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IN THE DISTRICT COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT MCGRATH

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
David HAEG,) Case No.: 4MC-S04-024 Cr.
)
Defendant.)
)

Appellate Court Case #A-09455.

REPLY TO OPOSITION TO MOTION TO PROCEED PRO SE

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

COMES NOW Defendant, DAVID HAEG, in the above referenced case, & hereby replies to the opposition to defendant's motion to proceed pro se during remand.

I. Law:

> Article 1.1 Inherent Rights: "This constitution is dedicated to the principles that all persons ... have the right to the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

> Article 1.7 Due Process: "No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

Article 1.9 Jeopardy and Self-Incrimination: "No person shall be compelled in any criminal proceeding to be a witness against himself."

Article 1.11 Rights of Accused: "In all criminal prosecutions, the accused shall have the right to a ... public trial, by an impartial jury of twelve, except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled ... to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Article 1.14 Searches and Seizures: "The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 3.16 Governor's Authority: "The governor shall be responsible for the faithful execution of the laws."

Article 8.1 Statement of Policy: "It is the policy of the State to encourage ... the development of its resources by making them available for maximum use consistent with the public interest."

Article 8.2 General Authority: "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State... for the maximum benefit of its people."

Article 8.3 Common Use: "Wherever occurring in their natural state,...wildlife, and waters are reserved to the people for common use.

Article 8.4 Sustained Yield: "[W]ildlife... and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses."

Article 8.5 Facilities and Improvements: "The legislature may provide for facilities, improvements, and services to assure ... fuller utilization and development of the ... wildlife..."

> Article 8.8 Leases: "The legislature may provide for the leasing of, ... any part of the public domain or interest therein..."
>
> Article 8.10 Public Notice: "No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law."
>
> Article 8.16 Protection of Rights: "No person shall be involuntarily divested of his ... his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.
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> Article 12.5 Oath of Office: "All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . to the best of my ability..."
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> Article 12. 9 Provisions Self-Executing: "The provisions of this constitution shall be construed to be self-executing whenever possible."
>
> AS 16.05.020. Functions of Commissioner. The commissioner shall **...**(2) manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state..."

The United States constitution guarantees most of these same rights with the addition of Amendment XIV which states "... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

II. Facts, Procedural History and Argument:

Mr. Rom's factual and procedural history is incomplete, misleading and sometimes false.

Wolves in Alaska can reproduce 6 times as fast as the ungulate population (moose, caribou, sheep, etc.)(See ADF&G & other studies[1]). Alaska Department of Fish & Game studies in Alaska have found that without effective control of wolf numbers they will increase to levels ungulate populations are unable to support. When this happens ungulate populations crash at a faster and faster rate as an ever-increasing number of wolves try to live off an ever-decreasing number of ungulates. As a result of this phenomenon ADF&G studies have found that without wolf management much of Alaska's game will exist in low-level equilibrium – otherwise know as a "predator pit". Ungulate numbers cannot escape this "pit" because any increase triggers a bigger increase in wolf numbers – driving ungulate numbers back down. At these levels there is little or no surplus for human harvest[1].

From before Alaska became a State to 1991 wolf numbers had been regulated by denning (digging up dens and killing pups), poison, and/or utilizing aircraft either by shooting from the air (stopped in 1986) or landing and immediately shooting. All other methods of controlling wolves were found ineffective for most of

[1] Wayne L. Regelin Division of Wildlife Conservation ADF&G March 2002; BW Dale, and B Shults. 1989; Ballard WB, MB, ME McNay, CL Gardner, & DJ Reed. 1995; SM Miller, & JS Whitman. 1986; JS Whitman, & Gardner. 1987; JS Whitman, & DJ Reed. 1991; Bishop RH & RA Rausch. 1974; Boertje RD, WC Gasaway, DV Grangaard, & DG Kelleyhouse. 1988; P Valkenburg, & ME McNay. 1996; Dale BW, LG Adams, & RT Bowyer. 1995; Gasaway WC, RD Boertje, DV Grangaard, DG Kelleyhouse, RO Stephenson, & DG Larsen. 1992; RO Stephenson, JL Davis, PEK Sheperd, & OE Burris. 1983; Haber GC. 1977; Keith LB. 1983; Dlein DR. 1995; Larsen DG, DA Gauthier, & RL Markel 1989; McNay ME. 1990; TJ Meir, JW Burch, & LG Adams. 1995; Modafferi RD & EF Becker. 1997; Osborne TO, TF Paragi, JL Bodkin, AJ Loranger, & WN Johnson. 1991; Peterson RO, JD Wollington, & TN Bailey. 1984; & Van Ballenberghe V & J Dart. 1983.

