. In such cases, a court would face the insurmountable task of determining the extent

and degree to which "the witnesses' testimony may have been shaped, altered, or affected by the immunized testimony." Id.

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

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

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

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

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

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

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

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

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

> This burden may be met by establishing that the witness was never exposed to North's immunized testimony, or that the allegedly tainted testimony contains no evidence not "canned" by the prosecution before such exposure occurred.
>
> Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990)
>
> "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(25) Robinson testified that he never told Haeg that he would no doubt win on appeal. Yet Haeg has recordings and witnesses proving Robinson told Haeg that he would no doubt win on appeal. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by

Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(26) Robinson testified that he still thought the subject matter jurisdiction issue was still valid for Haeg's appeal. Yet Robinson himself had previously testified that the state had "cured" this defect prior to trial. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson was pursuing an invalid "tactic", ignoring valid tactics, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(27) Robinson testified that he never said Haeg couldn't tell anyone about the plea agreement because that would be "admitting" to the court they had subject matter jurisdiction. Yet Haeg has recordings and witnesses proving Robinson told Haeg that he couldn't tell anyone about the plea agreement because this would "admit" the court had subject matter jurisdiction. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg

was deprived of his right to plea agreement enforcement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(28) Robinson testified that he never heard Haeg had been granted immunity for his statement. Yet Cole has testified that Haeg had immunity for his statement and Robinson claims that he talked to Cole about the statement. So either Robinson is lying that he never heard that Haeg had immunity for the statement or Cole lied to Robinson that Haeg didn't have immunity for the statement. In either event this is ineffective assistance of counsel, as Haeg could not be prosecuted after being given immunity (*See* Gonzalez and North above) – proving the harm to Haeg. And since this was the case Robinson had a duty to find this out and both Cole and Robinson had a duty to use this in Haeg's defense.

(29) Robinson testified that Haeg's statement could not be used because of the evidentiary rules. Yet these rules hold that Haeg's statement could not be used anywhere for anything – yet Robinson keeps testifying that the evidentiary rules only exclude Haeg's statement from being used in the state's case in chief. *See* Evidence Rule 410(a):

> "Evidence of…. statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding….."

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as

Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(30) Robinson testified that why would Haeg make a plea agreement and take a deal if Haeg had immunity. Yet Haeg has recordings and witnesses proving Cole and Robinson told Haeg that he could be prosecuted after being given immunity and that the state could use his statement to do so. See Haeg's PCR exhibits. This explains why Haeg agreed to be prosecuted after being given immunity – he didn't know that being given immunity meant he could not be prosecuted. It was for this information that he hired his attorneys for hundreds of thousands of dollars and why they are guilty beyond any doubt of ineffective assistance of counsel – they let Haeg be prosecuted when the law prevented Haeg from being prosecuted. This proves Robinson's and Cole's sworn testimony to be irrefutably false, more proven perjury by Robinson and Cole, is another attempt to cover up their sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted, against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(31) Robinson testified that he did not believe Haeg had been given immunity. Yet Cole has twice testified under oath that Haeg had been given immunity and a witness that Cole called to testify on Cole's behalf, attorney Kevin Fitzgerald, has

also testified that Haeg had been given immunity. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted, against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(32) Robinson testified that Judge Murphy allowed the state to "correct" the subject matter jurisdiction defect prior to trial. Yet Robinson's trial and appeal "tactic" was based on this "defect" and not on the use of Haeg's statement, the knowing falsification of the evidence locations to Haeg's guide area, or the fact state told Haeg that for the greater good of the state he must do exactly as they charged him with doing. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of these defenses for a defense that had no merit becaeu it had been corrected.. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(33) Robinson testified that Leaders never took Haeg's statement out of the charging information even after Robinson protested this. Yet Robinson never said a word about this continued and specific violation of Evidence Rule 410 (not to mention the additional violation of Haeg's immunity). See court record. Everything that happened after this was "fruit of the poisonous tree" – or null and

void – including Haeg's trial and conviction. This proves Robinson's ineffectiveness and meets both Risher standards of deficient attorney performance and harm to client. *See* the Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(34) Robinson testified that there was nothing improper with the state using Haeg's statement to cross-examine Haeg. Yet Evidence Rule 410(b) (which prevents the use of plea agreement statements) specifically states:

> This rule shall not apply to (1) the introduction of voluntary and reliable statements made in court on the record in connection with any of the forgoing plea when offered in subsequent proceedings as prior inconsistent statements, and (2) proceedings by a defendant to attack or enforce a plea agreement.

Haeg's statement was made in Cole's office and was not on the record – thus the state could not use Haeg's statement to cross-examine Haeg. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(35) Robinson testified that he did not object to Leaders use of Haeg's statement to cross-examine Haeg after he took the stand because Haeg's statement could be used for this. As shown above, Evidence Rule 410(b) prevented this use as Haeg's statement was not made in court (it was made in Cole's office) and was not made

on the record. This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(36) Robinson testified that he had no grounds to protest Zellers testimony. Yet Zellers and Kevin Fitzgerald have testified that Haeg's statement was used to force Zellers to testify. See Haeg's exhibits. As no use could be made of anything or anyone tainted by Haeg's statement Robinson had irrefutable grounds to object to Zellers testimony. *See* Gonzalez, North, Kastigar, and Evidence Rule 410 above. This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(37) Robinson testified that nothing needed to be done about the irrefutable violation of Haeg's constitutional right against self-incrimination. Yet

all caselaw hold that a violation of the right against self-incrimination means the conviction is invalid – period – end of story:

> "[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary [statement], without regard for the truth or falsity. . . even though there is ample evidence aside from the [statement] to support the conviction." Jackson v. Denno, 378 U.S. 368 (U.S. Supreme Court 1964).
>
> "The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972).

This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted, his right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(38) Robinson was non-responsive when asked if there was a reason to challenge the state's theory that Haeg was killing wolves in his guide area to benefit his guide business. Yet Haeg had told Robinson that the state had falsified the wolf kill locations to Haeg's guide are on every warrant used to seized Haeg's property; used the false locations to justify guiding charges against Haeg; testified falsely to Haeg's judge and jury about the wolf kill locations; and then argued to Haeg's judge and jury this justified Haeg being found guilty of devastating guide

charges – when all along the state's own GPS coordinates proved the wolves were not killed in Haeg's guiding area – and Haeg had told the state this years before trial during Haeg's statement. This proves Robinson's ineffectiveness, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with material evidence known to the state to be false and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

In addition, when the state falsified the Game Management Unit numbers during trial Haeg flat demand Robinson confront the state on this. Only after the state knew they had been found out did they admit they had testified falsely about the GMU numbers. But then no one, not Robinson and not the state, told Haeg's judge and jury that this meant the state's whole theory that Haeg was killing wolves where he guide was false. And because the state (Trooper Gibbens) owed up to the falsehood only after he knew he was caught, this is proven perjury by the state, which is not allowed:

> AS 11.56.200. Perjury
> (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
> (b) In a prosecution under this section, it is not a defense that
> (1) the statement was inadmissible under the rules of evidence; or
> (2) the oath or affirmation was taken or administered in an irregular manner.
> (c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.
(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement
(1) during the course of the same official proceeding;
(2) before discovery of the falsification became known to the defendant;
(3) before reliance upon the false statement by the person for whom it was intended; and
(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

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

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

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

“The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is]

> implicate in any concept of ordered liberty…" Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)
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> "We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony…" United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

And the proof of the effectiveness of the perjury even after the state admitted to it is the fact that Judge Murphy specifically cited the false evidence locations as justification for Haeg's sever sentence. And if Judge Murphy used the perjury to sentence Haeg it stands to reason Haeg's jury used the perjury to convict him. This proves Robinson's ineffectiveness, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(39) Robinson testified that he had no further reason to look at whether or not Trooper Gibbens search warrant affidavits were correct when Trooper Gibbens was caught at trial admitting he had knowingly falsified the evidence locations. (The false evidence locations were placed on every last search warrant affidavit – and it was now proven Gibbens was knowingly falsifying this.) See court record and Haeg's PCR exhibits. Yet all caselaw holds that intentional or reckless falsification on a warrant affidavit renders it null and void:

> "[A]ll evidence obtained by searches & seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." Mapp v. Ohio, 367 U.S. 643 (U.S. Supreme Court 1961)
>
> "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." Lewis v. State, 9 P.3d 1028, (Ak.,2000)
>
> "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful." State v. Davenport, 510 P.2d 78, (Ak.,1973)
>
> "Misstatements on warrants were material and intentional, justifying suppression of evidence obtained through use of the warrants." State v. White, 707 P2d 271 (Ak., 1985)
>
> "'[Defendant] has everything to gain and nothing to lose' in filing a motion to suppress…" U.S. v. Molina, 934 F.2d 1440 (9th Cir. 1991)

When Trooper Gibbens admitted to knowingly falsifying the evidence locations at trial it is clear he had to know the search warrant affidavits were also false. And the state's own case at trial and Judge Murphy's specific use of the false evidence locations proves it was material. In other words not only would have Gibbens perjury at trial ended Haeg's prosecution – so would his falsification of the evidence locations on all the search warrant affidavits – because virtually all evidence was tainted by the materially false locations. This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as

Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right against unreasonable searches and seizures, his right not to be prosecuted with perjury by the state, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(40) Robinson testified that he raised the issue that Haeg should be charged under the Wolf Control Program law. Yet Robinson never protested when Judge Murphy (who was being chauffeured full time by Trooper Gibbens) granted the state's protection order that Haeg could not argue that he should have been charged under the Wolf Control Program – stripping Haeg of the protection of the law. *See* court record. And to justify stripping Haeg of this protection the state had falsified all evidence locations to Haeg's guide area and Robinson told Haeg it wasn't a legal defense that the state officials running the Wolf Control Program told Haeg it was in the best interest of the state to do exactly as Haeg was charged with doing. And Robinson never brought this up in his points of appeal. *See* court record. This proves Robinson's ineffectiveness and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of his right to the equal protection of the law and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(41) Robinson testified that he discussed a pretrial motion to suppress with Haeg. Yet Haeg has recordings and witnesses proving this is false. See

Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of his right against self-incrimination, right against unreasonable searches and seizures, right not to be prosecuted with perjury by the state, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(42) Robinson testified that the only way to suppress evidence seized with a search warrant was if the "misstatement" on the affidavit were reckless or intentional and that he did not know if Gibbens falsifying the evidence location was reckless or intentional. Yet, as shown above, Gibbens knew the evidence locations on his affidavits were false at trial yet continued to falsify the evidence locations so they would conform to his affidavits that were used to seize all the evidence. And only after he knew his falsification had been discovered did he admit he had falsified the evidence locations. This proves the "misstatement" was intentional. Yet even after he admitted this Haeg's trial went on without anyone informing the judge or jury this meant all the search warrants were false and that the state's case Haeg was taking wolves to benefit his guide business was false. And the proof everything was still tainted was the fact Judge Murphy specifically used the false locations to justify Haeg's sentence. And more

disturbing then this is the fact prosecutor Leaders had to know the evidence locations on the warrants had been falsified yet did nothing about it and later, when he solicited Gibbens testimony at trial, knew Gibbens trial testimony was also false and did nothing about it. Leaders had to know all this years ahead of time because Haeg and Zellers, during the statements they gave Leaders and Gibbens, stated and proved the evidence locations were false.

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)
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> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)
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> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)
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> “The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is]

> implicate in any concept of ordered liberty…" Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)
>
> "We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony…" United States v. Basurto, 497 F.2d 781 (9th Cir. 1974)

This proves Robinson had to have known that Gibbens knew the statements he made on the affidavits were false – requiring all the evidence to be suppressed. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client– as Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right against unreasonable searches and seizures, his right not to be prosecuted with perjury by the state, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> Commonwealth v. Bowie, 243 F.3d 1109 (9th Cir. 2001):
> The ultimate mission of the system upon which we rely to protect the liberty of the accused as well as the welfare of society is to ascertain the factual truth, and to do so in a manner that comports with due process of law as defined by our Constitution. This important mission is utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation. *See* United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991) ("Indeed, if it is established that the government knowingly permitted the introduction of false testimony `reversal is virtually automatic.' ") (citations omitted); In Napue v. Illinois, 360 U.S. 264 (1959), Chief Justice Warren reinforced this constitutional imperative. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has

the responsibility and duty to correct what he knows to be false and elicit the truth."

A prosecutor's "responsibility and duty to correct what he knows to be false and elicit the truth," Napue, 360 U.S. at 269-270, requires a prosecutor to act when put on notice of the real possibility of false testimony. This duty is not discharged by attempting to finesse the problem by pressing ahead without a diligent and a good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining willfully ignorant of the facts.

What appears clearly from this record is a studied decision by the prosecution not to rock the boat, but instead to press forward with testimony that was possibly false. What emerges from this record is an intent to secure a conviction of murder even at the cost of condoning perjury. This record emits clear overtones of the Machiavellian maxim: "the end justifies the means," an idea that is plainly incompatible with our constitutional concept of ordered liberty. *See* Rochin v. California. 342 U.S. 165, 169 (1952). Such false testimony and false evidence corrupts the criminal justice system and makes a mockery out of its constitutional goals and objectives.

The authentic majesty in our Constitution derives in large measure from the rule of law -principle and process instead of person. Conceived in the shadow of an abusive and unanswerable tyrant who rejected all authority save his own, our ancestors wisely birthed a government not of leaders, but of servants of the law. Nowhere in the Constitution or in the Declaration of Independence, nor for that matter in the Federalist or in any other writing of the Founding Fathers, can one find a single utterance that could justify a decision by any oath-beholden servant of the law to look the other way when confronted by the real possibility of being complicit in the wrongful use of false evidence to secure a conviction in court. When the Preamble of the Constitution consecrates the mission of our Republic in part to the pursuit of Justice, it does not contemplate that the power of the state thereby created could be used improperly to abuse its citizens, whether or not they appear factually guilty of offenses against the public welfare. It is for these reasons that Justice George Sutherland correctly said in Berger that the prosecution is not the representative of an ordinary party to a lawsuit, but of a sovereign with a responsibility not just to win, but to see that justice

> be done. 295 U.S. at 88. Hard blows, yes, foul blows no. The wise observation of Justice Louis Brandeis bears repeating in this context: "In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . . . If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself."
>
> All due process demands here is that a prosecutor guard against the corruption of the system caused by fraud on the court by taking whatever action is reasonably appropriate given the circumstances of each case. The Attorney General's faulty decision and calculated course of non-action in this case deprived Bowie of the fair process that was his due under our Constitution before he could be deprived of his liberty.

(43) Robinson testified that if there was proof that Gibbens had committed perjury he would have asked for sanctions that may have included a mistrial. Robinson then testified that since Gibbens "corrected" his testimony this meant Gibbens was not guilty of perjury. Yet Robinson testified that Gibbens corrected his testimony only after Gibbens knew his falsification had been discovered – meaning that Gibbens had to have known at the time he gave the testimony it was false and waited until he knew he had been caught before fessing up – and if he had never been caught he would have never "corrected" his false testimony. This is by definition perjury – which would have ended Haeg's prosecution:

> AS 11.56.200. Perjury
> (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
> (b) In a prosecution under this section, it is not a defense that
> (1) the statement was inadmissible under the rules of evidence; or

(2) the oath or affirmation was taken or administered in an irregular manner.

(c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.

(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement

(1) during the course of the same official proceeding;

(2) before discovery of the falsification became known to the defendant;

(3) before reliance upon the false statement by the person for whom it was intended; and

(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

This proves Robinson's ineffectiveness, proves his sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right not to be prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(44) Robinson testified that since Haeg admitted to violations the state's case could not have been based upon material false evidence. Yet Haeg never admittd to vilations. See court record and Haeg's PCr exhibits. And it is irrefutable that the state falsified the evidence to Haeg's guide area on all the warrants used to seize property and evidence; falsified the evidence locations to Haeg's guide area

during trial; and that Haeg's judge specifically used the false location to justify Haeg's severe sentence – proving the evidence falsification was material. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right not to be prosecuted with evidence obatined in violation of Haeg's right not to be prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(45) Robinson testified that Haeg's statement was not used in the state's case in chief. Yet the map the state required Haeg to make during his statement was presented to Haeg's jury during the state's case in chief and Robinson has testified under oath that he knew this. *See* trial exhibit #25 and the court record. In addition, as proven by Evidence Rule 410, a plea statement could not be used anywhere or anytime by the state – not just excluded from its case in chief. In addition, Haeg had immunity for his statement so it prevented any prosecution whatsoever. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR

memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(46) Robinson testified that the only time Haeg's statement was used against Haeg was after he had testified and that it was allowed to be used to impeach Haeg after Haeg had testified. Yet as shown in Evidence Rule 410(b) above a statement can only be used for this if it is made in court and on the record. Haeg's statement was not made in court, was not made on the record and had the additional protection of immunity- which prevents any prosecution whatsoever. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(47) Robinson testified that he was not sure if he told Haeg about the risks of testifying. Yet just minutes previously in his deposition Robinson testified that he had told Haeg about the risks of testifying. This is perjury by inconsistent statements, proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR

memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(48) Robinson testified that he did not advise Haeg to testify. Yet later on in the deposition, when during cross-examination Robinson knew his falsification had been discovered, he admitted he had told Haeg that because the state was going to use the "bad" parts of Haeg's statements against Haeg at trial Haeg had to testify to bring in the "good" parts of his statement. This proves Robinson's sworn testimony to be irrefutably false, is more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(49) Robinson testified that Haeg was absolutely determined to testify. Yet Haeg has recordings and witnesses proving this is false. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(50) Robinson testified the charging information was defective since it was not sworn to. Yet Criminal Rule 7 does not require an information be sworn to:

> The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney.

