

1 **ORAL ARGUMENTS 5/8/08**
2 **Alaska Court of Appeals**
3 **Haeg v. State A-09455/A-10015**
4

5 CLERK: Please rise. (GAVEL) The honorable judges of the Court of Appeals for the
6 State of Alaska.

7 JUDGE: Please be seated.

8 CLERK: The Court of Appeals is now in session. (GAVEL)

9 JUDGE: We're here for argument in the case of David S. Haeg versus State of Alaska. -
10 Uh- it's number 9455 and -uh- 10015. Mr. Haeg if you're ready you may begin. (00:27)

11 HAEG: May it please the Court - my name is David Haeg. Our constitution guarantees
12 fundamental fairness. I did not receive fundamental fairness. The constitutional rights violated
13 in my case are equal protection under the law, due process, double jeopardy, self-incrimination,
14 nature and cause of accusation, compulsory process for witnesses, assistance of council, and
15 unreasonable searches and seizures.

16 My case started out with the State claiming they found the evidence of wrongdoing in a
17 place where it wasn't found. In essence they – they moved the evidence. They maybe didn't
18 move the evidence but they claimed it was found in a different game management unit. –Uh- the
19 unit they claim it was found in was where I guide – was licensed to guide. The evidence was
20 actually found in a game management unit in which a wolf control program was taking place -
21 uh- in which I was participating. (01:39)

22 JUDGE: Well -um- I've – I've reviewed your testimony at the trial and -um- according
23 to your testimony all 9 of the wolves were in fact taken outside the area where you had the
24 permit.

25 HAEG: –Uh- I've read a lot of law. It makes -um- you're ... to make sure something's
26 fair they have to follow certain things. Due process is one – one thing due process is the
27 government is not allowed to make false claims - even if something's wrong. The risk is that
28 you may be charged with the wrong crime or pay a punishment that you're not of - deserving.
29 And that's what I'm claiming.

30 JUDGE: Ok.

31 HAEG: –Uh- it started out with they – they put the wrong game management unit on
32 every search warrant that was used to seize all of my property that I use to provide a livelihood.
33 We entered into plea negotiations with the State. I informed them that the evidence was not
34 found where they say it was. After the plea negotiations broke down they persisted in claiming

1 that the evidence was found where I guide - after they had been told and they taped me telling
2 them this. Upon immediate cross-examination they admitted that the evidence was not found
3 where I guide. It was all found in the game management unit in which the wolf control program
4 was taking place. And the taint of that was proven at sentencing even though upon cross-
5 examination the States admitted the wrong - the very judge, when I was sentenced, said the
6 reason for my sentence is because 'most if not all the wolves were killed where you guide'. And
7 that is a completely false statement. Not a single wolf was killed where I guide. -Um- the
8 Supreme Court says that a nation - a free and strong nation cannot abide by convictions based on
9 false testimony known to the State. And they knew that that testimony, to my judge and jury, was
10 false. There is no doubt about that. (03:52)

11 When they seized my property - they seized my airplane, which is the primary means by
12 which I provide for my family. I have a wife and 2 daughters. They did not give me notice of a
13 hearing so I could contest or even ask to bond the property out. So immediately, before I was
14 even charged, I could not make a living. I was not charged for 8 months. For 8 months I had no
15 income. It was a year and a half before I went to trial and it was decided that I should - the
16 property should be forfeited. On no -uh- warrant and no information and in no charge did they
17 ever say that they wanted to forfeit my property. And the Supreme Court says that there can be
18 no forfeiture or use as evidence when you did not have notice that they intended to forfeit it or
19 they did not give you notice of a hearing 'within days if not hours' of seizing property that's used
20 as the primary means to provide a livelihood. I was not a lawyer and I did not know I could
21 contest. The State claims that no notice is needed. But it's in direct violation of U.S. and Alaska
22 Supreme Court cases. (05:10)

23 JUDGE: Let - let me ask you - did you - did you talk to the judge about the forfeiture at
24 your - at your sentencing hearing?