Alaska as ADF&G studies have found wolf numbers need up to a 40% harvest rate to keep them from increasing.

The lack of an effective way to manage wolf numbers after 1991 resulted in an explosion of wolf numbers, which in turn caused a rapid, drastic, and widespread decline in ungulate numbers across large areas of the State. By the late 1990's the situation was so bad that all moose hunting, including subsistence, had been banned around a number of remote subsistence villages and moose hunting was severely restricted, including subsistence, in many Game Management Units (GMU's). Numbers of big game guides were driven out of business[2].

The Alaska Board of Game in response to overwhelming concern expressed by rural subsistence people, big game guides, and urban hunters again authorized a wolf control program for the winter of 2003/2004, which included shooting wolves from the air. Programs similar to this had been authorized, several times, during Governor Tony Knowles administration but were never implemented because Governor Knowles refused to do so.

The aerial shooting program, which was conducted in Unit 19D, started in the winter of 2003 and was supposed to end April 2004. Boycotts to Alaska tourism were threatened to be conducted across the U.S. in response to this program. The program was to eradicate 5 wolf packs around McGrath and the area included started at 17,028 square miles and was expanded to 32,000 square miles because ADF&G realized that the 5 wolf packs they wanted to

[2] See court record.

eradicate were traveling beyond the original area. The department wanted to take all 40-55 wolves that were in the permit area.

Haeg signed up for this program, in December 2003, after there were very few if any wolves taken in the first months of the program. In February 2004 ADF&G called Haeg in Pennsylvania to ask if he was still willing to help with the program. Haeg responded that he would be willing to do so after he got back to Alaska and after testifying at the Alaska Board of Game Hearing being held in Fairbanks during March. At the Board of Game meeting members of the Board of Game told Haeg that it was much more important for him to be out killing wolves then for him to be testifying. Haeg was told by Board of Game members that only 4 wolves had been taken so far and if most of the goal of 40-55 wolves were not taken there was a good possibility that the program would shut down because it would be perceived as not be effective. Haeg (pilot) & Zellers (gunner) flew to McGrath on March 3, 2004 to pickup permits and conduct wolf control operations.

On April 1, 2004 Haeg's aircraft and other property was seized, all of which was being used at the time to provide a livelihood for his family. In fact to seize the airplane Lieutenant Steve Bear had to contact Kenai Flight Service to recall Haeg in the aircraft because Haeg was in the air flying equipment out to get ready for his clients, which were arriving the next day. Haeg learned that on March 29, 2004 other

property, used to provide for his family, had been seized from his lodge. Trooper Brett Gibbens (Gibbens), who asked for all search warrants, swore under penalty of perjury on the search warrant affidavits that the 5 suspicious sites he had found, that he thought were indications of someone killing wolves with an airplane, were all located in Unit 19C and that Haeg's lodge was also located in Unit 19C.[3] Haeg asked Trooper Glenn Godfrey when he could get his property back because he had clients coming in the next day.[4] The troopers did not give any indication, either in writing or verbally, that Haeg's property was being seized so that it could be forfeited either under either civil or criminal rules. No notice, of any sort, was given to Haeg that he had a constitutional right for an "unconditioned opportunity" "within days, if not hours" to contest the seizure of his property, all of which was being used at the very time to provide for a living for his family.[5]

On June 11, 2004 Haeg gave Trooper Gibbens and Prosecutor Leaders a 5-hour statement that Prosecutor Leaders required for the Rule 11 Plea Agreement. During this 5-hour statement, which was recorded by Trooper Gibbens, Haeg told Trooper Gibbens and Prosecutor Leaders the sites which Trooper Gibbens had claimed on the search warrant affidavits were in Unit 19C were actually located in Unit 19D. Unit 19D is the Game Management Unit where the wolf control program was taking place. Haeg's lodge is

[3] See court record.
[4] See court record.
[5] See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

located in Unit 19C. Trooper Gibbens had GPS coordinates he had taken at the sites along with a map of the site locations - all of which proved the sites were actually in Unit 19D as Haeg had claimed.[6] On June 23, 2004 Zellers gave Trooper Gibbens and Prosecutor Leaders a statement, which was recorded by Trooper Gibbens. During this statement Zellers also told Trooper Gibbens and Prosecutor Leaders that the sites which Trooper Gibbens had claimed on the search warrant affidavits were in Unit 19C were in fact located in Unit 19D. Zellers accurately quoted the boundaries, from memory, to Trooper Gibbens and Prosecutor Leaders.