Since the informations charging Haeg were signed by Leaders, the attorney prosecuting Haeg, and all authorities hold a prosecutor's signature represents his oath of office, it is irrefutable the information was not defective because it was not sworn to. This proves this "tactic" by Robison was unreasonable and nothing more than a decoy to keep Haeg from pursuing the real defenses of the false evidence locations, prosecution after being given immunity, statement used to do so, perjury by state, entrapment, etc, etc. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the numerous defenses above. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(51) Robinson testified that he could see no other potential defense that Haeg could use other than the charging information was not sworn to. As shown above and in more detail in Haeg's original PCR memorandum, exhibits, and affidavits there were numerous defenses – any one of which would have ended Haeg's favorably for Haeg. And it is irrefutable that Robinson recognized most of

these defenses – such as the use of Haeg's immunized statement, because Robinson himself brought it up in a reply brief (where it was not required to be acted up and was not acted upon) and the state's falsification of the evidence locations (which Robinson confronted the state on when Haeg flat demanded he do so). And the power of these defenses is stated over and over in Gonzalez, North, Napue, Mesarosh, Mooney, Giles, and Basurto above. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the numerous defenses above – any one of which would have changed the outcome in Haeg's case. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(52) Robinson testified that he subpoenaed Cole because Haeg wanted Cole to testify at Haeg's sentencing. Robinson then testified that Cole never showed up as subpoenaed and that he (Robinson) did not try to compel Cole's presence because he didn't see any relevant basis for having Cole testify. Yet Haeg has recordings and witnesses proving he had given Robinson a written list of 56 questions that Haeg flat demanded Cole be asked at Haeg's sentencing – questions that would have proved the state and Cole had Haeg had give up a year of guiding for charges less severe than what Haeg had gone trial on, that Haeg was promised credit for this year, and then Cole and the state refused to give Haeg his end of the bargain. This would have proved Haeg's conviction on the severe

charges was unconstitutional and would have proved Haeg had to be given credit for the year of guiding he had already given up. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for the whole year of guiding he had given up because he had been promised he would get credit for it. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(53) Robinson first testified that he could see no up side or downside to having Cole testify at Haeg's sentencing but afterward agreed with Peterson's suggestion that it would hurt to have Cole testify it he admitted that Haeg had told him he had taken wolves outside the area. Yet Robinson himself had Haeg admit this very thing at trial in front of everyone including Haeg's sentencing judge. *See* court record. No harm whatsoever could come of Cole saying Haeg had also told him this. Moreover, what good could come from Cole's testimony? Proof Cole had committed ineffective assistance of counsel and malpractice, reversal of Haeg's conviction, and credit for the guide year Haeg had given up. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of credit for the guide year already given up and Robinson's perjury

proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(54) Robinson testified that he was not trying to protect Cole and that his allegiance to Haeg was never impacted by a desire to protect another attorney. Yet Haeg has recordings of Robinson, along with witnesses, proving Robinson was protecting Cole. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(55) Robinson testified that Fitzgerald was not subpoenaed because Fitzgerald did not know about the dispute between Haeg and Leaders over the plea agreement. Yet Haeg has sworn testimony from Fitzgerald that he knew nearly everything about the dispute. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of his right to plea agreement enforcement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(56) Robinson testified that he didn't remember telling Haeg that there was nothing that could be done about Cole not showing up at Haeg's sentencing. Yet Haeg has recordings of Robinson, along with witnesses, proving Robinson told Haeg nothing could be done about Cole not appearing as subpoenaed. See Haeg's PCR exhibits. This proves Robinson's testimony to be false, more perjury, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of credit for the guide year already given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(57) Robinson testified that because Cole had disobeyed the subpoena he could have asked the court to have the troopers go pick up Cole. This proves Robinson lied to Haeg to protect Cole, proves his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's lie to Haeg proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(58) Robinson testified that he told Haeg that he was not going to enforce Cole's subpoena. Yet Haeg has recordings of Robinson, along with witnesses, proving Robinson had said there was nothing he could do to force Cole to appear – not that he chose not to enforce Cole's subpoena. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by

Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of credit for the guide year already given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(59) Robinson testified that it was his (Robinson's) right to decide whether or not to enforce Cole's subpoena – irregardless of the fact Haeg demanded Cole be subpoenas and forced to answer the 56 written question Haeg had prepared. Yet the ruling caselaw state's that it is HAEG who decides what to do, not Robinson.

> Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "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 is correct; rather, the question is whether [the defendant] approved the course."… "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 individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

It is clear why Robinson never told Haeg he did not intend on calling Cole to testify about everything Cole and the state had Haeg do for a plea agreement they took away after Haeg had paid for it. Haeg would have fired Robinson and hired an attorney who would do as Haeg demanded - call Cole and expose his sellout of Haeg to the state. In addition, if Haeg could not find an attorney willing

to do this Haeg would have done it on his own - just as Haeg is now representing himself. This proves Robinson's conflcit of interest.

(60) Robinson testified that Judge Murphy allowed in "irrelevant and unneeded charges" at Haeg's sentencing, "we spent hours going over that", and that "once the bell is rung it's kind of hard to un-ring it." Yet Robinson never pointed out the caselaw that prevents this, brought this issue up on appeal, and in fact told Haeg he could not appeal his severe sentence that was specifically based upon proven false testimony from the state. *See* court record.

> Smith v. State, 531 P.2d 1273 (Alaska Supreme Court 1975)
> "[R]eferences to accusations or arrests which did not lead to convictions are not proper considerations in sentencing.

This proves Robinson's deficient attorney performance and harm to Haeg. *See* the Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(61) Robinson testified the only recourse he had for something prejudicial that Leaders said was to make a counter argument. Yet this is not true. After Leaders knowingly accepted Gibbens testimony falsifying the evidence locations and then continued to argue Haeg had taken the wolves where he guides to benefit his guide area Robinson could have filed a motion of prosecutorial misconduct and asked, as part of the sanctions imposed, that the charges against Haeg be dismissed:

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It

cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)

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

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

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

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted with perjury by the state and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(62) Robinson testified that he had no idea if Leaders would give Haeg credit for the year guiding if Haeg decided to accept "the state's original offer of forfeiting the airplane and 1 year off". Yet Haeg has a copy of a letter from Leaders to Robinson stating that Haeg would NOT be given credit for the year Haeg was told to give up for the plea agreement. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the credit he was promised for the guide year given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(63) Robinson testified that there was no question that the state's theory was that Haeg was taking wolves where he guide to benefit his guide business. Yet Robinson did nothing to point out the state was knowingly using false evidence and testimony to do this. See court record and Haeg's PCR exhibits. This would have ended Haeg's trial:

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

This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted with

perjury by the state. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(64) Robinson testified that the court denied his motion that Haeg be allowed to bond the airplane out. Yet the court never ruled on this motion. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the priamry means by which he provided a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(65) Robinson testified that since sentencing went until 2 in the morning he was tired but not unconscious or delirious. Yet Haeg has tape recordings of Robinson stating that he "was barely there by 11 [pm]". This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

In addition Haeg told Robinson he was so wore out by that time he didn't know what was going on and then Robinson told Haeg he had no right to appeal

his severe sentence. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(66) Robinson testified that "she [Judge Murphy] drug this thing [Haeg's sentencing] out longer than she should have – I mean there's no doubt about that." Yet Robinson never protested this, asked for a new sentencing, placed this in Haeg's points of appeal, and in fact told Haeg nothing could be done about the sentencing or Haeg's severe sentence – when Criminal Rule 32.5 and Appellate Rule 215 specifically allowed Haeg to appeal the sentencing and sentence. Compounding this misinformation from Robinson was Judge Murphy's failure to inform Haeg he could appeal his sentence – as she was required to do under Criminal Rule 32.5 and Appellate Rule 215. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have appealed his sentence had Robison told him the truth or Judge Murphy informed Haeg as she was required to. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(67) Robinson testified that the reason he didn't appeal Haeg's sentence was that if Haeg overturned his conviction Haeg wouldn't a have a sentence. Yet if Haeg can't overturn his sentence (as he has been unable to do for the last 7 years) he will have to live with an illegal, unjust, and devastating sentence. And it was Haeg's right to decide if he wanted to appeal his sentence or not – not Robinson's decision. Since Robinson lied to Haeg that the sentence could not be

appealed Robinson unconstitutionally took this decision away from Haeg. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have appealed his sentence had Robison told him the truth or Judge Murphy informed Haeg as she was required to. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(68) Robinson testified that Haeg did not have immunity for his statement and that this was "just [Haeg's] rendition of what he thinks happened." Yet Cole, who was Haeg's attorney when Haeg gave the statement, and Fitzgerald, who was helping Cole at this time, have both testified under oath that Haeg had transactional immunity for his statement. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg should have never been prosecuted and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(69) Robinson testified that Haeg's statement was not used against Haeg until Haeg got on the stand. Yet Robinson himself protested the use of Haeg's statement in a reply brief long before trial. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both

Risher standards of deficient attorney performance and harm to client – as Haeg was prosecuted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(70) Robinson testified that he never told Haeg that Cole gave Haeg false advice. Yet Haeg has tape recordings of Robinson, along with witnesses, proving Robinson told Haeg that Cole had given him false advice. See Haeg's exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(71) Robinson testified that Haeg had not hired him to claim ineffective assistance of counsel of Cole. Yet Haeg had hired Robinson to advocate for him in a criminal prosecution that included pretrial, trial, sentencing, and on appeal – and an ineffective assistance of counsel claim can be used during any one of these phases to advocate for a defendant:

> "Particularly where, as here, it is the pretrial and post-trial performance of counsel as well as the performance during trial that is specifically alleged to have been inadequate, it is not sufficient that the trial judge found counsel's performance as observed in the course of trial to be adequate." Wood v. Endell, 702 P.2d 248 (AK 1985)

At any time he represented Haeg Robinson could have claimed Cole's ineffectiveness violated Haeg's constitutional right to effective assistance of counsel and asked for all damage done by Cole to be repaired. Instead, Robinson pressed on with a case that had already been hopelessly sabotaged by Cole. And Robinson has told Haeg why he never claimed ineffective assistance – a successful claim of ineffective assistance is the same as proving malpractice. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(72) Robinson testified that Haeg would have had to hire him on a separate "civil issue" to claim ineffective assistance of counsel. Yet effective assistance of counsel was Haeg's mightiest criminal right, for it is through counsel that all other rights are raised:

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

Robinson testifying under oath he did not have to use Haeg's mightiest criminal right in Haeg's defense is proof Robinson himself was ineffective in Haeg's case – and proof he was protecting Cole at Haeg's expense. This proves

Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(73) Robinson testified that he never told Haeg that troopers and prosecutors can lie with immunity. Yet Haeg has tape recordings of Robinson, along with witnesses, proving Robinson told Haeg that troopers and prosecutors can lie with immunity. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(74) Robinson testifies that Cole would not have been relevant for sentencing purposes. Yet Cole could have proved the state promised Haeg would get credit for the guide year Haeg had given up. SeeHaeg's PCR exhibits. Moreover, as Cole was the one that made the deal with the state on Haeg's behalf, Cole's testimony was critical. So Cole was incredibly relevant for Haeg to get credit for a whole years income from both he and his wife Jackie (she worked

fulltime for the guide business at the time). Who would not agree a whole years income from both adults in a family of 4 is not relevant? This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, should have received credit for the guide year already given up, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(75) Robinson testified that he never objected to Judge Murphy riding with Trooper Gibbens because "not when she was commandeered." Yet, one of the most basic rights a defendant like Haeg has is to have an "independent" and "unbiased" judge. A judge that can be "commandeered" by the main witness against a defendant is anything but "independent". The right to an independent judge has been a fundamental right of the people since the Magna Carta.

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

Robinson's not objecting to this is more proof on his sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had an absolute right to an unbiased judge and if not his convicton is invalid. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(76) Robinson testified that he personally witnessed Trooper Gibbens chauffeuring Judge Murphy while Judge Murphy presided over Haeg's case. Yet, Judge Murphy and Trooper Gibbens have testified to the Alaska Commission on Judicial Conduct that they never rode together while Judge Murphy presided over Haeg's case. However, the official court record of Haeg's case itself captured both Judge Murphy and Trooper admitting the chauffeuring was taking place while Judge Murphy presided over Haeg's case. Since Judge Murphy is proven to have testified faslely about her being chauffeured by the main witness against Haeg this is proof of actual bias – requiring Haeg's conviction to be overturned

(77) Robinson testified that no one with the state ever contacted him about the chauffeuring of Judge Murphy by Trooper Gibbens. Yet the only investigator of judges in Alaska for the last 25 years, Marla Greenstein, has testified under oath the she contacted Robison about Judge Murphy being chauffeured by Trooper Gibbens and that no one other than Haeg had witnessed Trooper Gibbens chauffeuring Judge Murphy while she presided over Haeg's case. This proves Judge Murphy and Trooper Gibbens conspired with Alaska Commission on Judicial Conduct investigator Greenstien and that Greenstein falsifed her investigation to cover up for Judge Murphy, proof of Judge Murphy's actual bias – requiring Haeg's conviction to be overturned.

(78) Robinson testified that it would have been really beneficial if his deposition had happened sooner before his memory faded. Yet Haeg had continuously filed for expedited consideration of his case and been denied every

request and the state, when asking for extensions of 380 days on a single item that was to have been filed within 20 days, was granted their requests. These delays have resulted in Haeg's PCR being delayed until 8 years after the state started prosecuting Haeg – requiring Haeg's conviction to be overturned.

(79) Robinson testified that what his investigator found out about the plea agreement was different then what Haeg had told him. Yet Haeg has documents and recordings from Robinson's investigator proving what he found out was the very same as what Haeg told Robinson. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(80) Robinson testified that Cole never confirmed there was a plea agreement. Yet Cole, in the recording Robinson's investigator made of him, confirmed there was a plea agreement and that the state broke it. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right to have the plea agreement enforced, and Robinson's perjury proves his conflict of

interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(81) Robinson testified the plea agreement was never enforced because Cole never confirmed that Leaders bowed out of a plea agreement. Yet Cole, in the recording Robinson's investigator made of him, confirmed that Leaders bowed out of a plea agreement. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a a right to enforce the plea agreement and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(82) Robinson testified that he did not know if it was important that the state had reneged on a plea agreement. Yet all caselaw holds differently, especially since Haeg and wife had given up a whole years income for the plea agreement:

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "Where an accused relies on a promise… to perform an action that benefits the state, this individual…will not be able to "rescind" his or her actions. … In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. …courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to allow the prosecution to withdraw from a plea agreement." Closson v. State, 812 P.2d 966 (Ak. 1991)

> "When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).
>
> "The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)
>
> "[A] court must carefully scrutinize the agreement to determine whether the government has performed; in doing so, court must strictly construe the agreement against the government." Stolt-Nielsen v, U.S., 442 F.3d 177 (3d. Cir. 2006)
>
> "Modern notions of due process have belied the notion that a prosecutor may invoke his discretion to evade promises made to a defendant or potential defendant as part of an agreement or bargain. That being the case, a defendant or witness does have more to rely upon than merely the "grace or favor" of the prosecutor… to allow the defendant some redress for prosecutorial reneging." Surina v. Buckalew, 629 P.2d 969 (Alaska 1981)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(83) Robinson testified that at sentencing he brought up at Haeg's sentencing that Haeg had given up a whole years guiding for a plea agreement that the state broke. Yet the court record of Haeg's case proves this false. *See*

sentencing record. In addition, Cole, who was supposed to testify about this never showed up as subpoenaed and Robinson told Haeg there was nothing that could be done about this. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(84) Robinson testified he never subpoenaed attorney Fitzgerald to testify at Haeg's sentencing because he wasn't "relevant" – even though Haeg had requested Fitzgerald be subpoenaed because he knew all about the state breaking the plea agreement that Haeg had given so much for. See Haeg's PCR exhibits. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and had right to credit for the guide year already given up in reliance on the state's promise of credit. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(85) Robinson testified that he didn't know if it would be important to Haeg (who never received credit for the guide year Cole told him to give up) to

have Cole testify that Haeg should get credit for the guide year given up because the state promised he would get credit for it. This proves Robinson's ineffectiveness, conflict of interest and prejudice, proves his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(86) Robinson testified that even though Haeg was adamant that Cole be subpoenaed to testify at Haeg's sentencing so Haeg could get credit for the guide year already given up Robison did not have to do this because he (Robinson) didn't think it relevant. As shown by Brookhart and Jones above this was Haeg's decision to make and as this was incredibly relevant to Haeg getting credit for a whole years income Robinson had no choice but to obey Haeg's request. This proves Robinson's perjury, sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(87) Robinson testified that Haeg told the court that the state promised to give Haeg credit for the guide year. The court record proves this never happened. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(88) Robinson testified that it was not possible at Haeg's sentencing for it to be proved that Haeg's trial was invalid. Yet overwhelming caselaw proves if Haeg had been promised lesser charges in return for him giving up a year of guiding (exactly as happened) and Haeg had given up this year (exactly as happened) it would mean Haeg could not be prosecuted with charges that were more severe (exactly as happened) See Haeg's PCR exhibits.