25 HAEG: Correct. That was the big item. But at that point we didn't know to prepare.
26 We didn't know that we could bond the property out. We had no notice that - that - there was no
27 official notice up until that point that the property would be sought to be forfeited. And I... The
28 main thing is - is I was deprived of my income with no opportunity to contest because I didn't
29 know for a very long length of time. And I asked the trooper that was seizing the property can I
30 get my plane back? Cause I had clients coming in the day after they seized my plane and he says,
31 "Never - you will never get your plane back." Well in commercial - in fishing boat seizures in
32 Bristol Bay when you have a 2 week season if a trooper seizes your boat and sits on it for 2

1 weeks that trooper effectively cost you a whole seasons income. You may not know that you
2 could go bond it out or even say, “hey it was somebody else”. (06:17)

3 I’d like to point out that the statutes that the State used – I believe its 16.05.190 and 195 -
4 I believe are unconstitutional, as written, because they require no prompt notice of a hearing -uh-
5 when property is seized. –Uh- they require no prompt notice that the items may be forfeited. So
6 it – essentially those statutes allow property to be seized with no – without due process. (06:43)

7 I also -uh- -uh- you know after that that happened there was a plea negotiations – we
8 arrived at a plea agreement. That plea agreement was arrived at in August. For that plea
9 agreement I had given a statement – 5-hour statement to the prosecution. It required me to give
10 up guiding for at least one-year -um- and also to talk about a moose hunt. I took and gave up
11 guiding for the year. I gave up a September and October and if you guys hunt you know moose
12 seasons in September. That’s what we primarily do and bear season is in October. In November
13 the State filed charges that were in agreement with the plea agreement and then -uh- 5 business
14 hours before we were supposed to fly to McGrath and present the plea agreement to the judge
15 they filed an amended information changing the charges. And what that did is two things. It
16 violated the plea agreement after there was enormous detrimental reliance put on it. Not only a
17 5-hour statement, which the State used, but my wife and I both of whom depend on guiding for
18 our entire livelihood was gone. I got nothing. Um and we flew in all the – I mean it happened so
19 close ... they changed the charges so close to the time at which it was supposed to happen that
20 we’d already flown in witness from – witnesses from as far away as Illinois. We had bet the
21 farm on this plea agreement. And after we’d bet the farm on it and the farm was gone they pull it
22 away from us. And I asked, “how can they do that” to my attorney. He said, “It’s the way the
23 games played.” Well I don’t think that’s fair. I don’t think anybody would think that’s fair.

24 They then used ... Since I had agreed to talk about this moose issue for that plea
25 agreement – after I was convicted on the harsher charges they said, “Well since Dave Haeg
26 agreed for this moose issue to enhance his sentence, for these lesser charges, it means Dave Haeg
27 agreed for these – this moose thing to enhance his sentence on these harsher charges.” So not
28 only did they break it that time later on down the line they use it. The Supreme Court says you
29 can’t break a paid for plea agreement or change charges without justification. You cannot
30 increase the severity of charges or the number of charges without going before the Court and
31 proving justification because it – they say basically that there’s the likelihood of vindictive or the
32 appearance of vindictive – vindictiveness if they do that. (09:26)

1 Ok then I told you that I gave a statement. After they changed the charges they used
2 them not only for the original information that they filed in agreement for the plea negotiations -
3 they used it for the amended information – my statements. They said Dave Haeg came in and
4 said this this and this so we're you know – it essentially provided probable cause for a whole lot
5 of charges that they had absolutely no evidence for. Evidence Rule 410 states, "*To foster*
6 *negotiations the rule provides that nothing that is said during plea-bargaining may be used*
7 *against the accused in any proceeding, whether criminal, civil or administrative. Thus, the*
8 *accused is free to discuss the case without resort to hypothetical statements of fact and without*
9 *fear that a slip of the tongue may be devastating at a later trial or other proceeding.*" I was
10 devastated by my own statement that I gave for a plea agreement that then vanished. They used
11 the statement in all the informations. They used the statement to obtain their main witness
12 against me at trial. They gave my statements to the media. It was published around the world –
13 my statements admitting what we had done. And they used it to enhance my sentence.