After Haeg had given Trooper Gibbens and Prosecutor Leaders this statement that they required for plea negotiations, cancelled a whole years guiding income which represented virtually the entire years income from both David and Jackie Haeg in reliance upon those same plea negotiations, and flown in witnesses from as far away as Illinois for a discussion of a 2003 moose hunt (which Prosecutor Leaders also required for a plea agreement) Prosecutor Leaders broke both Haeg and Zeller's Rule 11 Plea Agreement by filing charges never agreed to along with utilizing all of Haeg's and Zeller's statements made during plea negotiations. This violated not only the Alaska and U.S. constitution rights of due process and against self-incrimination but also Alaska Evidence Rule #410. Without Haeg or Zeller's

[6] See court record.

statements there would have been no probable cause for over half of the charges filed.

On July 28, 2005 Prosecutor Leaders questioned Trooper Gibbens about where the suspicious sites were located that started the investigation. Trooper Gibbens, while on the witness stand and under oath, stated that sites he investigated were in Unit 19C. This is **after** Trooper Gibbens had recorded both Haeg and Zellers telling him and Prosecutor Leaders that the sites investigated were in Unit 19D. Prosecutor Leaders requested this testimony from Gibbens and accepted this perjury after it was given to him. This is the felony crime of subornation of perjury.

This perjury and subornation of perjury destroyed any chance of establishing the crimes charged were violations of the Wolf Control Program (which was taking place in Unit 19D) instead of a big game guiding violation. This meant that a conviction would affect the business and the entire combined income of both David and Jackie Haeg for the rest of their lives. The immense prejudice of this perjury and subornation of perjury was positively proven at the sentencing hearing on September 30, 2005. Judge Murphy justified the unbelievably harsh sentence that she handed down by stating that "since the majority if not all the wolves were taken in Unit 19C ... where you were hunting"[7]. It has in fact been proven this is a false statement.

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[7] See court record.

Haeg has never hunted or guided in Unit 19D nor even been licensed to guide in Unit 19D.

In August Haeg received a copy of a memorandum from Trooper Gibbens to Lieutenant Steve Bear of the Soldotna Detachment of Fish & Wildlife Protection. In this memorandum Trooper Gibbens states that **all** the sites he investigated in conjunction with Haeg's criminal case were located within Game Management Unit 19D.[8]

III. Response to Rom's Memorandum of Law:

Prosecutor Rom (Rom) is mistaken in claiming wolves were taken from Haeg's private aircraft. The registered owner of the aircraft is The Bush Pilot, Inc. The Bush Pilot, Inc. is the corporation which David and Jackie Haeg worked for to provide their entire yearly income. To call this airplane a private aircraft is misleading and false.[9]

In the top half of page 2 Rom makes the statement that "In June 2004 both hunters were interviewed by the troopers and admitted that they knew 9 wolves were shot from the airplane outside the permit area." Rom is continuing to commit the violations against Haeg by continuing to use the statements made by Haeg during the plea negotiations broken by the State. This is a gross violation of Haeg's rights under two constitutions and Evidence Rule 410. In addition Rom fails to include that the

[8] See memorandum from Trooper Gibbens to Lieutenant Bear dated 8/5/06.
[9] See court record.

search warrants were based upon search warrant affidavits that included intentionally false and misleading statements. [10]

Rom fails to mention that the State is the one who broke the plea agreement reached and then used everything that Haeg had given the State in payment for the plea agreement.

Rom fails to point out the reason Haeg fired Mark Osterman (Osterman) is because the brief Haeg hired Osterman to write failed to include the items required by Haeg and which Osterman had agreed were in fact the main issues. These issues focused on Haeg's first two attorneys Brent Cole (Cole) and Arthur Robinson (Robinson) "selling Haeg out to the prosecution".