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "Where an accused relies on a promise… to perform an action that benefits the state, this individual…will not be able to "rescind" his or her actions. … In the plea bargaining arena, the United States Supreme Court has held that states should be held to strict compliance with their promises. …courts consider the defendant's detrimental reliance as the gravamen of whether it would be unfair to

allow the prosecution to withdraw from a plea agreement." Closson v. State, 812 P.2d 966 (Ak. 1991)

"When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).
"The indictment upon which Garcia's convictions are based was obtained in violation of the express terms of the agreement and is therefore invalid. The upholding of the Government's integrity allows for no other conclusion." U.S. v. Garcia, 519 F.2d 1343 (9th Circuit 1975)

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

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

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had right to credit for the guide year already given up in reliance on the state's promise of credit, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(89) Robison testified that his "tactic", that the court did not have subject matter jurisdiction because the information had not been verified by Leaders, was supported by the case Albrecht v. United States, 273 U.S. 1 (1927). Albrecht does not support this:

> The claims mainly urged are that, because of defects in the information and affidavits attached, there was no jurisdiction in the District Court and that rights guaranteed by the Fourth Amendment were violated. The main ground urged in support of the objection was that the information had not been verified by the United States attorney; that it recited he 'gives the court to understand and be informed, on the affidavit of I. A. Miller and D. P. Coggins'; and that these affidavits, which were annexed to the information, had been sworn to before a notary public-a state official not authorized to administer oaths in federal criminal proceedings. As the affidavits on which the warrant issued had not been properly verified, the arrest was in violation of the clause in the Fourth Amendment, which declares that 'no warrants shall issue but upon probable cause, supported by oath or affirmation.' *See* Ex parte Burford, 3 Cranch, 448, 453; United States v. Michalski (D. C.) 265 F. 839. But it does not follow that, because the arrest was illegal, the information was or became void. If before granting the warrant, the defendants had entered a voluntary appearance, the reference and the affidavits could have been treated as surplusage, and would not have vitiated the information. [Footnote 5] The fact that the information and affidavits were used as a basis for the application for a warrant did not affect the validity of the information as such. Here, the court had jurisdiction of the subject-matter; and the persons named as defendants were within its territorial jurisdiction. Albrecht v. United States, 273 U.S. 1 (U.S. Supreme Court 1927)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – especially as Haeg voluntarily appeared in court. This deprived Haeg of effective assistance of counsel and Robinson's perjury proves his conflict

of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(90) Robinson testifies that subject matter jurisdiction is obtained by a grand jury indictment and not by statute**.** Yet this is irrefutably false. An indictment provides jurisdiction over the person who is claimed to have committed a crime and the constitutional and statutes provide subject matter jurisdiction:

> Article 4, Secton 1, Alaska Constitution:
>
> The judiciary power of the state is vested in a supreme court, a superior court, and the courts established by the legislaute.The jurisdiction of courts shall be prescribed by law.
>
> AS 22.15.060 Criminal Jurisdiction (a) The district court has jurisdiction (1) of the following crimes: (A) a misdemeanor

Haeg was charged with misdemeanors in district court – thus it is irrefutable that the district court has subject matter jurisdiction. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(91) Robinson testified that after trial he still thought that Haeg's best defense was the lack of subject matter jurisdiction because Leaders had not sworn to the charging information. However, Robinson has testified that before trial the

court had allowed Leaders to correct this defect. Robinson's continued use as Haeg's defense an error that had been cured is overwhelming proof of his ineffectiveness - especially when Haeg had other defenses that were unbeatable such as his being given immunity and the state knowingly presenting false evidence on all the warrants and at trial. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(92) Robinson testified that the jurisdiction defect was so strong he recommended Haeg not refute the state's case at trial. Yet Robinson has testified under oath that the jurisdiction defect had been cured before trial. This proves Robinson's "tactic" was invalid and that he did not pusue valid tactics, meeting both Risher standards of deficient attorney performance and harm to client. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(93) Robinson testified that the reason he never filed a motion to suppress was that the state never used Haeg's statement. Yet Robinson, in a reply brief written by him prior to trial, specifically states that the state was using Haeg's statement in the information charging Haeg. *See* court record. This proves

Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(94) Robinson testified that the reason he brought up the use of Haeg's statement in a reply brief is that the state had brought up the use of Haeg's statement in the state's opposition brief. Yet the state's opposition brief proves this is false. *See* court record. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(95) Robinson testified that another reason he brought up the use of Haeg's statement in a reply brief is that new issues can be brought up in reply and the court had to address them. Yet the Alaska Court of Appeals ruled that Judge Murphy properly refused to consider Robinson's protest on Haeg's statement use since it was brought up in a reply brief. *See* court record. And all ruling caselaw

prohibits bringing up new issues in a reply because the opposing party then has no opportunity to refute the new issue:

> "[T]he issue of improper motive was raised for the first time before the superior court in APEA's reply memorandum (in support of its motion for Rule 11 sanctions). Thus, ASEA did not have a chance to reply to the allegation of improper motive. As a matter of fairness, the trial court could not consider an argument raised for the first time in a reply brief. In effect, APEA has abandoned the issue of improper purpose." AK State Employees Ass'n v. AK Public Employees Ass'n, 813 P.2d 669 (AK Supreme Court 1991).
>
> "The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments, much less change the nature of the primary motion." Demmert v. Kootznoowoo, Inc, 960 P.2d 606 (Ak Supreme Court 1998).

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(96) Robinson testified, "Why would it have been?" when asked why he never put the use of Haeg's statement in Haeg's points of appeal. The use of Haeg's statement would irrefutably overturn Haeg's conviction, unlike Robinson point of appeal that the court did not have subject matter jurisdiction, which, as shown above, the court irrefutably had. This proves Robinson's sworn testimony

to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(97) Robinson testified the use of Haeg's statement in the charging information did not make the charging information defective. Yet Evidence Rule 410 and all caselaw holds otherwise. *See* Gonzalez, North, and Kastigar above and below. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(98) Robinson testified that he did not know what the penalty was for the state using Haeg's statement. Yet it was Robinson's irrefutable and specific duty to know this - for all caselaw holds any prosecution using such a statement must be overturned:

State of Alaska v. Gonzalez, 853 P.2d 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.

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.

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

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

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

exposed to the immunized testimony in order to prepare themselves or others as witnesses.

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

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

Finally, and most importantly, an ex parte review in appellate chambers is not the equivalent of the open adversary hearing contemplated by Kastigar. *See* United States v. Zielezinski, 740 F.2d 727, 734 (9th Cir.1984).

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.

Where immunized testimony is used… the prohibited act is simultaneous and coterminous with the presentation; indeed, they are one and the same. There is no independent violation that can be remedied by a device such as the exclusionary rule: the…process itself is violated and corrupted, and the indictment [or trial] becomes indistinguishable from the constitutional and statutory transgression. If the government has in fact introduced trial evidence that fails the Kastigar analysis, then the defendant is entitled to a new trial. If the same is true as to grand jury evidence, then the indictment must be dismissed." United States v. North, 910 F.2d 843 (D.C.Cir. 1990).

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972)

This proves Robinson is ineffective, trying to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(99) Robinson testifies that Evidence Rule 410 prevents a plea agreement statement from being used at trial. Yet Evidence Rule 410(a) states that a plea agreement statement cannot be used in anywhere – not just at trial:

> "Evidence of…. statements or agreements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case or proceeding….."

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(100) Robinson again testifies that the state could use Haeg's statement, made in Cole's office and not on the record, to impeach Haeg. Yet Evidence Rule 410(b) specifically states:

> This rule shall not apply to (1) the introduction of voluntary and reliable statements made in court on the record in connection with any of the forgoing plea when offered in subsequent proceedings as prior inconsistent statements…

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(101) Robinson testified that he told Haeg at trial that Haeg had to testify because the state was going to use only all the bad things Haeg said during Haeg's statement and for all the good things to be heard Haeg had to testify. In other words, Robinson irrefutably proves he and the state used Haeg's statement to force Haeg to testify at trial. This proves Robinson's ineffectiveness, sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel and had a right against self-incrimination. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(102) Robinson testified that there was nothing in the warrant affidavits seizing evidence and property that "was not probable." Yet the state's own GPS coordinates proved the state had falsified all evidence locations to the Game

Management Unit in which Haeg guided. In other words, there was a devastatingly prejudicial error far more certain then "was not probable." This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against unreasonable searches and seizures, ecersing this would have eliminated nearly all the evidence against Haeg, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(103) Robinson testified that he did not think the state had falsified the location of all the evidence they put on the affidavits. Yet all evidence locations had been falsified on the affidavits. See court record and Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(104) Robinson testified that the state falsifying all the evidence to the Game Management Unit where Haeg guided would not make it easier for the state

to claim Haeg was killing wolves where he guided to benefit his business. This is like saying it would not make it easier to convict someone of murder if the body were found outside the shooters house rather then inside the shooters house. It may be murder either way - but the likelihood it was self-defense instead of murder is exponentially greater if the dead body was found inside the shooters house. No one would agree that it would make no difference if the state claimed the body was found outside your house instead of inside when you are claiming self-defense. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against the state using material perjury to convict him, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(105) Robinson testified that he told Haeg the he could file a motion to suppress. Yet Haeg has tape recordings of Robinson, documents, and witnesses, proving Robinson never told Haeg that a motion to suppress could be filed. See Haeg's PCR exhibits. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, had a right against self-incrimination, against the state using material perjury to convict him,

against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(106) Robinson testified that he didn't know if the location of the wolves could make it more or less likely that Haeg would be charged as a guide or with violating the wolf control program. Yet the states whole case was that Haeg was taking wolves where he guided to benefit his guide area and that this meant Haeg had to be charged and found guilty of guide crimes. This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, to the equal protection of the law, against the state using material perjury to convict him, against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(107) Robinson testified that the only location that mattered to Haeg being charged with guiding crimes was whether the wolves were taken in the permitted area. Haeg asked Robinson if that meant he could be charged with guiding crimes if he took wolves inside one of the "donut holes" (areas not open to the wolf control program that were completely surrounded by the open wolf control program area). Robinson testified, "I never thought you should be charged as a

guide to begin with if you recall." This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was entitled to effective assistance of counsel, to the eqaul protection of the law, against the state using material perjury to convict him, against unreasonable searches and seizures, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(108) Robinson testified that it would have made no difference if it was proved that the state had intentionally falsified the evidence locations to Haeg's guide area. Yet this is irrefutably false:

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956).
>
> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959).
>
> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf,

> has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935).
>
> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty…" Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967).
>
> "We hold the Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony…" United States v. Basurto, 497 F.2d 781 (9th Cir. 1974).

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as this renders Haeg's conviction invalid, that nearly all evidence had to be suppressed, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(109) Robinson testified he knew that Haeg and Zellers, during their statements, had told prosecutor Leaders the evidence locations had been falsified but did not know if Leaders had a duty to correct the false evidence locations. Yet a prosecutor must correct what he knows is false. *See* United States Supreme Court:

“A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.” Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959).

In conclusion, the clear defects in Bowie's trial were the direct result of the prosecutor's pretrial constitutional failure to guard against improbity in the trial process, a failure which rendered the trial itself patently unfair in due process terms. The manner in which the trial unfolded leaves us with the definite conviction that the process itself lacked fundamental fairness and delivered a palpably unreliable result. In this connection, the principles which compel our decision here are not designed to punish society for the misdeeds of a prosecutor, see United States v. Agurs, 427 U.S. 97, 110 n.17 (U.S. Supreme Court 1976), but to vindicate the accused's constitutional right to a fair trial, a fundamental right for which the prosecution shares responsibility with the courts.

This important mission is utterly derailed by unchecked lying witnesses, and by any law enforcement officer or prosecutor who finds it tactically advantageous to turn a blind eye to the manifest potential for malevolent disinformation. *See* United States v. Wallach, 935 F.2d 445 (2nd Cir. 1991) ("Indeed, if it is established that the government knowingly permitted the introduction of false testimony `reversal is virtually automatic.' ") (citations omitted); Cf. Franks v. Delaware, 438 U.S. 154 (U.S.Supreme Court 1978) ("[I]t would be an unthinkable imposition upon [the authority of a magistrate judge] if a warrant affidavit, revealed after the fact to contain a deliberately or recklessly false statement, were to stand beyond impeachment.")**.**

In 1976, the Court was called on yet again to visit this recurring issue, noting that it "has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." United States v. Agurs, 427 U.S. 97, 103 (U.S. Supreme Court 1976). The Court observed that the Mooney line of cases applied this strict standard "not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process."Commonwealth v. Bowie, 243 F.3d 1109 (9th Cir. 2001)

This proves Robinson's sworn testimony to be irrefutably false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Robinson's perjury proves his conflict of interest and it was unclaisitiotunatl for Haeg to be convcite with perjury know to the prosecution. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(110) Robinson testified that when Trooper Gibbens falsified the evidence locations during his trial testimony, Haeg was angry and concerned that Gibbens would continue to do so after Gibbens knew they were false. Robinson further testified that Haeg demanded that Gibbens be confronted and forced to admit he knew his prior testimony was false – which Robinson admitted he did. Yet Robinson further testified that it was not perjury when Gibbens changed his testimony only AFTER he knew his false testimony had been found out – and this is why he never did anything about it. Gibbens admitting he had falsified his testimony only after he knew he had been found out proves he knew his testimony was false when he had given it moments before, proves he is guilty of perjury, and cannot "correct" his mistake.

> AS 11.56.200. Perjury
> (a) A person commits the crime of perjury if the person makes a false sworn statement which the person does not believe to be true.
> (b) In a prosecution under this section, it is not a defense that
> (1) the statement was inadmissible under the rules of evidence; or

(2) the oath or affirmation was taken or administered in an irregular manner.

(c) Perjury is a class B felony.

AS 11.56.235. Retraction as a defense.

(a) In a prosecution under AS 11.56.200 or 11.56.230, if the false statement was made in an official proceeding, it is an affirmative defense that the defendant expressly retracted the false statement

(1) during the course of the same official proceeding;

(2) before discovery of the falsification became known to the defendant;

(3) before reliance upon the false statement by the person for whom it was intended; and

(4) if the official proceeding involved a trier of fact, before the subject matter of the official proceeding was submitted to the ultimate trier of fact.

This proves Robinson's sworn testimony, that Gibbens did not commit perjury is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted with the state knowingly using material perjury against him and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(111) Robinson testified that due process required Haeg to be given a hearing within days if to hours of the state seizing the airplane (the primary source of Haeg's income) but the reason he never protested Haeg never getting a hearing is that by the time Haeg hired Robinson "it was too late to do anything about it." This obviously not true – if due process required the state to give Haeg an immediate hearing the passage of time without a hearing just makes the

constitutional violation worse, not better and it can never be “too late” to do something about it.

> Waiste v. State, 10 P.3d 1141 (Ak Supreme Court 2000) "This court's dicta, however, and the persuasive weight of federal law, both suggest that the Due Process Clause of the Alaska Constitution should require no more than a prompt postseizure hearing... The State argues that a prompt postseizure hearing is the only process due, both under general constitutional principles and under this court's precedents on fishing-boat seizures, whose comments were not dicta...But given the conceded requirement of a prompt postseizure hearing on the same issues, in the same forum, 'within days, if not hours' the only burden that the State avoids by proceeding ex parte is the burden of having to show its justification for a seizure a few days or hours earlier... The State does not discuss the private interest at stake, and Waiste is plainly right that it is significant: even a few days' lost fishing during a three-week salmon run is serious, and due process mandates heightened solicitude when someone is deprived of her or his primary source of income... As the Good Court noted, moreover, the protection of an adversary hearing 'is of particular importance [in forfeiture cases], where the Government has a direct pecuniary interest in the outcome.' An ensemble of procedural rules bounds the State's discretion to seize vessels and limits the risk and duration of harmful errors. The rules include the need to show probable cause to think a vessel forfeitable in an ex parte hearing before a neutral magistrate, to allow release of the vessel on bond, and to afford a prompt postseizure hearing.”

This proves Robinson’s sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole’s sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the primary means by which he provided a livelihood and Robinson’s perjury proves his conflict of interest. *See* Haeg’s original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(112) Robinson testified that he asked for a hearing about the airplane and that Judge Murphy denied it. Yet Robinson never asked for a hearing about the airplane and Judge Murphy never denied it. This is proven by the court record. *See* court record. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg was deprived of the primary means by which he provided a livelihood and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(113) Peterson prevented Haeg from questioning Robinson about his belief of the law. Yet it is automatic ineffective assistance of counsel if an attorney has an erroneous belief of the law and this harms the defendant. Because of this Haeg must have a hearing in which to ask Robinson his belief of the law and before this hearing happens Haeg's PCR cannot be dismissed.