14 I hired a gentleman named Brent Cole to represent me. I asked him about all this. He
15 says, "You can't do anything". "Alls you can do is call Leaders boss." Leaders was the
16 prosecutor. I said, "is that all I can do?" He said, "That's all you can do." (11:00)

17 I was so concerned after I hired my next attorney and went to trial and lost – I was so
18 angry and so upset and so frustrated over all I had given for nothing that I subpoenaed Mr. Cole
19 to my sentencing - I subpoenaed Mr. Cole to my sentencing. I bought him an airline ticket. I
20 bought him a hotel room. I paid for his witness fees. And then Mr. Cole never showed up. My
21 second attorney said, "There's nothing you can do about that Mr. Haeg." -Um- he said "go to
22 trial". Well this is – he said that after we'd been to trial but when I first hired Mr. Robinson he
23 said there's nothing he could do about what happened with Mr. Cole", "you have to move
24 forward", "it's all water under the bridge". He says, "Go to trial." He says, "don't put on any
25 evidence...I have a tactic that there's no subject matter jurisdiction." Well me being - fighting
26 for my life and fighting for my family and everything I had built in my life – I said I'm goanna
27 help Mr. Robinson create a – the best tactic – the best defense known to man. So I did my
28 research. He said, "That for the subject matter jurisdiction to work you can't talk about the plea
29 agreement or all that you did for it or admit to the Court that there was jurisdiction – subject
30 matter jurisdiction". He said, "Don't bring up any of that Dave. Don't talk about it." Well I
31 started looking at subject matter jurisdiction. AS 22.15.060 "*Criminal jurisdiction – the District*
32 *Court has jurisdiction (1) of the following crimes (A) a misdemeanor.*" I was charged with a

1 misdemeanor in District Court. There was nothing else the District Court needed for jurisdiction.
2 Why would Mr. Robinson have me hide all of the other constitutional violations in my case for a
3 tactic that irrefutably would never work? (PAUSE) (12:59)

4 He then failed to enforce the subpoena against Mr. Cole. I was then given an illegal
5 sentence. They revoked my lic – my guide license for 5 years. It could only be suspended. That
6 revocation cost me to loose – lose numerous guiding camps that I pay leases on to the federal
7 government. Because they said if it was suspended you still have a license and we'll allow you
8 to keep the camps and it says revoked you have no license. Those camps must be removed. I
9 removed those camps because of an illegal sentence that my own attorney never objected too.
10 My own attorney says I cannot appeal the sentence. And the judge in my case told me that –
11 never told me I could appeal the sentence. So I didn't know – I knew I was appealing the
12 conviction but nobody told me I could appeal the sentence. And in fact my attorney told me I
13 couldn't appeal the sentence. Mr. Robinson's points of appeal that he submitted to you prove
14 what I'm telling you about the subject matter jurisdiction is true and about the other stuff.
15 (14:04)

16 After I figured out ... after I became very unhappy with Mr. Robinson I hired Mr.
17 Osterman, my third attorney. After a week of looking at all the evidence he said it was the
18 biggest sellout he'd ever seen. And let me put ... back up a moment. Because of problems of
19 my first two attorneys and what I felt - the lies told to me - I tape-recorded every single word I
20 ever had with Mr. Osterman. Every word. From the day I called him up to hire him to the day I
21 fired him. He said it was the biggest sellout he'd ever seen by attorneys. That I didn't know my
22 attorneys were going to quote "load the dice so the State would always win". He said
23 Robinson's no jurisdiction – no subject matter jurisdiction tactic was no good. We – me and him
24 were goanna sue Mr. Cole and Mr. Robinson after my conviction was overturned. A month later
25 Mr. Osterman ... I couldn't get a hold of him for a month and my deadline for my appeals
26 coming up or for the brief to you – to this Court was coming up. A month later he told me that
27 Mr. Robinson's tactics were good – about the subject matter jurisdiction. And when I asked him
28 about all the other things that I had on those two attorneys he told me quote "I can't affect their
29 lives and livelihoods". Well I found caselaw in the U.S. Supreme Court and in Alaska Supreme
30 Court that says if you can prove that a conflict of interest of your attorney – that he was
31 representing interests in conflict with yours that you don't even have to prove prejudice because
32 the likelihood of prejudice to a defendant whose attorney is representing interests in conflict with