Rom fails to mention that Haeg was told that the hearing of August 15, 2006 was to first to determine whether Osterman could withdraw and second if Haeg knowingly and intelligently waived his right to counsel and whether he is competent to represent himself on appeal.

Rom first states that a criminal defendant has a "conditional" constitutional right to represent himself but later states that the right to defend oneself is "fundamental".

Rom also states that a defendant has the constitutional right to represent himself at trial but not on appeal - quoting *Martinez v. Court of Appeal of California*. Rom fails to include that the rational behind this is that there is no federal right to appeal in the first place thus it follows there can be no

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[10] See *Mapp v. Ohio*, 367 U.S. 643 (1961) – Seminal U.S. Supreme Court case forcing states to comply with federal law, *McLaughlin v. State*, 818 P.2d 683, (Ak.,1991); *Stavenjord v. State*, 2003 WL1589519, (Ak.,2003); *Lewis v. State*, 9 P.3d 1028. (Ak.,2000); *Gustafson v. State*, 854 P.2d 751, (Ak.,1993).

constitutional right to allow a defendant to represent himself on appeal. Since Alaska has an absolute right to appeal the holding is moot in Alaska.[11]

The Court of Appeals of Alaska charged this court with determining whether Haeg knowingly and intelligently waived his rights to counsel on appeal. The Court of Appeals of Alaska did not charge this court with determining whether Haeg has a constitutional right to proceed pro se - also rendering the question of whether Haeg has the constitutional right to proceed pro se moot.

Rom argues at great length and utilizes numerous authorities as to the courts obligations before letting a defendant proceed pro se. This court has done a masterful job of informing Haeg of the pitfalls and disadvantages of self-representation. Haeg has made it abundantly clear in many different ways that he is knowingly waiving his right to counsel after being so informed of the disadvantages of proceeding pro se by the court. The one question, which has yet to be fully answered, is whether Haeg is intelligently waiving his right to counsel. Haeg feels it an absolute requirement to be able to complete his questioning of Osterman so he may prove this to the court. Haeg is dismayed by the courts ruling to not allow Haeg to exercise this right after being guaranteed the right to do so by this same court.

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[11] See Criminal Rule 32.5.

Rom is correct that where the record does not objectively support a finding of a knowingly and intelligent waiver the Court of Appeals will reverse a conviction of a pro se defendant. This is why it is so important for this court to determine if it is an intelligent decision by Haeg to proceed pro se. Haeg feels the only way to prove it is an intelligent decision to waive counsel is by being able to more fully and completely question attorney Osterman and Trooper Gibbens.

Rom has made much of Haeg's conduct, which in his mind would be disturbing to the Court of Appeals of Alaska. Rom apparently forgets that Haeg's personal presence before the Court of Appeals of Alaska is limited to a 15 minute oral argument with all other proceedings being conducted in writing. Haeg's conduct falls far short of the forfeiture that occurs when one looses the right to act pro se by "engaging in disruptive or obstreperous conduct...calculated to undermine, upset, or unreasonably delay the progress of the trial."[12] Haeg feels that anyone should be entitled some showing of frustration when they find out the three attorneys to which they have paid almost $80,000.00 to were working with the State to convict and sentence them.

Haeg feels the U.S. Supreme Court holding in *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 is on point:

> "The Constitution [422 U.S. 806, 815] does not force a lawyer upon a defendant." ... "The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an

[12] See People v. McIntyre, 341 N.Y.S.23 943 (N.Y. 1974)

> accused's position before the law..." ...What were contrived as protections for the accused should not be turned into fetters...To deny an accused a choice of procedure in circumstances in which he, though a layman is as capable as any lawyer of making an intelligent choice, is to impair the worth of great Constitutional safeguards by treating them as empty verbalisms."... When the administration of the criminal law...is hedged about as it is by the Constitutional safeguards for the protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards...is to imprison a man in his privileges and call it the Constitution."