(114) Robinson testified that a judge could not force prosecutor Leaders or the state to give Haeg credit for the guide year already given up even though the state promised to give Haeg credit for it. Yet all caselaw proves this false:

> "Government must adhere strictly to the terms of agreements made with defendants—including plea, cooperation, and immunity agreements…" Santobello v. New York, 404 U.S. 257 (U.S. Supreme Court 1971)
>
> "When the prosecution makes a 'deal' within its authority and the defendant relies on it in good faith, the court will not let the

defendant be prejudiced as a result of that reliance." United States v. Goodrich, 493 F.2d 390, 393 (9th Cir. 1974).

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

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

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

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

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

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never received credti for the guide year given up and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(115) Robinson testified there was nothing he could do to about the use of Trooper Gibbens false trial testimony against Haeg after Gibbens had admitted he knew it was false when he gave it. Robinson could have, and was required to, ask for a new trial so the taint of Gibbens false testimony didn't affect the rest of trial and Haeg's sentencing – as it irrefutably did. For Judge Murphy, at Haeg's sentencing, specifically cited Gibbens false testimony as the reason for Haeg's sentence. *See* court record, "Since the majority, if not all the wolves were taken in 19-C…in the area where you were hunting." If Judge Murphy specifically used Gibbens known false testimony to justify Haeg's sentence it is certain Haeg's jury used the known false testimony to convict Haeg.

> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956)
>
> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence,

> including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)
>
> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf, has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935)
>
> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty…" Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967)

This proves Robinson's sworn testimony, that Gibbens did not commit perjury is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted with the state knowingly using material perjury against him and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(116) Robinson testified it was an injustice for Judge Murphy to specifically use Gibbens known false testimony against Haeg but that it was up to Haeg, and not Robinson, to do something about it. (Robinson further testified if Judge Murphy had specifically used Gibbens known false testimony to sentence

Haeg, it was possible Haeg's jury used Gibbens known false testimony to convict Haeg.) Yet ignorant Haeg had hired Robinson for about $50,000 to exercise his rights that would guarantee a fair trial and sentencing, proving it was Robinson, and not ignorant Haeg, who should have done something to cure the taint of Gibbens perjury from Haeg's case while Robinson was representing Haeg.

> "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984)
>
> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he not be guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 45 (U.S. Supreme Court 1932)
>
> "A layman will ordinarily be unable to recognize counsel's errors and to evaluate counsel's professional performance; consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case." Kimmelman v. Morrison, 477 U.S. 365 (U.S. Supreme Court 1986)

This proves Robinson's sworn testimony, that it was up to Haeg to defend himself while Robison was representing Haeg, is more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher

standards of deficient attorney performance and harm to client – as Haeg was had a right to the assistance of counel, could not be convicted with the state knowingly using material perjury against him, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(117) Robinson testified that prosecutor Leaders never used Haeg's statement during the state's case in chief. When Haeg asked Robinson if he remembered Leaders, during his case in chief, presenting the map Haeg was required to make during his statement, Robinson testified it was Zellers who presented the map – not Leaders. But the court record of Haeg's case irrefutably proves it was Leaders who presented the map, made by Haeg during his statement, as evidence against Haeg during the state's case in chief. *See* court record. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(118) Robinson testified that Zellers had already testified and used the map before the map was presented by Leaders. Yet the court record proves that long before Zellers testified, Leaders had already presented Haeg's map against Haeg in the state's case in chief during Trooper Gibbens testimony. *See* court record. This

proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(119) Robinson testified that the state was using ZELLERS statement against Haeg when the state presented the map HAEG made against Haeg during the state's case in chief. This is so undeniably false that it's chilling that Robinson made it. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg..

(120) Robinson testified that it you are given immunity in Alaska this means the government is "not going to prosecute you. Period."

(121) Robinson testified that he never asked Cole why Cole had Haeg give a statement or asked Cole if Haeg had immunity "because I never ask attorneys why they had their client do something or the other." Yet if Robinson had investigated the facts of the case by simply picking up the phone and calling Cole

he would have found out that Haeg had immunity and could not be prosecuted. This is incredibly compelling evidence of Robinson's ineffectiveness and proof of harm to Haeg - meeting both Risher standards of deficient attorney performance and harm to client – as had Robinson investigated he would have found out Haeg could not be prosecuted. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

> "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)
>
> "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)
>
> Because counsel failed to investigate at all, calling his decision not to present… evidence as strategic "strips that term of all substance." Sanders v. Ratelle, 21 F.3d 1446 (9th Cir. 1994)
>
> Counsel ineffective in murder case for failing to investigate circumstances of taking of first confession. Bess v. Legursky**,** 465 S.E.2d 892 (W. Va. 1995)
>
> Counsel was ineffective in drug possession case for failing to adequately investigate and cross examine the arresting officer. The court held, "[n]o reasonable attorney would have allowed this case to go to the jury without having investigated [the officer's] testimony and without having raised questions about his observations." Asch v. State, 62 P.3d 945 (Wyo. 2003)

> Prejudice presumed in drug case because "[s]trategic justification cannot be extended to the failure to investigate" King v. State**,** 810 P.2d 119 (Wyo. 1991)
>
> "Knowledge of the law is a basic prerequisite to providing competent legal assistance. If an attorney does not investigate clearly relevant law, then he or she has objectively failed to provide effective assistance." State v. Ross**,** 951 P.2d 236 (Utah Ct. App. 1997)

(122) Robinson testified that he did not research to find out if Haeg's statement was used to obtain Zellers cooperation "because it didn't matter." Yet this is irrefutably not true. *See* Gonzalez, North, Kastigar, and Evidence Rule 410 above. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Zellers' testimony could not have been used against Haeg in the charging informations or at trial – violating Haeg's right against self-incrimination - and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(123) Robinson testified that his concern was that Haeg had given a statement that was potentially damaging to Haeg's innocence but "there was no reason to have it [Haeg's statement] suppressed other then the fact they couldn't use it." This is evidence of Robinson's ineffective assistance of counsel, and harm to Haeg – as the state irrefutably used Haeg's statement against Haeg. This meets both Risher standards of deficient attorney performance and harm to client – as

Haeg could not be convicted in violation of his right against self-incrimination and the use of Haeg's statement violated this right. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(124) Robinson testified that if Cole has testified that Haeg had immunity it means Haeg should have never been prosecuted. Cole has testified under oath in 2 separate proceedings, and attorney Kevin Fitzgerald (who was working with Cole during Haeg's case) once, that Haeg had been given immunity by the state. Robinson and Cole letting Haeg be prosecuted after being given immunity is the height of ineffective assistance of counsel – because Haeg could not be prosecuted. Period. No matter what evidence there was. *See* Haeg's original PCR memorandum, exhibits, and affidavits for evidence and for how this harmed Haeg.

(125) Robinson testified he did not know why Haeg hired an attorney when Haeg asked if Haeg hired an attorney because of his ignorance of the law. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to assistance of cousel because of his ignorance, hired attorneys because of his ignorance. and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(126) Robinson testified that he did not remember Haeg asking if he and Robinson should go talk to Zellers before Zellers pled out. Yet Haeg has tape recordings, letters, and witnesses proving Haeg and Robinson discussed this – with Robinson steadfastly refusing to talk to Zellers about what the state was trying to do. See Haeg's PCR exhibits. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to assistance of cousel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(127) Robinson testified that he didn't know if, to help Haeg get credit for the year of guiding already given up, Cole testified the state promised to give Haeg credit for the guide year if he gave it up before trial – when the state was claiming under oath they had no idea why Haeg had given up the year guiding so Haeg would not get credit. It is undeniable Cole's testimony would have been helpful to Haeg and devastating to the state's false claim. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg never got credit for the guide year and Robinson's perjury proves his conflict of interest. *See* Haeg's

original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(128) Robinson testified that Cole testifying the state had robbed Haeg of a whole year guiding would mean nothing because:

> "in legal parlance you would have been directly dealing with Scott Leaders – it was your case – not Brent Cole."

Yet Cole never let Haeg talk directly with Leaders, so Haeg's testimony of what happened would be hearsay and thus not admissible as evidence – so Cole's testimony meant everything. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg hired Cole to represent him, Haeg never got credit for the guide year and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(129) Robinson testified that after Haeg demanded Cole be subpoenaed; paid for him to be subpoenaed; bought Cole an airline ticket; and gave Robinson a list of 56 written questions he demanded Cole be asked about how Haeg had been robbed of year of guiding by Cole and Leaders working together, it was still Robinson's right to tell Cole he didn't have to come and testify – without ever having to tell Haeg that this is what he was going to do. Yet the ruling caselaw holds Haeg is in command of the ship – not Robinson:

> Jones v. Barnes, 463 U.S. 745 (U.S. Supreme Court 1983) & Brookhart v. Janis, 384 U.S. 1 (U.S. Supreme Court 1966) ruled it is the defendant, not the attorney, who is captain of the ship: "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 is correct; rather, the question is whether [the defendant] approved the course."… "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 individual which is the lifeblood of the law.'" (Quoting *People v. Malkin*, 250 N. Y. I85, 350-51 (1970) Brennan, J. concurring).

And it is clear why Robinson never told Haeg this was what he was going to do – Haeg could have fired Robinson and found an attorney willing to question Cole about his sellout of Haeg – or Haeg could have questioned Cole himself. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as it was Haeg's right to require Cole to testify (right to compel witnesses in his favor), Haeg never got credit for the guide year, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(130) Robinson testified that he didn't remember if he asked all the written questions, about all Haeg had done for the plea agreement he had been robbed of, that Haeg had prepared for all the witnesses who Haeg had testify on behalf of Haeg at sentencing. Yet Haeg has tape recordings, letters, and witnesses proving Robinson knew he refused to ask these question – telling Haeg at the time "now is

not the time" and then afterward telling Haeg "its too late to ask them now." This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as it was Haeg's right to require these witnesses to testify (right to compel witnesses in his favor), Haeg never got credit for the guide year, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(131) Peterson prevents Haeg from asking Robinson questions about the advantage of establishing the state told Haeg it was in the best interest of the state for Haeg to take the very actions the state charged Haeg with taking. This means there must be a hearing at which Haeg is allowed to question Robinson on this matter and until this hearing takes place Haeg's PCR cannot be dismissed.

(132) Robinson testified that he didn't know if it was a violation for Haeg's statement to be published in the Anchorage Daily News – Alaska's most widely published paper – and didn't know if Haeg's jurors had read it. Yet all caselaw holds this is a violation. *See* Gonzalez, North, Kastigar, and Evidence Rule 410 above. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and the publishing of Haeg's statement violated this right. *See*

Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(133) Robinson testified he did not remember telling Haeg that because his sentence was legal Haeg could not appeal it. Yet Haeg has tape recordings and witnesses proving Robinson told Haeg that he could not appeal his sentence because it was legal. In addition, the court record proves that Judge Murphy failed to inform Haeg of his right to appeal his sentence as required by Criminal Rule 32.5 and Appellate Rule 215. *See* court record. The harm to Haeg from Robinson's false advice and Judge Murphy's failure to inform Haeg of his right to appeal was that Haeg never got to appeal his sentece as he wanted and because the court had specifically based Haeg's severe sentence on admitted false testimony from the state. Courts may not actually rely on inaccurate information in sentencing a defendant. Actual reliance is demonstrated when the court gives "explicit attention" to the inaccurate information. United States v. Tucker, 404 U.S. 443 (U.S. Supreme Court 1972).

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg would have appealed his sentence and exposed Judge Murphy specific use of the state's perjury. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(134) Robinson testified he saw Judge Murphy ride with Trooper Gibbens, never saw Judge Murphy drive, that Judge Murphy was an "overweight woman", and that Trooper Gibbens was the main investigator and witness against Haeg. (1) Haeg's trial took place in a small office building in McGrath (which doubles as an Iditarod Sled Dog Race checkpoint); (2) Judge Murphy flew in from Aniak to conduct Haeg's trial, there are no taxi's in McGrath, (3) Judge Murphy never walked, and the only vehicle usually present at the building was Trooper Gibbens *state* truck. This is evidence that Judge Murphy was bias against Haeg - requiring his conviction be overturned.

(135) Robinson testified that he didn't know if it was evidence that Haeg's statement was being used to prepare witnesses against Haeg when state witness Toby Boudreaux, during his trial testimony against Haeg, repeatedly referred to Tony Zellers as Tony Lee. *See* court record. The state never knew Tony Lee was involved in any way whatsoever until Haeg told the state about Tony Lee's involvement during Haeg's statement. This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right against self-incrimination and the use of Haeg's statement violated this right. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(136) Robinson testified that Judge Murphy and Trooper Gibbens lying about the chauffeuring during Haeg's case would be significant because it would raise questions as to the impartiality of Judge Murphy if she and Trooper Gibbens were trying to hide something. Robinson testified the reason he didn't protest anything because he could not when Judge Murphy was "commandeered" by Trooper Gibbens. Yet there is no valid excuse to allow Haeg to be deprived of an impartial judge – one the most important and basic rights a person has.

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

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to an unbiased judge and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(137) Robinson testified that Judge Murphy granted the state's protection order that sought to prevent Haeg from defending himself. After Judge Murphy granted this protection order Haeg was prevented from proving that his wolf control permit and the wolf control law (along with the state falsifying all the evidence and telling Haeg that the wolf control program required the very actions he was charged with taking) prevented Haeg from being charged or convicted of

guiding violations.See court record. Judge Murpy ruled she could do this becaeu it wa a “legal” issue for her to decide. But days earlier she had ruled this issue was a “factual” issue for the jury to decide. In other words Judge Murphy was making rulings that were incompatible with each other in order to harm Haeg – clear evidence of bias. See court record. Yet Robinson never brought this up in his points of appeal even though Haeg asked him to. See court record and Haeg’s PCR exhibits. This proves Robinson’s sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to an unbiased judge. *See* Haeg’s original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(138) Robinson testified that he never told Haeg that Cole lying to Haeg in and of itself may not be ineffective assistance of counsel. Yet Haeg has tape recordings and witnesses proving Robinson told Haeg exactly this. See Haeg’s PCR exhibits. This proves Robinson’s sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole’s sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client This proves Robinson’s sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole’s sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to effective assistance of counsel and Robinson’s perjury proves his conflict of interest. *See* Haeg’s original

PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(139) Robinson testified that an attorney lying to his own client may not be ineffective assistance of counsel. Yet if the client hired the attorney for his counsel and the attorney were giving him false counsel this is by definition ineffective assistance of counsel. In addition, for an attorney to lie to his own client the attorney must have a conflict of interest.

> "[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)
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> "[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 Supreme Court 1974)

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

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

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

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to effective assistance of counsel and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(140) Robinson testified that Judge Murphy was a "law-enforcement type judge and not the independent judiciary type you're supposed to have." Yet Robinson never brought this up in his points of appeal even though Haeg asked him to. See court record and Haeg's PCR exhibits. This proves Robinson's sellout of Haeg and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted in violation of his right to an unbiased judge. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(141) Robinson testified that Judge Murphy first denied Haeg's motion that that the wolf control program law protected him from guiding charges or conviction, ruling this was a factual issue the jury to decide. Robinson then testified that a few days later Judge Murphy granted the state's protection order preventing Haeg from arguing to the jury that the wolf control program law prevented – by claiming this was a legal issue for her to decide. In other words, when Judge Murphy needed to deny Haeg's motion it was a factual issue for the jury to decide and then when she needed to grant the state's motion to strip Haeg of any defense it to be a legal issue for Judge Murphy to decide. In other words, to deprive Haeg of the defense he was participating in the wolf control program and his actions should be governed by wolf control program law, Judge Murphy made two decisions that are in exact opposition with each other. Finally, Robinson failed to answer Haeg's question why he never protested this. Because of this Haeg must

have a hearing in which Robinson is required to answer this and before this hearing happens Haeg's PCR cannot be dismissed.

(142) Robinson testified he never used the ineffectiveness of Cole for Haeg's defense because Haeg didn't hire him for this purpose. Robinson further testified that he never told Haeg of the defense of ineffective assistance of counsel because he wasn't supposed to. Yet the denial of effective counsel is one of the greatest defenses Haeg had to criminal charges and Robinson's refusal to use it when there was such overwhelming evidence of it is overwhelming proof of Robinson's ineffectiveness.

> "[T]he right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759 (U.S. Supreme Court 1970).
>
> "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." United States v. Cronic, 466 U.S. 648 (U.S. Supreme Court 1984).
>
> "From counsel's function as assistant to the defendant derive… the more particular duties to consult with the defendant on important decisions and to keep the defendant informed…The reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's …litigation decisions." Strickland v. Washington, 466 U.S. 668 (U.S. Supreme Court 1984)
>
> "[I]n a case of joint representation of conflicting interests, the evil -- it bears repeating -- is in what the advocate finds himself compelled to refrain from doing, not only at trial but also as to possible pretrial plea negotiations and in the sentencing process…to assess the impact

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

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

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to use Cole's ineffectiveness in Haeg's defense, Haeg could not be convicted in violation of his right to effective assistance of counsel, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(143) Robinson testified that Cole could not be ineffective because he did not represent Haeg during trial. Yet caselaw proves this is false.