Haeg feels the U.S. Supreme Court holding in *Faretta v. California*, 422 U.S. 806 (1975) is even more to the point:

> "We confront here a nearly universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly want to do so."... "This consensus is soundly premised: The right of self-representation finds support in the structure of the Sixth Amendment, as well as in the English and colonial jurisprudence from which the Amendment emerged."..." Although not stated in the Amendment in so many words, the right to self-representation - to make one's own defense personally - is thus necessarily implied by the structure of the Amendment. The right to defend [422 U.S. 806, 820] is given directly to the accused; for it is he who suffers the consequences if the defense fails."..."To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists."..."An unwanted counsel "represents" the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense."..."The Sixth Amendment, when naturally read, thus implies a right of self-representation. This reading is reinforced by the Amendment's roots in English legal history. In the long history of British criminal jurisprudence, there was only one tribunal that ever adopted a practice of forcing counsel upon

an unwilling defendant in a criminal proceeding. The tribunal was the Star Chamber. That curious institution, which flourished in the late 16th and early 17th centuries, was of mixed executive and judicial character, and characteristically departed from common-law traditions. For those reasons, and because it specialized in trying 'political' offenses, the Star Chamber has for centuries symbolized disregard of basic individual rights. 'There is something specially repugnant to justice in using rules of practice in such a manner as [422 U.S. 806, 823] to debar a prisoner from defending himself, especially when the professed object of the rules so used is to provide for his defense.' 1 J. Stephen, A History of the Criminal Law of England 341-342 (1883). The Star Chamber was swept away in 1641 by the revolutionary fervor of the Long Parliament. The notion of obligatory counsel disappeared with it."..." In the American Colonies the insistence upon a right of self-representation was, if anything, more fervent than in England.

The colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers. When the Colonies were first settled, "the lawyer was synonymous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions." This prejudice gained strength in the Colonies where "distrust [422 U.S. 806, 827] of lawyers became an institution."

"No State or Colony had ever forced counsel upon an accused; no spokesman had ever suggested that such a practice would be tolerable, much less advisable. If anyone had thought that the Sixth Amendment, as drafted, failed to protect the long-respected right of self-representation, there would undoubtedly have been some debate or comment on the issue. But there was none.

In sum, there is no evidence that the colonists and the Framers ever doubted the right of self-representation, or imagined that this right might be considered inferior to the right of assistance of counsel. To the contrary, the colonists and the Framers, as well as their English ancestors, always conceived of the right to counsel as an "assistance" for the accused, to be used at his option, in

defending himself. The Framers selected in the Sixth Amendment a form of words that necessarily implies the right of self-representation. That conclusion is supported by centuries of consistent history.

There can be no blinking the fact that the right of an accused to conduct his own defense seems to cut against the grain of this Court's decisions holding that the Constitution requires that no accused can be convicted and imprisoned unless he has been accorded the right to the assistance of counsel. ... And a strong argument can surely be made that the whole thrust of those decisions must inevitably lead to the conclusion that a State may constitutionally impose a lawyer upon even an unwilling defendant.

But it is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want. The value of state-appointed counsel was not unappreciated by the Founders, yet the notion of compulsory counsel was utterly foreign to them. And whatever else may be said of those who wrote the Bill of Rights, surely there can be no [422 U.S. 806, 834] doubt that they understood the inestimable worth of free choice.

It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant can only lead him to believe that the law contrives against him. Moreover, it is not inconceivable that in some rare instances, the defendant might in fact present his case more effectively by conducting his own defense. Personal liberties are not rooted in the law of averages. The right to defend is personal. The defendant, and not his lawyer or the State, will bear the personal consequences of a conviction. It is the defendant, therefore, who must be free personally to decide whether in his particular case counsel is to his advantage. And although he may conduct his own defense ultimately to his own detriment, his choice must be honored out of "that respect for the individual which is the lifeblood of the law." Illinois v. Allen, 397 U.S. 337, 350 -351 (BRENNAN, J., concurring)"..." In forcing Faretta, under these circumstances, to accept against his will a state-

appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense. Accordingly, the judgment before us is vacated, and the case is remanded for further proceedings not inconsistent with this opinion. It is so ordered."

"The Founders believed that self-representation was a basic right of a free people. Underlying this belief was not only the anti lawyer sentiment of the populace, but also the "natural law" thinking that characterized the Revolution's spokesmen. See P. Kauper, The Higher Law and the Rights of Man in a Revolutionary Society, a lecture in the American Enterprise Institute for Public Policy Research series on the American Revolution, Nov. 7, 1973, extracted in 18 U. of Mich. Law School Law Quadrangle Notes, No. 2, p. 9 (1974). For example, Thomas Paine, arguing in support of the 1776 Pennsylvania Declaration of Rights, said: 'Either party ... has a natural right to plead his own cause; this right is consistent with safety, therefore it is retained; but the parties may not be able, . . . therefore the civil right of pleading by proxy, that is, by a council, is an appendage to the natural right [of self-representation]...' Thomas Paine on a Bill of Rights, 1777, reprinted in 1 Schwartz 316."

"We are told that many criminal defendants representing themselves may use the courtroom for deliberate disruption of their trials. But the right of self-representation has been recognized from our beginnings by federal law and by most of the States, and no such result has thereby occurred."

Haeg would like to point out what was said in the dissenting opinion of this seminal case. The dissenting opinion comments that:

"[t]he prosecution is more than an ordinary litigant, and the trial judge is not simply an automaton who insures that technical rules are adhered to. Both are charged with the duty of insuring that justice, in the broadest sense of that term, is achieved in every criminal trial. See *Brady v. Maryland*, 373 U.S. 83, 87 , and n. 2 (1963); *Berger v. United States*, 295 U.S. 78, 88 (1935). That goal is ill-served, and the integrity of and public confidence in the system are undermined, when an easy conviction is obtained due to

> the defendant's ill-advised decision to waive counsel. The damage thus inflicted is not mitigated by the lame explanation that the defendant simply availed himself of the "freedom" "to go to jail under his own banner..." *United States ex rel.* [422 U.S. 806, 840] *Maldonado v. Denno*, 348 F.2d 12, 15 (CA2 1965). The system of criminal justice should not be available as an instrument of self-destruction."

Haeg feels the evidence is overwhelming that the prosecution conspired with his own attorneys to ensure that injustice happened. Haeg cannot comprehend how his own attorney could counsel him to give up every defense and every weapon that he had, along with sabotaging his business for a year, all for a rule 11 plea agreement that, after the State had broke it, Haeg's own attorney said that there was nothing that could be done to enforce it. Haeg has found **all** caselaw requires a Rule 11 Agreement with such detrimental reliance placed upon it **must** be upheld at all cost.[13]

> The dissenting opinion in Faretta continues: "defendant has expressed no dissatisfaction with the lawyer who represented him and has not alleged that his defense was impaired or that his lawyer refused to honor his suggestions regarding how the trial should be conducted. In other words, to use the Court's phrase, petitioner has never contended that 'his defense' was not fully presented."

Haeg has at every opportunity and every turn expressed his profound dissatisfaction and disbelief that his own attorneys had not only impaired but also had intentionally sabotaged all his defenses and lied to Haeg when Haeg demanded his rights be protected. In other words Haeg has continually contended that his defense was not fully presented but in fact was

[13] See Brent Cole IAC Argument.

intentionally sabotaged by his own attorneys. Further on the dissenting opinion states:

> "This is not a case where defense counsel, against the wishes of the defendant or with inadequate consultation, has adopted a trial strategy that significantly affects one of the accused's constitutional rights. For such overbearing conduct by counsel, there is a remedy. *Brookhart v. Janis*, 384 U.S. 1 (1966); *Fay v. Noia*, 372 U.S. 391, 439 (1963). Nor is this a case where distrust, animosity, or other personal differences between the accused and his would-be counsel have rendered effective representation unlikely or impossible."

All of Haeg's defense attorneys went against his wishes and adopted strategies that absolutely gutted all of Haeg's rights under rule, statute, and constitution. The distrust and animosity this has created in Haeg for defense counsel has made it absolutely impossible for any further effective representation by counsel.

Rom has made much of Haeg's failings to understand the intricacies of procedural law in regard to making objections, along with other soft bar procedural matters. Rom asserts the rational that form must come before substance and that a pro se defendant must be penalized for failings in form. As has been held in the following Alaska Supreme Court holdings it is mistaken for the court to thus intentionally penalize pro se defendants:

> *Breck v. Ulmer*, 745 P.2d 66 (1987). In *Breck* the Alaska Supreme Court held that a trial judge has an "explicit" duty "to advise a pro se litigant of his or her right under the summary judgment rule to file opposing affidavits to defeat a motion for summary judgment" and that "[a] judge should inform a pro se

litigant of the proper procedure for the action he or she is obviously attempting to accomplish..."

Keating v. Traynor, 833 P.2d 695 (1992). The Alaska Supreme Court applied the same principle to a trial court's handling of a letter seeking permission to intervene. The trial court had a duty to notify the litigant of the proper procedure for seeking permission to intervene.