> "Particularly where, as here, it is the pretrial and post-trial performance of counsel as well as the performance during trial that is specifically alleged to have been inadequate, it is not sufficient that he trial judge found counsel's performance as observed in the course of trial to be adequate." Wood v. Endell, 702 P.2d 248 (AK 1985)

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as

Haeg had a right to use Cole's ineffectiveness in Haeg's defense, Haeg could not be convicted in violation of his right to effective assistance of counsel, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(144) Robinson testified that it seemed the state went "overboard" and got "carried away" in its prosecution of Haeg, that Haeg's prosecution may have had a lot of "political pressure" and that taking Haeg's:

> "license and plane and all that [nearly two years in jail, $19,500 fine, $4500 restitution] was a bit much for wolves that didn't even have a salvage value…"

Yet Robinson never appealed Haeg's severe sentence and even told Haeg he could not appeal it. See court record and Haeg's PCR exhibits. This proves Robinson's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg had a right to use Cole's ineffectiveness in Haeg's defense, Haeg could not be convicted in violation of his right to effective assistance of counsel and Robinson's false advice to Haeg proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(145) Robinson testified (after Peterson asked him if this was the case) that if Zellers pointed to the marks that Haeg had made on the map (after the map had been presented to Haeg's jury by the state), it meant the marks were now made by Zellers. This is such a blatant lie it is incredible. This would mean the state could

play the tape of Haeg's statement to the jury, then have someone come in afterward and parrot it, and then claim the statement was not Haeg's. All caselaw holds there can be no taint:

> "First, the prosecution could use the compelled testimony to refresh the recollection of a witness testifying at North's criminal trial.
>
> 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.
>
> Even the state's utmost good faith is not an adequate assurance against nonevidentiary uses because there may be "non-evidentiary uses of which even the prosecutor might not be consciously aware." State v. Soriano, 68 Or.App. 642, 684 P.2d 1220, 1234 (1984) (only transactional immunity can protect state constitutional guarantee against nonevidentiary use of compelled testimony). We sympathize with the Eighth Circuit's lament in McDaniel that "we cannot escape the conclusion that the [compelled] testimony could not be wholly obliterated from the prosecutor's mind in his preparation and trial of the case." McDaniel, 482 F.2d at 312. This incurable inability to adequately prevent or detect nonevidentiary use, standing alone, presents a fatal constitutional flaw in use and derivative use immunity.
>
> Because of the manifold practical problems in enforcing use and derivative use immunity we cannot conclude that [former] AS 12.50.101 is constitutional. Mindful of Edward Coke's caution that 'it is the worst oppression, that is done by colour of justice,' we conclude that use and derivative use immunity is constitutionally infirm." State of Alaska v. Gonzalez, 853 P2d 526 (Ak Supreme Court 1993)

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

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

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

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

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

"The Government must do more than negate the taint; it must affirmatively prove that its evidence is derived from a legitimate source wholly independent of the compelled testimony." Kastigar v. United States, 406 U.S. 441 (U.S. Supreme Court 1972).

This proves Robinson's sworn testimony is false, more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets

both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicteed in vilation of his right against self-incrimination – which the state's use of Hag's map was, Haeg could not be convicted in violation of his right to effective assistance of counsel, and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

(146) Robinson testified, after being asked if this was the case by Peterson, that that falsification of the evidence locations was irrelevant. Yet the state's whole case was that Haeg was taking the wolves where he guides to benefit his guide area. And irrefutable proof the falsification to Haeg's guide area was relevant was Judge Murphy's specific use of the false location to justify Haeg's severe sentence. And all caselaw holds a falsification by the state is relevant in nearly every instance:

> "Conviction obtained through use of false evidence, known to be such by representatives of the State, is a denial of due process, and there is also a denial of due process, when the State, though not soliciting false evidence, allows it to go through uncorrected when it appears. Principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." Napue v. Illinois, 360 U.S. 264 (U.S. Supreme Court 1959)
>
> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicate in any concept of ordered liberty…" Giles v. Maryland, 386 U.S. 66 (U.S. Supreme Court 1967).
>
> "Requirement of 'due process' is not satisfied by mere notice and hearing if state, through prosecuting officers acting on state's behalf,

> has contrived conviction through pretense of trial which in truth is used as means of depriving defendant of liberty through deliberate deception of court and jury by presentation of testimony known to be perjured, and in such case state's failure to afford corrective judicial process to remedy the wrong when discovered by reasonable diligence would constitute deprivation of liberty without due process." Mooney v. Holohan, 294 U.S. 103 (U.S. Supreme Court 1935).
>
> "[T]he dignity of the U.S. Government will not permit the conviction of any person on tainted testimony. The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them." Mesarosh v. U.S., 352 U.S. 1 (U.S. Supreme Court 1956).

This proves Robinson's sworn testimony, that the falsification of material evidence locations is irrelevant, is more proven perjury by Robinson, is another attempt to cover up his and Cole's sellout of Haeg, and meets both Risher standards of deficient attorney performance and harm to client – as Haeg could not be convicted with the state knowingly using material perjury against him and Robinson's perjury proves his conflict of interest. *See* Haeg's original PCR memorandum, exhibits, and affidavits for additional evidence and how this harmed Haeg.

8-25-10 Dale Dolifka Testimony

Superior Court Judge Stephanie Joannides presiding

Judge Joannides: I thought based upon the information that was submitted to me and the information and the affidavits that the importance of -uh- the public confidence in hearings and proceedings was very important and there was an appearance of impropriety at a minimum.

Mr. Haeg: You have – you know you've alluded to the fact that my concerns about Judge Murphy and Trooper Gibbens were that they rode together

and you know and that's been muted because there've been a decision that in rural locations it's all right for law enforcement to chauffer judges around. My bigger concern that dwarfs that into minuteness is the fact that when I filed a complaint I have it on tape that the person that investigated the single investigator in this state – her name is Marla Greenstein - they testified to her the rides never took place. Both Trooper Gibbens and Judge Murphy. You agree or basically looked like agreed because of the and they – they said that one ride took place but only after I was sentenced. So the – the rides never took place during my case. You address the fact that the rides did took place before I was sentenced. It's irrefutable in their own words she "commandeered" him. So now we don't have the case of a judge riding around with a Trooper because she flew in from one village to another and you know we'll - we'll just kind of loosen things up a little bit to -uh- because there's no public transportation. Now you have a sitting judge lying to the official investigator and not only that conspiring with the Trooper who was giving her rides so he would testify falsely also. That is – that is a felony, it's a conspiracy, and it shows that all my concerns of her decisions that everyone went for that Trooper and even when it was proven he committed perjury, during my trial, nothing was done and I can read the law about perjury during a trial. This is the US Supreme Court…and this one has…

Judge Joannides: Well I – I understand but let…

Mr. Haeg: Ok.

Judge Joannides: … me just tell you I don't – let me just explain to you. I didn't reach that issue of what happened before the Judicial Conduct Commission because that issue isn't really before me. But as you'll see in my confidential order I do point out all those issues that you raise and address them for the Judicial Conduct Commission and that's why I'm sending their affidavits so to the – the additional affidavits you filed so to the extent that there was any testimony or information presented to the Commission they can review that and compare it to the affidavits. So I didn't discount your position.

Mr. Haeg: I – I understand it's kind of like you realize that this was something more than what you were assigned to but me after 6 years and my family and all my friends here that have seen what's going on. They're crying for somebody to do something about it. Because we've been to everyone that should and guess what? It's been wiped away. Can I ask you did you listen to the CD recordings of Marla Greenstein?

Judge Joannides: Well let just say – Mr. Haeg I don't – I'm not – I don't want you to misinterpret what I – what I said in the order. And as you will see in the confidential order that's coming out all the issues and the concerns you address

specifically about what the Commission did are laid out in the order and the Commission is made up of a number of members. And the order will go to them. So it isn't just that the investigator looks at my order it's the Commission looks at – at the order. And the Commission is made up of a number of members, attorneys, as well as public members who will look at it. So while I understand you're very frustrated at this I really – we need to stay focused on – I know you want justice and I know you want it now but it – at this point what you did is you were successful in – in challenging Judge Murphy's sitting on the case. Your allegations are going back to the Commission so they can look at them…

Mr. Haeg: Ok.

Judge Joannides: If you want to put on some testimony to make your record because as I understand and you're alleging -um- some coercion with respect to -uh- your obtaining counsel I would give you an opportunity to make a limited record but I want – I would say I would give you – how long do you need? You said 2 witnesses.

Mr. Haeg: -Um- I would say – I don't know an hour?

Judge Joannides: Who would you like to call first?

Mr. Haeg: -Um- and I'd – I guess I'd like say this on the record I apologize for doing it but I'd like to call Dale Dolifka.

Judge Joannides: All right. Mr. Dolifka would you please come forward? And if you'd remain standing the clerk would administer an oath to you.

The Clerk: Do you solemnly swear or affirm that the testimony you're about give in this case now before this court will be the truth, the whole truth and nothing but the truth?

Mr. Dolifka: I do.

The Clerk: Thank you. Sir for the record can you please state your first and last name?

Mr. Dolifka: -Um- my name is Dale Dolifka.

Attorney Peterson: How long have you been an attorney?

Mr. Dolifka: -um- almost 35 years.

Mr. Haeg: Ok and have you ever been a criminal attorney?

Mr. Dolifka: Just briefly. I was a Teamster lawyer. I did misdemeanors but for a very short time.

Mr. Haeg: Ok and how long have you been my business attorney? Approximately?

Mr. Dolifka: I don't remember how long. It's been a long time.

Mr. Haeg: -Uh- would you say it is over 20 years?

Mr. Dolifka: It could be I don't – I don't…

Mr. Haeg: -Um- when I got into the trouble a little over 6 years ago did I ask you to defend me?

Mr. Dolifka: -Um- my recollection is you called one day and you brought your CPA Mr. Obendorf with you to my office -um- you were very emotional, you explained what had happened to you and I immediately knew although not a criminal attorney per say I knew your world was about to change and I told you I could not be your attorney cause I was not certainly wasn't seasoned to do that. But I recommended Jim McCommas -uh- who I believed to be the best criminal lawyer in Alaska and I believed you needed the best criminal lawyer in Alaska given what you faced.

Mr. Haeg: Ok and -um- throughout all this you know -um- did I not just move on to the other attorneys did I try to keep you in the loop to maybe not at first but basically did I express that I had trust in you and basically go to you even though you had said you were not a profess – or a criminal attorney but basically I kept you abreast of what was going on?

Mr. Dolifka: Well I think that's where we probably differ in what our conversations were. I actually thought you were calling me as a friend because I – I was very worried about you and I did consider you a friend. I made it very clear to you I think every phone call we had that I was not a criminal attorney -um- but I somewhat relaxed because -um- when Mr. McCommas didn't represent you – you did hire an attorney that he had referred you to so -um- I tried not to interfere with your – your criminal case but I did you're correct I did talk with you many times -um- but as much of that was just trying to befriend you because I was very worried about – about you.

Mr. Haeg: Ok when you say worry about me can you explain more?

Mr. Dolifka: And the case that you had is very different then the normal criminal case because I knew, as did Mr. Obendorf, when you lost your airplane that your livelihood was impacted. It wasn't like you had shot a moose and you were goanna get a fine. Your life because your livelihood had changed is what really concerned me as your business attorney I didn't know how I was goanna - uh- protect you that way. And that what you came to me originally to see how – how to do asset protection things like that.

Mr. Haeg: Ok -um- and I – I take it you remember I hired Brent Cole is that correct?

Mr. Dolifka: Yea – well yes – I…

Mr. Haeg: And -um- did I -uh- oh present to you after I had – I guess did there come a point when I had such concerns with Brent Cole I came to you again and said, "hey is this right or what do you think about these issues"?

Mr. Dolifka: Well my recol – I mean this has been a long time ago and I've been very ill for 2 years so my memories not what is should be. But -um- my recollection is you hired Mr. Cole who I did not know. And I don't really recall be very much involved in the case in the early stage but there was a day that you came to me I actually think you had fired Mr. Cole. And -um- I then gave you another referral to -uh- Chuck Robinson who is from Soldotna. He's been my friend and colleague for – we actually practiced in the same law firm initially. And -um- I had great faith in him and so when it didn't work out with Mr. Cole who I didn't know or have anyway to judge I encouraged you to go to Mr. Robinson, which you ultimately did.

Mr. Haeg: Ok and I'm just goanna -uh- point out or -uh- oh one specific instance here is do you ever remember reading a letter I had wrote basically to the Court about why my side of what happened -um- and I can – I can maybe give you…

Mr. Dolifka: I don't – I noticed that letter in one of your recent pleas. I – I have no recollection reading that letter. I'm not saying I didn't I just don't remember it.

Mr. Haeg: Ok -um- do you ever remember stating and these are probably near exact words that "after I read the letter - as I read the letter even though I'm not a hunter the hackles stood up on the back of my neck because I knew exactly why you had done what you had did" and then you went on to say that you felt that that letter, which I was asking should it be presented to the Court – should it.

You said that it should be – you thought it should be presented because you thought it may be my only defense and I…

Mr. Dolifka: I don't – I don't remember that. I do remember the hackles on my neck have stuck up a lot of times in your case not just that time. But I don't remember that issue.

Mr. Haeg: Ok -um- but that's – that was I may be the only specific instant – well I can't testify here but anyway that's what I remember but I'll move on here. -Um- -uh- did I end up hiring Chuck Robinson?

Mr. Dolifka: Yes.

Mr. Haeg: Ok and -um- did it seem like things I informed you that things were breaking down with him also?

Mr. Dolifka: Well it was my recollection is pretty much the same as the other time. I - when you hired Chuck I was greatly relieved cause I had a lot of faith in him. And my – my memory is it went quiet for a while. I didn't actually know what was going on and then it was a repeat almost exactly of the other one. Then one day you came and -um- something had happened in the case and then – that actually was when I took a look at your case. -Um- again I'm not a criminal lawyer but – when - when things crashed with Mr. Robinson -uh- I became more proactive in actually reading documents and that's when I became very confused about your case. Again not being a criminal lawyer I still am an attorney and I was very confused. Even to the point of contacting Judge Hansen – my old friend from Kenai of 20 years Superior Court judge and called him more than once about your case because I – I couldn't get my arms around it. It made no sense what had happened.

Mr. Haeg: Ok and do you remember that after Chuck Robinson do you remember saying that I absolutely should not hire another attorney in this state and I should look for one outside the state?

Mr. Dolifka: You know I – I don't remember actually saying that to you. I – I may have because when you had -um- when it didn't work with Mr. McCommas or his referral and then when it didn't work with a lawyer that I had great faith in -um- and – and I really couldn't understand what happened -um- I – I may have said that cause I – I was quit disturbed when a – an attorney that I had that much faith in and it -um- and I couldn't understand your case.

Mr. Haeg: Ok and the reason why you couldn't under – couldn't understand it is that - did I tell you that I thought there were defenses such as

evidence being moved to my guide area, -um- that the State told and induced me to do what they then charged me with, that we had made a plea agreement, gave up a year of our livelihood and then it was broken did you think that the reason why – the reason why basically your hackles were standing up is because there were defenses that I was bringing up that weren't – that weren't ever utilized by attorneys?

Mr. Dolifka: Well again I'm not a criminal attorney but there's two things about your case I've - I'm tired of trying to figure out. I don't understand all the issues that went on with your plea agreement – it's – it's shocking to me how that all played out. And I don't understand how you possibly had due process with regard to the seizure of your airplane. I have read it and read it and read it. I've - I could write a doctors brief on it and I can't – and – and I'm just wore out trying to figure it out. Cause I – I can't.

Mr. Haeg: Ok. -Um- I had this is something I remember and is this correct? And I guess this is the question. Did you say that I must hire a great attorney from outside Alaska and when I walked into their office if the carpet wasn't 6 inches deep to turn around and walk out? Could you have ever said something?