Sopko v. Dowell Schlumberger, Inc., 21 P.3d 1265 (2001). The court characterized its prior cases as imposing a "limited" duty on the trial judge to assist a self-represented litigant. "We have imposed some limited duties on courts to advise pro se litigants of proper procedure, [including] . . . the duty to inform ... (1) of specific procedural defects, ... and (2) of the necessity of opposing a summary judgment motion with affidavits or by amending the complaint."

Collins v. Arctic Builders, 957 P.2d 980 (1998). Here, the court overturned a trial court's dismissal of a notice of appeal for a procedural defect in a pro se's second attempt to comply with the appellate rules. The court stated, "We are not concerned that specificity in pointing out technical defects in pro se pleadings will compromise the superior court's impartiality."

Rom has stated that Haeg is confused between the procedures - stating, "...he [Haeg] was confused by the distinction between post conviction relief and an appeal, he sought affidavits from approximately twenty or more person, including opposing counsel."

Haeg would like to point out that he was obtaining the affidavits **required** by the Court of Appeals of Alaska for any post-conviction relief claiming ineffective assistance of counsel.[14] In addition, since this court has refused to accept any post-conviction relief application from Haeg and has stated Haeg must file his application in the Court of Appeals Haeg feels

[14] See *Steffensen v. State*, 837 P.2d 1123 (Alaska) & *State v. Jones*, 759 P.2d 558 (Alaska).

he must be allowed to file these affidavits, or the reason why he could not obtain them, with the Court of Appeals of Alaska.

Rom believes it a breach of confidentiality that Haeg has discussed proceedings that took place in conjunction with the Alaska Bar Association. Haeg would like to point out he talked to the executive director and others at the Alaska Bar Association about this issue and is proceeding in accordance with their counsel.

Rom twists Haeg's words and makes it appear Haeg addressed inappropriate and vulgar language directly to the Court of Appeals and said doing so was appropriate and effective. Rom even makes it appear that Haeg included threats to the Court of Appeals. Rom fails to remember or memorialize the fact that all of this took place in a taped conversation between Haeg and his third attorney Osterman and the overriding and ultimate issue was that these conversations positively proved that Osterman was actively representing interests that were in conflict with Haeg's. It is without any doubt whatsoever that an issue as grave as this would be of the utmost interest to the Alaska Court of Appeals, regardless of how it was proven.

Rom states that Haeg filed a document with the Court of Appeals "knowing it to be extremely inaccurate and misleading". Haeg would like to point out that it was Osterman who filed this document with the Alaska Court of Appeals, without the authorization for doing so from Haeg. This is another small

example of the unbelievable acts Haeg's attorneys have taken in his case.

Rom fails to mention in his opposition that Haeg has now had 2-1/2 years of experience and untold hours in dealing with this one single case. Haeg has more hours in connection with this case then most attorneys would ever have in any single case in their career. Haeg has conducted enormous research into the controlling rules, law, and case law. Haeg feels he is extremely well versed yet admits that his lack of experience with procedural rules, especially those conducted in person, is a detriment. Haeg feels that since this case is now on appeal and will be conducted almost entirely through briefs this detriment is of small consequence.

IV. <u>COMPENTENCY EXAMINATION</u>

At the conclusion of the hearing of 8/15/06 this court ordered Haeg to submit to an examination to determine if he was competent to proceed pro se along with an opinion of whether Haeg was mentally capable of conducting his defense without qualified counsel. Pursuant to this order Haeg was examined in the psychological testing area at Alaska Psychiatric Institute by Tamara Russell, Psy.D., MHC IV.

Dr. Russell is a licensed psychologist and forensic evaluator and is one of the only two people currently authorized in the State of Alaska to conduct competency evaluations of defendants who wish to proceed pro se. Haeg was scheduled to spend one hour with Dr. Russell and ended up spending two hours

with her. After an hour of testing and evaluation Haeg explained to Dr. Russell in detail his reasons for wishing to proceed pro se. Dr. Russell responded that what Haeg had described was "an exact parallel" to situations she had been involved in pertaining to legal proceedings in Alaska against doctors who had committed malpractice. Dr. Russell stated "big State – small medical pool" and went on to elaborate how she had seen time and time again how those in the medical field who have obviously been guilty of malpractice were protected from prosecution by their fellow colleagues. Dr. Russell stated that in the mind of this group the harm caused by investigation and prosecution of one of their own dwarfed the harm caused to the unfortunate patient who had to bear the results of the malpractice without any compensation or satisfaction whatsoever. This group believes it is better to sacrifice the patient so the reputation of the many can remain untainted. Dr. Russell also stated that investigations and prosecutions were paid out of the dues and that one such large investigation tripled the dues to be paid for that year. Dr. Russell also stated that she is a vegetarian and is personally opposed to hunting of any sort but had learned that this is only her view and that it was her job to remain impartial when making determinations in regard to convicted criminals and/or those who hunt.