Mr. Dolifka: I – I might have said that. I – I don't…

Mr. Haeg: And – and if you did why would you have said – said that – "that if the carpet wasn't 6 inches deep turn around and walk out"? Why would you…

Mr. Dolifka: Well one of the reasons I would have said those things about the time your case took place I was very cynical about our court system. Particularly the court system in Kenai and I think that really jaded me in a lot of ways with regards to your case because you were not by any means the only person coming into my office -um- with problems with the – with the judicial system in Kenai. I've been there 35 years. I love my community. My wife and I have given greatly to the community. I've - during probate laws I get very close to a lot of people and what went on in my office for about a 5 to 6 year period of a steady stream of people coming into my office telling me of things that went on in our system down there and of course I had to hold them confidentially but I would – I've sent them to the Governor we sent them everywhere. So your case -um- actually only was one of many -um- to the point actually it wore my wife and I out. You – you called me many times I tried to befriend you. But you were not the only one calling and our home phone our -um- and finally my doctor just said you got to stop. Bec – and my wife too. I mean it – it was to the point that cause I watched my community implode, Judge Hansen watched the community implode,

and my friend Fred Angleton watched it implode. He was involved in many of those situations. And I was so proud of Kenai Soldotna. We rose up as a community and we got our community back. Now you got a problem and others have a problem but it is a different community today then it was even two or three years ago because there were people that had the guts to stand up. And I know you're not goanna call Mr. Angleton but I believe he could back – he's a former State Trooper. Judge Hansen would come here and I – I mean I'm here saying now but he would validate everything I've just said to you. -Um- so I don't know if that answers your question but it – it – it does -um- like I said I was very cynical during this 4 years when you were calling me.

Mr. Haeg: Ok and -uh- I just some of these questions I have don't flow real well how you answer but – did – did you know or possibly did you help me seek an attorney outside of Alaska and were we successful in that?

Mr. Dolifka: I wish I had kept notes. If I'd known I'd have been here today I or how this was goanna play out I would have kept notes but I didn't cause I – I was just kind of being your friend. But I did get a call. I don't remember the lawyer the lawyer's name. I think he was from Minnesota who – the only word I could use was he was appalled by your case. He had read pieces of your case. He just he said "you've got a kangaroo court up there". It was very disparaging -um- that's the only recollection of anyone I have. And – and I wish I would of wrote that down. I mean if I could do that over I would of -um-

Mr. Haeg: Ok would you believe that that same attorney was flying up here to one of these proceedings and was reading the actual transcripts and in Seattle turned around and went home because he said troopers conspiring with judges is so scary he refuses to come to Alaska - would you believe that?

Mr. Dolifka: Well I don't – I don't know whether. I mean don't - I never heard that. I …

Mr. Haeg: But would you believe with your knowledge of the corruption here that that is a valid concern?

Mr. Dolifka: Well I – I guess it was a concern. I – mine wasn't. I don't know so much. I don't know corruptions the right word for that. Not so many of the cases were corrupt as just blatant incompetency of -um- I mean it was embarrassing. I would have family, from Colorado who got the Clarion, would call me and – and say, "god what is going on up there?" They would read where Judge Card had just reamed out -uh- one of our DA's and they would call about district attorneys who had screwed up our grand juries. I mean that was embarrassing and that would be during an era down there that was kind of part of

our system. Now whether it was corrupt or not I don't know that that's the right word but it certainly bread great cynicism in our community. It was talked about at school board meetings. It was talked about at assembly meetings. It's how are we going to get our community back? This cannot go on. So I guess I could believe that. I don't – I didn't know that had happened. -um-

Mr. Haeg: Ok when I failed to get an attorney outside the state did I ask you if I should represent myself and if I did what your – do you remember what your response was?

Mr. Dolifka: Well I can't imagine. I – I mean I have an old adage that he who represents himself has a fool for – or whatever that one is. So I – I understand the incredible importance of having an attorney. Now having said that I agree with the district attorney you – you put a lot of lawyers to shame whatever - for whatever that means. I have read your pleadings. I've read what you sent to the Supreme Court and -um- you are far above average in what -um- the pleadings that I see by other lawyers. So I -um- I can't imagine I told you to represent yourself. Cause I don't I – I as judge has said here today it's important to have a lawyer. -Um- but you have pleasantly surprised me in how you've represented yourself.

Mr. Haeg: Ok so -uh- I guess to paraphrase it is it true that that you encouraged me to get an attorney outside the state but when I couldn't you were adamant I still get an attorney and is that basically true? I mean…

Mr. Dolifka: Well without it yes. I'm…

Mr. Haeg: I'm kind of caught you know.

Mr. Dolifka: Well I know I would have told you to get an attorney. I can't image I would…

Mr. Haeg: Ok.

Mr. Dolifka: Given – given that I had told you to go get the best lawyer in the State of Alaska out of the chute I can't imagine I would reversed and say "gee things have changed". Cause actually by then things were worse.

Mr. Haeg: Ok and so to you knowledge did I hire a 3rd attorney after your…

Mr. Dolifka: Well you did it wasn't one that I recommended nor would I have recommended.

Mr. Haeg: Ok but I -uh- …

Mr. Dolifka: Yes you did.

Mr. Haeg: Ok – ok and do you have an idea ok do you know who that attorney was?

Mr. Dolifka: I do and I've read all the pleadings and they were just more mind numbing to me. I -uh- it was just more par for the course. The more you read the more you were like "I – I don't believe in this".

Mr. Haeg: Ok and was that attorneys name Mark Osterman?

Mr. Dolifka: Yes.

Mr. Haeg: Ok and -um- is Mark from what you know of the pleadings and stuff with Mark Osterman, my 3rd attorney, is what happened with him what you feared may happen if I hired an attorney inside this State for the 3rd time?

Mr. Dolifka: Well yeah if you read the tape recordings you made of what he said to you. I mean that just – that's part of when I said the hackles come up on my neck. How could you – any lawyer – especially who believes in ethics read those tapes of things he said to you assuming they're transcribed correctly and – and not be appalled by what happened. That's…

Mr. Haeg: Ok and do the – the recordings basically say, you know before I hire him, "my God it's the biggest sellout of a client I've ever seen by not only by one but two attorneys and we're goanna get this thing reversed. We're goanna sue them". And then I hire Mr. Osterman and then he flops around 180 degrees and says, "not only have I spent all that money" which was supposed to be all the money for the appeal but "here's another bill for another $36,000.00 and by the way I can't do anything with what I agreed was a sell out quote "because I can't affect the livelihoods of your first 2 attorneys". I - and is that what appalled you in the transcripts?

Mr. Dolifka: Not only is that what appalled me that is primarily what I sought counsel from Judge Hanson. That - those were the things that disturbed me – was – we were – with … Judge Hanson and I were talking about – as was Mr. Angleton about other cases that were just disturbing. But the main thing with yours that I would talk with Judge Hanson was – I … I mean I would actually call him and say "Judge am I losing my mind? Am I reading this correctly?" And he took an interest in your case and I think he was shocked by those tapes as well. Of

what you just read. And - and because I – when I couldn't – not being a criminal lawyer and - and again he had become a good friend and I just – I did… Your case became more and more troubling to me cause it was endemic of our whole community. It would - might have been the cutting edge but it wasn't the only one. And for what - what Mr. Osterman said to you on tape -um- should disturb any lawyer who believes in ethics of any kind.

Mr. Haeg: Ok and -uh- I – I guess you answered this but in essence the fear or the reason why you had advised me to go outside the state was proven correct. It wasn't just a theory that this was going on. It was proven correct because of Mark Osterman. Because the tape recordings if you looked at them I taped everything from the day I called him to hire him to the day I fired him. And so would it be fair to say that you and I knowing that this may happen prepared – or I prepared for it and Mr. Osterman proved this was going on? That – that attorneys are – are intentionally not representing their clients?

Attorney Peterson: Your honor I just – I want to object because he doesn't remember actually telling him to go outside. He speculated that he may have. And Mr. Haeg's kind of testifying about a conclusion here. I'd – I'd just like him to ask the questions and…

Judge Joannides: I'll – I'll give him a little leeway. I recognize that the question is not evidence. But just the answer.

Mr. Haeg: Ok -um- and Mr. Dolifka's goanna not like this but -um- did you know that I taped recorded nearly every conversation I've ever had with you?

Mr. Dolifka: Yeah.

Mr. Haeg: Ok -um- I would like to just go over and ask you some -uh- questions that are actual quotes of conversations. And I have the cd's that the State's more then happy to have copies of. That are the actual conversations. So this – I'd actually like to admit these cd's as evidence.

Judge Joannides: Let me ask you and – and (excuse me) before we admit them into evidence could you just explain to me a little bit what you hope to show through these conversations?

Mr. Haeg: I'd like to show that there – that I am not voluntarily giving up my right to counsel. I want to show through these conversations that it's not only my belief that I – you know I don't know how you want to put it. I don't know if you want to call it corruption whatever, collusion, good old boys club might the best word for it. But – but that … I am having…

Judge Joannides: But let (undecipherable) for (undecipherable)…

Mr. Haeg: … a -uh- as I said for the greater good of the State. You know Mr. Dolifka's laid out his concerns about that is going on here and I wish to -um- stand up as Mr. Dolifka said and do my part and this is actual conversations with a I forget what is was 37 year attorney who has been following my case from the beginning.

Judge Joannides: So is it – is what you're what you are attempting to elicit is that you were represented, you then went and hired Mr. Osterman -uh- who did not – who was basically unwilling proceed on the case -uh- because of impacting the livelihood of others, that you had an attorney that you tried to hire from the lower 48 who refused to represent you, and that a member – a member of the bar here believes that you're goanna have some challenges with finding a lawyer to represent you so you're really in a position to being unable to find a lawyer?

Mr. Haeg: Exactly. It – it's and it isn't necessary that I'm unable as proven with Mr. Osterman. He – he said "holy cow this is the holy grail of my career. I'm goanna not only overturn a very big conviction I this state but I'm goanna sue two of the biggest attorneys" and he told us "we're goanna get rich off of this". He said that he needed 12,000 dollars total upfront because he charges 3 to 5 thousand dollars per point on appeal. But he figured he'd be able to get everything done a little quicker cause I'd done a lot of the leg work. And he said 12,000 dollars he needed it all up front. It would be total. And after he had my money and after my appeal brief was up to about 7 days from being due to the Alaska Court of Appeals he hands me a brief that's a piece of no good. And says, "by the way the12,000 dollars is gone. Here's another bill…" - for I think it was 36,000 - ... he says, "Because I now charge 8,000 dollars per point on appeal with no limit. And by the way I can't use anything in your brief that I agreed too when you hired me because I can't affect the lives and livelihoods of your first 2 attorneys". And he had agreed that a successful ineffective assistance of counsel claim is prima-facie evidence of malpractice.

Judge Joannides: All right…

Mr. Haeg: Ok and I think that it was going very well -um- and I - you know – it just is something so – as… If Mr. Dolifka feels it's so bizarre. - I want everybody to - here to know how do I feel about it who bore the brunt of it. And my family bore the brunt of it. When we have a specific right of counsel that's written into our Constitution and the US Supreme Court over and over has said that's effective representation. Yet I cannot find effective representation. No

matter how much money I spend. And I've spent hundreds of thousands of dollars on attorneys. Hundreds.

Judge Joannides: And do you have a tape of Mr. Osterman's comments to you that he did – he won't take the case because it would affect Mr…

Mr. Haeg: He wouldn't – he wouldn't use the arguments. He took the case…

Judge Joannides: No but that he wouldn't use the arguments because he didn't want to impact …

Mr. Haeg: Correct…

Judge Joannides: …their livelihood? Then you have that one tape?

Mr. Haeg: Yep.

Judge Joannides: Just encourage you to stay focused a little on the issue.

Mr. Haeg: Ok -um- -uh- Mr. Dolifka I've got some -uh- basically excerpts out of conversations and I just am going to -uh- read through them. And I just like you to -uh- to either agree or disagree that this is something you said or – or possibly said. -Um- 'Cole giving the State and interview -um- was malpractice' and that – that has to do with that we didn't get anything for it and they used it against us but anyway that's just one excerpt. Is that something you could have said?

Mr. Dolifka: Well I could have but if you're just goanna just pull out excerpts without the whole context what – what very well may have come in front of that would have been 'if this and this happened it would have been malpractice'. What I never understood and still don't nor do other lawyers on your plea agreement is how you were -you believed you were goanna have - plea to these lesser charges that was in place in theory. And the next thing we know you go and sing like a bird, tell everything you know, and all of a sudden you – the charges against you are just exponentially increased. What – what I – I don't know – I'm sure I said it if I'm on tape but if the question was you know depends on how it played out. I the way I interpreted reading and reading and reading over and over and over how you could have found yourself in that position where you went and told everything. When you – you're – the case was actually a very poor case until you – until you spoke. Every lawyer said that, Robinson said it, Osterman said it, that until you went to Scot Leaders and told all that you told there were a lot of holes in that case. My point I probably did say that but it would

have been in the context of how in the world did you go and tell all that you told and not have a plea agreement nailed down. Because over and over what was then said later is 'oh they can use all that they want'. What lawyer would have let you lay all of that out and get your – get you charges increased exponentially? So yeah I probably did say it. But it's – it's kind of unfair to just pull out a sentence out without…

Mr. Haeg: I – I understand I just -um- I'm not a lawyer I – I now understand why it's you know – I have the entire conversations I was just going to try to you know as everybody knows I only have a limited amount of time. -um- I will just go through just some of them that I marked here. Do you remember saying that 'never has – never has there been a case in history that cries out more for outside intervention because you've been to all the major players'? Is – I mean…

Mr. Dolifka: Oh I'm sure I said that.

Mr. Haeg: Ok.

Mr. Dolifka: And I believe that.

Mr. Haeg: And that's because we…

Mr. Dolifka: Of all the places you've been.

Mr. Haeg: Jim McCommas?

Mr. Dolifka: Yeah.

Mr. Haeg: Chuck Robinson? Brent Cole? Even Kevin Fitzgerald…

Mr. Dolifka: Yeah.

Mr. Haeg: was part of it with my codefendant. Ok -um- do you remember saying something 'sold your soul for a deal and then the State and Cole sold you down the river'. Is that?

Mr. Dolifka: I – I could have very well said that…

Mr. Haeg: Ok.

Mr. Dolifka: Cause your – your whole plea thing just boggles my mind to this day.

Mr. Haeg: Ok ‘other than just an outright payoff of a judge or jury it is hard to imagine anyone being sold down the river more’?

Mr. Dolifka: I don’t remember saying that but I – I might of.

Mr. Haeg: Ok -um- -uh-…

Mr. Dolifka: That could have been in the context of – of all of the – the little travels… I mean your stuff even with the proprieties that went on I’m so glad you got a new judge on this because one of the things that smelled so bad to – to lay people was all the stuff that you filed for new judge about. The judge riding around with the Trooper and commandeering vehicles. I mean that smelled to high heaven. Especially to non-lawyers. That was one of the things he community was most outraged was just…

Mr. Haeg: Well and not only that – that when I went to the single investigator of judicial conduct and I can prove she lied. I mean that and when she told me – well I guess I’m testifying but… Is the fact that she investigated and because she’s been the only judicial investigator for 21 years and – and you reading the stuff should know she lied. Was that a concern?

Mr. Dolifka: Of course. I mean it was and it was… Look at the people that are here today. It was those things that became so troubling. Not only in your case but other cases down there. You would see this stuff and you would just go ‘my god that cannot be…

Mr. Haeg: Ok.

Mr. Dolifka:…true’…

Mr. Haeg: Ok. Well let me – I’ll just ‘your end of the bargain was not met. It was heads I win tails you loose. You didn’t even have to be a lawyer or you don’t even have to be a lawyer to know inherently there’s something wrong with that’.

Mr. Dolifka: I – I’m sure I said that and I still feel that way. That how you – when you went and told everything that you did thinking you had an agreement. Turns out you didn’t have agreement and your charges got exponentially increased. That statement I made right there. I absolutely said it. I’m sure and I agree with it today.

Mr. Haeg: Ok if I told – 'if you told a thousand ordinary citizens that for a deal you went in an spilled your guts and then never got the deal they would find that appalling. That's what smelled so bad to me'?

Mr. Dolifka: I'm sure I said that.

Mr. Haeg: -Um- 'the fruit of the poisonous tree started with the warrants which claimed all the evidence was found where you guide. The dominos should have all went down right there. That's what I thought Chuck would latch onto'?

Mr. Dolifka: Well yeah when – when I read your case and the lay people here read your case it appears that the whole the whole foundational things built on a lie. Unless we're all misreading it - it looks like it - it the whole deal about section this and all the affidavits. Everything had it. And then the hearing while it wasn't that at all it – when I used it… And that was kind of odd thing to use as fruit of the poisonous tree. We all had that. For us old coots that was a common theory in law school. And once you poison something it's like a house without a foundation. So all the good folks that are here today that we would talk about – I think almost everyone goes back to that original seminal issue that how the hell did this case go on when it appears to lay people and to me a lot of it was built on a lie in a sworn affidavit?

Judge Joannides: And Mr. Haeg just want to tell you that this kind of information (undecipherable) is the kind of information that generally goes to PCR judge about the legal defects in the case.

Mr. Haeg: -Um- 'everyone in your case has had a political price to pay if they did right by you. If they did right by you the DA would take it out on them and other cases. Then you got the case of your lawyer and the other lawyer got hurt. You had a series of situations which everyone was doing things to protect everyone rather than you because there was a price to pay'?

Mr. Dolifka: I agree with that.

Mr. Haeg: Ok. -Um- 'your case has shades of Selma in the 60's. Where judges, sheriffs, and even assigned lawyers were all in cahoots together'?

Mr. Dolifka: Well I don't remember that but as a southerner I probably said that.

Mr. Haeg: Ok. 'Troopers at least didn't try to kill you like they did one of my other clients'?