Haeg respectfully requests this court to consider very carefully the psychiatric investigation prepared by Dr. Russell at the courts request. Dr. Russell states:

1. "Mr. Haeg does not have a mental disease or defect."

2. "Mr. Haeg was interviewed **extensively** regarding his knowledge of the charges against him, his perception of the seriousness of those charges, his understanding of possible legal alternative available to him, and his understanding of the process involved with this court case."

3. "He was able to exhibit a **very** clear understanding of not only the charges against him, but the various legal alternative that he could select from."

4. "He is also able to present a **logical** argument for self representation, and is cognizant of the challenges that he may face in doing so."

5. "He did sate that he has begun to look for legal consultation, and presented argument in regards to pitfalls of utilizing a lawyer who actively practices in Alaska at this time."

6. "His mental status examination does not suggest **any** deficits in memory, comprehension or reasoning skills."

7. "His level of intellectual function falls in **at least** the average range, and **may be somewhat higher than average** based on his understanding of vocabulary, and ability to reason and comprehend abstract concepts."

8. "It is, therefore, my **professional** opinion that **Mr. Haeg may be found Competent to Continue Legal Proceedings at this time.**"

9. **"He also demonstrates the mental capability to conduct his own defense, and is clearly aware of the pros and cons of making such a choice."**

V. <u>SUMMATION</u>:

Haeg, especially after his evaluation with Dr. Russell, feels that this court may be unwise in dismissing Haeg's claims that his first attorney sold him out to the prosecution and his subsequent attorneys have been more concerned with concealing this fact then in advocating for Haeg. As attorney Kevin

Fitzgerald stated in regard to Haeg's case, while under oath at the Alaska Bar Association: "[T]here would be substantial pressure brought to bear on either the prosecution or the judge with regard to a very serious sentence. ... I could see an enormous public and political fallout on this."

If what Haeg claims is true this is the most egregious and fundamental breakdown in the adversary process that has ever occurred in the State of Alaska. Haeg feels a claim as significant to justice as this bears looking into. There is absolute proof of what has happened.

If what Haeg claims is true there is an overwhelming reason for the State of Alaska to require that Haeg remains represented by an attorney, who, as have all of Haeg's other attorneys, will be unwilling to expose what has happened. Haeg looks on in wonder at this likely resurrection of Star Chamber proceedings.

This court was charged by the Court of Appeals of the State of Alaska with the duty of determining whether Haeg knowingly and intelligently waives his right to counsel and that he is competent to represent himself on appeal. The Court of Appeals has not asked this court to make a ruling on whether Haeg can represent himself, only whether he is competent to do so.

If this court rules that appellant should not be allowed to represent himself, as Rom has requested, it is usurping the authority of the Court of Appeals of the State of Alaska. In addition Rom's "Opposition to Motion to Proceed Pro Se" should read "Opposition to Motion to Proceed Pro Se During Remand" which

is the only motion dealing with representation Haeg has filed with this court. If this court grants Rom's request it can only preclude Haeg from proceeding pro se during remand.

Based on the forgoing, it is respectfully submitted that Haeg should be found competent to represent himself on appeal and that he knowingly waives his right to counsel. Haeg would ask this court to honor its ruling that Haeg reserved his right to recall Osterman. Haeg wishes to exercise this right and complete his questioning of Osterman so he may prove to this court he intelligently waives his right to counsel.

This reply is supported by an affidavit of David Haeg, an affidavit of Jackie Haeg, and footnote documentation.

RESPECTFULLY SUBMITTED this ____ day of ____________, 2006.

Defendant,

____

David S. Haeg

I HEREBY CERTIFY that a copy of the foregoing was served on Roger Rom, OSPA, by first class mail on
__________________________, 2006

By: ___________________________