Mr. Dolifka: I don't remember saying that but that doesn't mean I didn't.

Mr. Haeg: Ok. -Um- 'the attorneys of this state have banded together against you. Under no circumstances get another attorney in Alaska. Contact firms'… and I think you said Washington. 'Tell them that you have the goods on two law firms'?

Mr. Dolifka: Well I – I could have said that.

Mr. Haeg: Ok this actually is and I'm getting close to the end here -um- at least this. Did we come to you fairly recently to try work out how to pay off are credit card debts and have a meeting with you with me and my wife and Tom Stepnosky?

Mr. Dolifka: Not fairly. I haven't talked to you for a long - long time.

Mr. Haeg: Ok well was -uh- I when I say fairly recently 8-19-08 oh yeah 2 years ago. But anyway let me just see if you remember this. 'The reason why you have still not resolved your legal problems is corruption. I can tell you exactly what happened. In the early stages you were one of the first that I realized it was corruption. At first I thought it was ineptness. Over time in this journey with you here's a corrupt case here's a corrupt case and here's a corrupt case. Now here's what happens when they come up on appeal. You have a Supreme Court sitting there looking at a pile of dung and if they right by you and reveal you know you have the attorneys going down, you have the magistrates going down, you have the troopers going down. You are one small part of the pocket. A lot of lawyers would agree with me. The reason is all gummed up at the top. You're just one of many. It's absolute unadulterated self-bred corruption'?

Mr. Dolifka: If that was in that era down there I – I probably did say that. I – I was – I had got to such a point of cynicism that I – I was ready to throw in the towel.

Mr. Haeg: Ok and then you…

Mr. Dolifka: But I…

Mr. Haeg: …you gone on 'I talked to Judge Hanson about this. I talked to Judge Hanson for 3 hours about your case. I lean on him all the time. He now sees it. The system crushes them. I don't have any question now because I couldn't figure out why your appeal could be over and done with. I walked over here and lawyer A says my god they're violating every appeal rule ever. How can it be like this?'

Mr. Dolifka: Well I probably…

Mr. Haeg: Ok. I mean this is you know then you said 'I absolutely have no faith left in the system'?

Mr. Dolifka: During that time that I probably would have said that. My faith in the system has somewhat been renewed with …

Mr. Haeg: Ok.

Mr. Dolifka: I would – I do want to add to that. That I'm – I'm not as cynical as I was. The last 2 years in Kenai has improved immeasurably. With new judges and new head DA everything is better. But when – one of the things… everything that you've quoted me as saying you have to remember I was very down. It was a very tough time in our community for me. I was – my wife and I almost on a daily basis was listening to people's struggles. Some of them worse than yours. And we would sit there and listen and listen and listen. So I don't doubt that I said those things but if you don't put it in the context the times we lived -um- …

Mr. Haeg: -Um- and I you know I am kind of ambushing you here and I you know I apologize for that but it's something that needs to come out. Even if it's goanna affect our friendship or relationship. - but … 'the Supreme Court frankly does not know what to do because of the incredible corruption'?

Mr. Dolifka: Well I – I again I don't know the date that that was said but you have to remember the whole State was in turmoil. Look – look at Senator Stevens's case. I mean go back look at all of the State legislators that were – I – I don't know when I may have said that. But really though the whole State for a 3 or 4 year period when all of our legislators and - and all of that was going on I mean that – that would have not – I mean that would have been a common statement made by most people. So you know I don't – I …

Mr. Haeg: Yeah.

Mr. Dolifka:…probably did s… If you got a tape of it I obviously…

Mr. Haeg: Yeah.

Mr. Dolifka: … did say it.

Mr. Haeg: And you know I'll just validate kind of. 'At some point 2 years from now or whenever I hope you can get on with a normal life'. And do you know the date you said that was 8-19-08? 'Two years from now I hope you can get on with a normal life'. It's now over 2 years.

Mr. Dolifka: I probably did say it.

Mr. Haeg: Ok and that ok 'as these indictments have hit all these different levels' and I think we are talking about the – the VECO corruption thing 'all we have left is to indict a judge'. Is that – I mean basically did you think the corruption was – or that statement led me to believe that you thought the corruption was so bad that that even judges were into stuff that they could be indicted for.

Mr. Dolifka: Well I don't know that I – I know of a judge. I think probably what I said that was at the rate we're going all - all that we had left. We had indicted senators, legislators, the – I mean Uncle Teddy had been indicted. I probably said something like "all we have left and the whole thing will implode is when judges start going down". I don't know of a – I'm not saying that I knew of a corrupt judge.

Mr. Haeg: Ok. -Um- and I actually think that's about it for Mr. Dolifka. And - and like I said I could just like make a statement that -um- what I've done here today is something that he's probably been fearing for a long time and I…

Mr. Dolifka: I haven't feared it.

Mr. Haeg: Well…

Mr. Dolifka: I knew – I knew it was coming and I have no fear. If I tell the truth I have no fear.

Mr. Haeg: Ok. Well thanks.

Mr. Dolifka: Ok.

Conclusion

In his deposition Cole admitted he had two conflicts of interest that were in direct conflict with Haeg's. (1) That if he advocated for Haeg by filing motions to

suppress, because of Haeg's statement use, because of the evidence falsification, to get the airplane back, or enforce the plea agreement he would not be able to make deals with the state in the future. (2) That he had a "personal" interest in making sure the Wolf Control Program was not harmed that was in conflict with his professional duty to Haeg. Yet he never informed Haeg of these conflicts either before Haeg hired him or while he represented Haeg. As Cole failed to take numerous actions because of his conflict of interest this requires Haeg's conviction to be overturned. See caselaw above and in Haeg's original PCR memorandum.

In his deposition Robinson stated he had no duty to use Cole's ineffective assistance (a violation of Haeg's constitutional rights) to defend Haeg – proving Haeg's claim that Robinson placed Cole's interest in not being found guilty of ineffective assistance (the equivalent of malpractice) above Haeg's interest. Yet he never informed Haeg of this conflict of interest. As Robinson failed to take numerous actions because of his conflict of interest this requires Haeg's conviction to be overturned. See caselaw above and in Haeg's original PCR memorandum.

Haeg has tape recordings of his third attorney, Mark Osterman, first stating that the "sellout" of Haeg by Cole and Robinson "was the biggest sellout of a client I have ever seen" and that "you didn't know they were goanna load the dang dice so the state would always win." Yet just before he was to file a brief on Haeg's behalf Osterman on tape stated that he could use nothing of the sellout for

Haeg's defense because he (Osterman) could do nothing that would affect Cole or Robinson – proving Osterman himself had fallen into the trap of protecting Cole and Robinson at Haeg's expense. As Osterman failed to take numerous actions because of his conflict of interest this requires Haeg's conviction to be overturned. See caselaw above and in Haeg's original PCR memorandum.

Even Dale Dolifka, Haeg's business attorney, recognized the conflicts of interest after he reviewed the filings in Haeg's case, testifying under oath that he agreed Haeg ended up with "a series of situations which everyone was doing things to protect everyone than you [Haeg] because there was a price to pay" and that,

> "your [Haeg's] case has shades of Selma in the 60's – where judges, sheriffs, and even assigned lawyers were all in cahoots together."

There is caselaw that this situation can and does occur – with a defendant's counsel turning against his or her own client - becoming a "second prosecutor", and making a situation in which the client "would have been better off to have been merely denied counsel."

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

> "[Counsel] so abandoned his overarching duty to advocate the defendant's cause that the state proceedings were almost totally non-adversarial. [T]he record supports the district court's finding that defense counsel turned against [defendant], and that this conflict in loyalty unquestionably affected his representation. Such an attorney, like unwanted counsel, 'represents' the defendant only through a tenuous and unacceptable legal fiction. A defense attorney who

> abandons his duty of loyalty to his client and effectively joins the state in an effort to attain a conviction… suffers from an obvious conflict of interest. In fact, an attorney who is burdened by a conflict between his client's interests and his own sympathies to the prosecution's position is considerably worse than an attorney with loyalty to other defendants, because the interests of the state and the defendant are necessarily in opposition. The performance of [defendant's] counsel was constitutionally unreasonable, but more importantly, the evidence presented overwhelmingly established that his attorney abandoned the required duty of loyalty to his client. [Defendant's] attorney did not simply make poor strategic choices; he acted with reckless disregard for his clients best interests and, at times, apparently with the intention to weaken his client's case. Prejudice, whether necessary or not, is established under any applicable standard." Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988)
>
> "Prejudice presumed because counsel did not serve as advocate – such that he was a 'second prosecutor' and defendant would have been 'better off to have been merely denied counsel.'" Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997)

The depositions of Cole and Robinson (along with the affidavit of Osterman) prove that Haeg's attorneys have now committed blatant and proven perjury throughout their sworn testimony in a last ditch effort to justify the court dismissing just about the last claim the court has left Haeg with – ineffective assistance of counsel. This lying under oath to cover up how they represented Haeg can only mean one thing – that they gave Haeg deficient representation and that this deficient representation harmed Haeg, meeting both Risher criteria - meaning that they are also guilty of malpractice. See caselaw above.

Summary of just some of the deficient attorney conduct, prosecutorial misconduct, judicial corruption, and how this harmed Haeg. For a complete list of instances, and how each meets both Risher standards of deficient

conduct and resulting harm, please refer to Haeg's original PCR application, memorandum, affidavits, and exhibits

A. Cole has testified that it was not a legal defense that Haeg was told by the state officials running the Wolf Control Program that if was in the best interest of the state for Haeg to take wolves outside the open area but claim they had been taken inside the open area - exactly as the state then charged Haeg with doing. Haeg has recordings that Cole, while he represented Haeg, stated this was not a legal defense. See PCR exhibits. Yet caselaw above proves this was a legal defense. Even after Cole told Haeg this was not a legal defense Haeg felt so strongly about it that he wrote a letter to the court explaining in detail that the state told and induced him to take the exact actions they then prosecuted him for. Cole testified that he remembers Haeg writing this letter and remembers submitting this letter to the court on Haeg's behalf. See PCR exhibits. Yet now all that remains in the court record is the cover sheet from Cole proving Haeg's letter had been submitted – Haeg's letter is gone from the official court record and all that remains is the proof it had been submitted. See pre trial court record. Robinson testified the reason he never brought up that the state told and induced Haeg to do what they charged him with doing because this would be like Haeg was admitting to taking wolves outside the open area. Yet then he had Haeg himself take the stand and admit he knowingly took wolves outside the open area and claim they were taken inside the open area – and skipped the part that the state told him he had to do this. Then Robinson never explained the state had falsified the evidence of taking

wolves to Haeg's guide area to specifically justify charging and convicting Haeg of guide violations. The failure of Haeg's counsel to litigate what the state had told Haeg, combined with them not litigating that the state falsified the evidence to Haeg's guide area changed the whole case from Haeg was a knight in shining armor saving the Wolf Control Program at the state's request to Haeg was a rogue guide out to feather his own nest – absolutely incredible harm to Haeg. This proves everyone was working together against Haeg to knowingly cover up the state's misconduct in telling and inducing Haeg to be their knight in shining armor. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg himself would have done far more then just write and submit a letter to raise the defense of entrapment. And the court record being tampered with to remove even Haeg's letter, evidencing this defense, is proof the court itself was involved in rigging Haeg's trial – requiring the overturning of Haeg's conviction on its own.

B. Cole testified under oath that Haeg had been given transactional immunity for his statement. This means Haeg could never have been prosecuted (See Blacks Law definition of transactional immunity) – yet not only was Haeg prosecuted he was convicted and sentenced to the complete destruction of the guiding business he built over his lifetime. This in and of itself is incomprehensibly deficient attorney performance that resulted in incomprehensible harm to Haeg. Compounding this already unbelievable injustice is that after Cole let the state prosecute Haeg in violation of the law he let the state use Haeg's immunized

statement in innumerable ways to do so – with the state specifically quoting Haeg's statement in the charging informations and releasing it to the media where it was published for the world to read. Then Robinson tries to cover up this sellout by bringing it up in a reply brief where the court is not allowed to act on it (see caselaw above) instead of the required motion to suppress – so the state could just remove the actual quotes yet still prosecute Haeg while using Haeg's statement in innumerable other ways not so obvious (See Gonzalez and North above) including presenting Haeg's map against Haeg at trial. And the proof Robinson knew how critically important it was to cover all this up before it got out is, in addition sending the protest to Leaders office by courier and fax, the fact Robinson even tracked prosecutor Leaders down at a hotel and faxed him "Please deliver to Scott Leaders, attending the District Attorney Conference and guest at your hotel ASAP" along with a copy of the affidavit Robinson had Haeg sign stating Leaders should not use Haeg's statement in the charging information. See attachment. Leaders must believe the courts are very corrupt indeed for him to not remove the specific use of Haeg's statement even after being informed in so many ways. More proof of Robinson's sellout is the fact that Haeg, after he was convicted, asked Robinson to include in Haeg's appeal the fact the state used his statement in the charging information (see attachment), Robinson never did so, and then when asked why this was not a point of Haeg's appeal, Robinson testified that it was – when Robinson's points of appeal prove this is false. See Robinson's points of appeal. Irrefutable proof Leaders was part of this conspiracy, knew he should not

be using Haeg's statement, that he is also committing perjury to cover up, and that Robinson committed ineffective assistance of counsel: Haeg filed a Bar complaint that Leaders had used Haeg's statement in the information charging Haeg. Leaders, in a verified response Leaders testified that he never used Haeg's statement in the charging informations and the proof of this was that Haeg's counsel never filed a motion to suppress. See Haeg's PCR exhibits. Yet the charging informations and the numerous other ways Leaders was informed he was using Haeg's statement (by courier, by fax to his office, and even by fax to the hotel where he was attending a conference – see attachment and Robinson's pre trial reply) prove Leaders was positively informed he had used Haeg's statement – proving in turn that he knowingly falsified his later testimony that he had not used Haeg's statement in the charging informations. And the harm proven by all this is as soon as Haeg's statement was used his prosecution was invalid (Not even counting that Haeg could not be prosecuted at all after being given immunity). See Gonzalez, North, and Kastigar above. All this proves everyone was working together to knowing violate Haeg's right against self-incrimination - even Judge Murphy - as Robison had informed her in his reply brief, yet she did nothing to stop this constitutional violation, as was required. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised the defense of self-incrimination by himself.

C. Cole and Robinson testified that it didn't matter that the state falsified all the evidence locations to Haeg's guide area on all the affidavits used to seize

evidence and Haeg's property (see Haeg's PCR exhibits); that Haeg told the state about the falsified evidence locations during his immunized statement (see Haeg's PCR exhibits); the state continued to falsify the evidence locations during trial (see court record); and - only after the state knew its false testimony had been discovered at trial - admitted it had knowingly used false evidence at trial (see court record). And the proof that this known falsification was effective and material in harming Haeg is the fact that Judge Murphy specifically cited the false evidence locations as the reason for Haeg's severe sentence (see court record). And if the false evidence locations were effective on Judge Murphy (who must document her reasons for action in Haeg's case) it is clear the false evidence locations were effective and material with Haeg's jury (who are not allowed to document their reasons for action in Haeg's case). And the overwhelming caselaw above holds that any knowing use of false material evidence by the state is a violation of due process that renders a conviction invalid. Period. And since it was it was proven the state had knowingly falsified the same evidence as was used on the affidavits seizing the evidence and property, this violates the right against unreasonable searches and seizures and means the evidence and property cannot be used and must be returned. All this proves everyone was working together to knowing violate Haeg's right to due process and against unreasonable searches and seizures. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised these defenses by himself.

D. Cole and Robinson testified that Haeg had no right to get credit for the year of guiding that he state promised Haeg he would get credit for. Yet all caselaw above holds that Haeg's agreement, that he had given so much for, was like a commercial contract backed up by the United States and Alaska constitutions. All this proves everyone was working together to knowingly violate Haeg's due process right to credit for giving up a whole year of livelihood. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised this due process defense by himself.

E. Cole has testified that Haeg could not legally obtain the return of the plane that was the primary means to provide a livelihood and Robinson has testified that even though due process was not followed it was legal for the state to keep the plane. Yet all the caselaw above holds the state must follow due process or a seizure violates the constitutional right against unreasonable searches and seizures and is illegal. All this proves everyone was working together to knowingly violate Haeg's due process right before his primary means of providing a livelihood could be taken away before he was charged, convicted or sentenced. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised this due process defense by himself.

F. Haeg's attorneys never protested that Judge Murphy, while she presided over Haeg's case, was being chauffeured by Trooper Gibbens - the main investigator and witness against Haeg – even though Haeg asked if this was allowed. Yet Robinson testified that this gave the appearance of bias – which is

not allowed. Further, Robins testified that if Judge Murphy and Trooper Gibbens lied during the investigation into the chauffeuring this would prove actual bias – and there is irrefutable evidence that both Judge Murphy and Trooper Gibbens lied during the investigation into the chauffeuring and that they both conspired with judicial conduct investigator Marla Greenstein to boot. See Haeg's PCR exhibits and supplements. All this proves everyone was working together to knowingly violate Haeg's due process right to an unbiased judge. And the recordings, testimony, and exhibits prove that had it not been for his attorneys Haeg would have raised this due process defense by himself.

G. Robinson testified his "tactic" that the court did not have subject matter jurisdiction is still valid and that the U.S. Supreme court case Albrecht supports it. Yet West's Encyclopedia of Law states: "In state court systems, statutes that create different courts generally set boundaries on their subject matter jurisdiction"; the Alaska Constitution states "The jurisdiction of courts shall be prescribed by law"; and Alaska Statute 22.15.060 states that "the district court has jurisdiction of misdemeanors". In other words it is irrefutable the district court had subject matter jurisdiction over Haeg since he was charged with misdemeanors in district court. And Albrecht specifically states that the court positively had subject matter jurisdiction. And Robinson has testified Judge Murphy, before trial, allowed the state to "cure" the subject matter jurisdiction defect – yet he still testifies this was Haeg's only issue for appeal after trial. The evidence that Robinson's "lack of subject matter jurisdiction" is a decoy to hide the real errors in

Haeg's case, and that he is now committing perjury over and over to support it after Haeg figured out his deception, is overwhelming. While representing Haeg he even stated that for this defense to work Haeg must hide, and not bring up, any of the other errors in Haeg's case – because this would "admit" to the court it had subject matter jurisdiction. See exhibits. Robinson is corrupt to the very core.

The enormity and growing size of the cover up being attempted is mind-boggling. Haeg and a growing number of the public continue to watch in horror as attorney after attorney and judge after judge try to cover up the impossible. Calmly, inexorably, and with complete disregard to personal consequences Haeg, along with many others seriously concerned, will continue to very carefully document the now rapidly expanding corruption, conspiracy, and cover up in his case and, when no more are willing, or forced, to "drink the loyalty Kool-Aid", will fly to Washington, DC and not leave until there is a federal prosecution of everyone involved.

Haeg will prevail, no matter how many judges, prosecutors, troopers, or defense attorneys join the conspiracy to cover up, not because he is strong or clever – it is because the axe he swings is named United States Constitution and as the forces against it grow it will burn brighter and brighter, calling all those sworn to protect it to its aid. And while a criminal conspiracy of judges, prosecutors, troopers, and defense attorneys is powerful indeed, our Constitution and those sworn to uphold mightier yet and will prevail no matter what. Our Constitution and the innumerable people who have died for it demand nothing less.

I declare under penalty of perjury the forgoing is true and correct. Executed on March 19, 2012. 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. In addition I would like to certify that copies of many of the documents and recordings proving the corruption in Haeg's case are located at: www.alaskastateofcorruption.com

David S. Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249 and 262-8867 fax
haeg@alaska.net

Certificate of Service: I certify that on March 19, 2012 a copy of the forgoing was served by mail to the following parties: Peterson, Judge Gleason, Judge Joannides, U.S. Department of Justice, FBI, and media.
By:

LAW OFFICES OF

MARSTON & COLE, P.C.

ERIN B. MARSTON
BRENT R. COLE

745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002
marston@alaska.net
Direct Dial: (907) 277-8004

October 12, 2011

Colton Seale
Supervisory Special Agent
Federal Bureau of Investigation
101 E. 6th Avenue
Anchorage, AK 99501

Re: David S. Haeg Complaint
Our File No. 1037.001

Dear Agent Seale:

Per your request, I am forwarding copies of the documents identified below for your review.

- Administrative Appeal from the Alaska Bar Association Third Judicial District at Anchorage, Appellee's Brief
- Before the Alaska Bar Association, Fee Review Committee, Decision and Award

If you have any questions regarding this transmittal, please do not hesitate to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Christine M. Watne
Paralegal

Enclosures

LAW OFFICES OF

MARSTON & COLE, P.C.

ERIN B. MARSTON
BRENT R. COLE

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ANCHORAGE, ALASKA 99501-2136

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

October 12, 2011

Colton Seale
Supervisory Special Agent
Federal Bureau of Investigation
101 E. 6th Avenue
Anchorage, AK 99501

Re: David S. Haeg Complaint
Our File No. 1037.001

Dear Agent Seale:

Today I am forwarding copies of the documents identified below for your review.

- Memorandum and Decision Order signed by Judge Harold Brown on June 15, 2007.

If you have any questions regarding this transmittal, please do not hesitate to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Christine M. Watne
Paralegal

Enclosure

LAW OFFICES OF
MARSTON & COLE, P.C.
745 WEST FOURTH AVENUE, SUITE 502
ANCHORAGE, ALASKA 99501-2136

ERIN B. MARSTON
BRENT R. COLE
COLLEEN J. MOORE

TELEPHONE (907) 277-8001
TELECOPIER (907) 277-8002

April 9, 2004

VIA FACSIMILE

Mr. David Haeg
Dave Haeg's Alaskan Hunts
P.O. Box 123
Soldotna, Alaska 99669

Re: Criminal Investigation
Our File No.: 102.484

Dear Dave:

You have requested that Marston & Cole, P.C. ("Firm") represent you in connection with the handling of disputes and claims arising out of a present criminal investigation by the State of Alaska. This letter confirms terms and conditions upon which this Firm is willing to undertake the foregoing representation.

1. Subject of Representation. You have asked this Firm to represent you in the handling of the above-captioned matter. This Firm agrees to represent you during the course of this investigation, any criminal litigation and through any criminal sentencing proceedings. This representation does not include representing you on any appeals which may arise out of this litigation.

2. Potential Conflicts of Interest. We are not aware of any potential conflicts of interest that the Firm may have with regard to this representation. As I indicated in conversations, I advise Mr. Fitzgerald be retained to represent Mr. Tony Zellers to avoid any possible ethical conflicts. While this Firm does not and has not represented the State of Alaska, this firm is occasionally retained by the State of Alaska to act as hearing officers in administrative appeals and to represent state employees in civil litigation. Neither of these appointments will affect your representation in this matter.

3. Professional Undertaking. Brent R. Cole will have primary responsibility for the legal representation undertaken on your behalf. Other attorneys and legal assistants in the office may be used in this matter in the best exercise of our professional judgment. ***We will***

endeavor to assist you in a professional manner and to the best of our abilities, but we cannot guarantee the outcome of any given matter.

4. Fee. Mr. Cole's hourly rate is $200.00 per hour for his services rendered in this matter and the Firm will bill you on a monthly basis. Occasionally Mr. Marston and/or Ms. Moore are required to assist in these matters and their hourly rate is also $200.00 per hour. Whenever possible, work that can be conducted more efficiently by a paralegal or an associate attorney for which we will bill at a rate of $100.00 per hour.

We take into account many factors in charging for services rendered. The principal factor is usually our schedule of hourly rates in effect at the time the services are rendered. Our hourly rates for attorneys and other staff members are based on years of experience and level of professional attainment. In setting fees, we also consider the uniqueness of the services rendered, the result obtained, the time limitation imposed by the client or the circumstances, and whether or not the work precludes other work which we otherwise would have done. Normally the attorney with primary responsibility for your representation will review all statements before they are rendered to ensure that the charges are appropriate.

You have chosen to pay for this firm's legal services on an hourly basis and not on a flat fee basis. If you so request, a flat fee for all services rendered in this case will be quoted after reviewing the police reports and discussing the matter with you. ***There will be a minimum fee of $5,000.00.*** I have advised that if this criminal matter is not resolved short of trial, this case could cost as much as $25,000.00, depending on the number of days in trial. This firm charges a flat fee of $1,500.00 a day in trial.

5. Expenses. Our agreement will require you to pay, ***in addition*** to our hourly rates, for any expenses incurred in our representation of you in this matter. The following is a breakdown of the types of expenses that can be incurred in matters such as this and how you will be charged.

1) Copy Costs:	$.10 per copy
2) Facsimile Costs:	$.25 per page
3) Postage:	Actual cost to the Firm
4) Long Distance telephone:	Actual cost to the Firm
5) Courier Costs:	Actual cost to the Firm
6) Discovery Costs:	Actual cost to the Firm
7) Investigation Costs:	Actual cost to the Firm
8) Legal Research on Data Base:	Actual cost to the Firm

9) Tapes:	$1.00 per tape
10) Secretarial Overtime:	$35.00/hour
11) Transportation Costs:	Actual cost to the Firm

Although this is not an all-inclusive list of possible expenses that can be incurred, it should provide you with an idea of the possible expenses and amounts that may arise in the course of our representation of you.

6. Retainers. In certain matters, we require payment before rendering service. We may ask for a retainer when we are about to start a trial or similar large undertaking, or when a client is new and has no payment history with us. Also, when we foresee substantial disbursements on a particular matter, we may ask you to pay them directly or to fund them in advance. ***In this case we are requiring a retainer of $2000.00, and we reserve the right to require an additional retainer in the future if necessary.***

7. Client's Duty to Be Truthful. In nearly all circumstances, the communications between an attorney and his client are confidential and cannot be disclosed to another party without the client's consent. This protection is available in order to encourage clients to be truthful and forthright with their counsel to ensure that appropriate legal advise is given in any one circumstance. ***Failure to be truthful or forthright with counsel for this Firm constitutes a grounds for terminating this Firm's agreement to represent you.***

8. Billings. Our statements generally will be prepared and mailed within a few days after the end of any month in which services are rendered and disbursements are made. ***Bill amounts left unpaid for more than thirty (30) days will accrue interest at a rate of ten percent (10%) annually.***

You may also be interested to know that we accept payments and retainers by MasterCard and Visa charge cards. To make a payment by charge card, please fill out the form at the bottom of your bill and return it to us. We will credit your account for the amount you indicate on the form, and send you a record of the transaction.

9. Termination. You will have the right to terminate our representation at any time. We will have the same right, subject to our obligation to give you reasonable notice to arrange alternative representation and, where required, to obtain permission of the judge before whom a litigation matter is pending. ***Failure to pay bills on a timely basis constitutes grounds for terminating our agreement to represent you.***

10. Closing Files. Some of the discovery we receive in this matter may consist of audio and video tape recordings. If you would like to keep these items or any documents from your file, please notify us within twenty (20) working days from the completion of your case and we will be happy to accommodate you; otherwise, any unclaimed audio and video tape recordings will be disposed of.

If you are willing to consent to our representation of you based on the conditions stated above, will you please so indicate in the space provided below and return one copy of this letter to us. After reviewing the police reports and listening to any tape recorded proceedings, I will contact you and give you my candid analysis of your case.

I look forward to working with you on this matter, and if you have any questions, please feel free to contact me.

Very truly yours,

MARSTON & COLE, P.C.

Brent R. Cole

BRC/ee

CONSENT

I, David Haeg, consent to Marston & Cole, P.C.'s representation of me on the terms and conditions set forth in the foregoing letter.

DATED this 10th day of April 2004.

David Haeg

faxed 4-11-04

THIS FACSIMILE TRANSMISSION IS CONFIDENTIAL AND MAY BE PRIVILEGED AND IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY. IF YOU ARE NOT THE ADDRESSEE (OR A PERSON RESPONSIBLE FOR DELIVERING THIS TRANSMISSION TO THE ADDRESSEE), DO NOT USE THIS TRANSMISSION IN ANY WAY, BUT PROMPTLY CONTACT THE SENDER BY TELEPHONE.

ROBINSON & ASSOCIATES
35401 Kenai Spur Highway
Soldotna, AK 99669
Telephone (907) 262-9164
Fax (907) 262-7034

TELECOPY COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

Name: District Attorney Scott Leaders

Telecopier Number: 907-754-2200 Date: 5-11-2005

Total Number Of Pages: 3 Including Cover Sheet

In Re Subject/File No.: D. Haag

If you do not receive all the pages or if you have problems, please contact Laura or Chuck at above phone number.

Hard Copy To Follow By U.S. Mail: ____ Yes X No

Remarks: Please deliver to Scott Leader, attending the District Attorney Conference & guest at your hotel ASAP

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT McGRATH

STATE OF ALASKA Plaintiff, vs. DAVID HAEG, Defendant.	)	Case No.: 4MC-S04-024 Cr.

VRA CERTIFICATION

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

AFFIDAVIT OF DAVID HAEG

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

DAVID HAEG, being first duly sworn, states:

1. I am defendant in the above caption case. I have personal knowledge of the matters stated in this affidavit.

2. From June 2004 to November 2004 I was engaged in plea negotiations with the State's prosecutor Mr. Leaders concerning the filing of state game charges against me.

3. The plea negotiations came to an end on November 8, 2004. The prosecutor, at the last minute, backed out of an agreement I thought was reached. The negotiations ended without a plea agreement between myself and the state. The prosecutor thereafter filed an amended information.

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4. I appeared in court on November 9, 2004, for arraignment on the amended information that charges me with numerous violations of state game laws. I pleaded not guilty to all of the charges. The court scheduled a jury trial for me to stand trial on the charges.

5. During the plea negotiations, I gave statements to the police regarding accusations of game violations that are in the statements in support of three informations filed by the prosecutor in my case. These statements from the prosecutor are used to establish probable cause that I committed the crimes alleged in the informations. Without a plea agreement between me and the State these statements should not be used to establish cause to believe I committed any of the crimes charged.

FURTHER AFFIANT SAYETH NAUGHT.

DAVID HAEG

SUBSCRIBED AND SWORN to before me this 6th day of May, 2005.

Notary Public in and for Alaska
My Commission Expires: _____.

"OFFICIAL SEAL"
IRENE ROBINSON
NOTARY PUBLIC, STATE OF ALASKA
MY COMMISSION EXPIRES 1/21/09

Robinson & Associates
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Soldotna, Alaska 99669
(907) 262-9164 Telefax (907) 262-7034

haeg@alaska.net

From: "Chuck Robinson" <chuck@robinsonandassociates.net>
To: "Dave Haeg" <haeg@alaska.net>
Sent: Monday, October 17, 2005 10:01 AM
Subject: RE: Appeal Stuff

Thanks for your thoughts and research. I think Ex Parte Flowers hits the point precisely regarding jurisdiction. While leave of court is not necessary in Alaska for the filing of an information, Rule 9 requires that information to be valid must be supported by oath. This can only mean oath before a magistrate or judge. An oath of office, under U.S. constitutional cases is not sufficient under the Albrecht requirements.

From: Dave Haeg [mailto:haeg@alaska.net]
Sent: Monday, October 17, 2005 9:46 AM
To: Chuck Robinson
Subject: Appeal Stuff

Chuck,

Here is some more stuff about the appeal:

Important: I found a very obvious reference to exactly what we have been talking about in Rule 5 Alaska Rules of Criminal Procedures. Proceedings Before the Judge or Magistrate. Sections (a) and (b) deal primarily with how arrested persons are handled. Section (c) applies to my case as to what I am informed (informing and giving a copy of the complaint, any affidavits, told not required to make a statement, right to have a preliminary examination, etc. etc.). Section (d) however deals with Initial Determination of Probable Cause. (1) and (2) deals with those that are arrested without warrants while section (3) simply states "If probable cause is not shown, the judicial officer shall discharge the defendant". My question is if this would apply to anyone and everyone? If I read Rule 5 correctly it should. It would literally say that during a persons proceedings before a Magistrate there would be an initial determination of probable cause and if probable cause is not shows the judicial officer shall discharge the defendant. (I am quit certain that Leaders looking at this would say that only those who are arrested would be entitled to an initial determination of probable cause and only those arrested would be discharged if probable cause is not shown. But this is not how it is written.)

1. In chapter 8 of NC Defender Manual it states, "The petition is the official pleading in a juvenile case, and "like an indictment or warrant in a criminal case, confers jurisdiction on the court".

2. Also, almost everywhere, it states, "an indictment, fair upon its face, is sufficient to confer jurisdiction upon the court". How can an information, without any verification, written and not sworn to by the prosecutor, confer that same jurisdiction upon the court?

3. Justice Frankfurter's quote:

The reason for this separation of functions was expressed by Mr. Justice Frankfurter in a similar context.

"A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counselled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication." McNabb v. United States, 318 U.S. 332, 343 (1943).

4. Ex parte Flowers - #2. INDICTMENT AND INFORMATION — Preliminary Proceedings — Sufficiency of Affidavit. An information, based upon a sworn affidavit, or sworn testimony filed in the county court, charging the

commission of a misdemeanor, is sufficient to give such court jurisdiction of the subject-matter of such charge.

5. I also think it significant that leave of court is not needed in Alaska for an information to be filed. This shifts even greater responsibility tot he prosecutor to insure the information is sufficiently verified that jurisdiction will attach.

6. Many states require leave of court before an information is filed and that the court must be satisfied there is probable cause before doing so. (see Albrecht v. United States) http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=273&invol=1

7. Did Leaders file the information under his "official oath" which in some instances is sufficient to confer jurisdiction? If he didn't we need to point this out!

8. Also should we point out again the information uses much of my statement made in plea negotiations?

9. Should we also point out Leaders states he "has provided a sworn factual basis for the charges in the Second Amended Information" yet in fact he failed to do so? This reinforces the idea the information was not made on his "official oath".

Thanks.

Dave

Very Very Important