1 that defendant it's – it's – it's automatically ineffective assistance. There – there can be no – or
2 there need be no proof of prejudice. Ok. (15:57)

3 In my appeal there've been what I feel are errors. I haven't been able to -uh- to stay my
4 appeal so I can go post conviction relief, subpoena in the attorneys and prove exactly what went
5 on. -Um- my illegal sentence was not fixed. I lost approximately 100,000 dollars in camps
6 because of my illegal sentence not being fixed. (16:17)

7 JUDGE: Mr. Haeg on the – on the question of the illegality of your sentence I – on the –
8 on the part about whether it should have been suspended or revoked I was just looking through
9 the file. -Um- last August this Court issued an order saying that you could in fact go back to the
10 District Court and ask for correction of the sentence. Did you – did you do that? (16:36)

11 HAEG: No I did not...

12 JUDGE: Ok.

13 HAEG: ...your honor. What happened is – is I asked this Court and this Court I believe
14 said “although we could fix your sentence we will not do so until we decide your appeal” and
15 the federal government said “camps better be gone”. So the camps were gone and now it no
16 longer matters. Although now if I got to go get my guide license - no longer will it just be
17 unsuspended - I'll have to become an assistant guide for 5 years, become a registered guide for
18 13 years to become the master guide I used to be. So instead of a suspension it'll be a 18-year
19 end of my guide career because of a revoked sentence. Or a revoked guide license. Ok. (17:15)

20 Some other things that I don't think are quit right. -Um- when Magistrate Woodmancy
21 was assigned to rule on whether I could represent myself - he was involved in my original trial
22 and he'd throw up his hands in – in frustration whenever we would try to assert my rights. So I
23 tried to recuse him according to law. I submitted an affidavit, in the time required, under AS
24 22.20.022 and he never was removed. And that law – that's a law - says that if you want to
25 recuse somebody and you submit an affidavit, which you did – without requiring proof and
26 immediately that judge shall be recused. But not in my case. I don't know. (17:55)

27 I've - 2 years ago I started trying to get my property back because of the due process
28 violations. It's now over 2 years since I started that. I don't really mean to – to harp but I had to
29 tell the Courts that I was goanna go get my property before anyone would actually hear my – my
30 request for my property. Everybody said – the District Courts said you had jurisdiction. You
31 said they had jurisdiction. Even though you both had the orders. I didn't think that was fair.
32 That was 2 years ago. I'm getting hungry. I mean we're done. We're – we can't go on forever.

1 It's 4 years since this stuff started. -Um- the property hearing with Woodmancy – he made it
2 constitutionally ineffective. The U.S. Supreme Court says when you're fighting for your property
3 you can submit evidence, you can cross-examine adverse witnesses, you can present witnesses,
4 and you can have oral arguments. Mr. Oster – Mr. Woodmancy says, “you can't submit
5 evidence, you can't cross examine adverse witnesses, you can't present witnesses, and there will
6 be no oral argument.” Well when I read what the U.S. Supreme Court says I need to get my
7 property back for a fair fight and the magistrate says, “no” I don't think that's fair. He made an
8 adverse decision deciding I couldn't get all my property back. I then appealed that decision and
9 it's been over a year since then. And another summers coming up. It's May. June and July –
10 August September's when I make my livelihood. I need my property back. (19:30)

11 I would like to ask this Court for immediate return of all my property. And I'd like your
12 honors to look at the de – the order of the 1st of January 2008 granting expedited consideration.
13 That was in January. It's now May. And 2 more granting's for expedited consideration and
14 expedited decision issued on March 6th 2008. I'd ask this Court to declare that 12.35.020 and
15 025 and AS 16.05.190 and 195 are unconstitutional as written because they don't provide for due
16 process. I'd like a reversal of my convictions with prejudice because of vindictive and malicious
17 prosecution and ineffective assistance of counsel. I would like this Court to recommend civil
18 and criminal proceedings for those involved. And I would like a ruling on *all* issues from this
19 Court so that -uh- there can be some justice or some resolution in my case. And I'm out of time
20 and I'd - thank you very much unless you have any more questions? (20:40)

21 JUDGE: Thank you Mr. Haeg. Mr. Peterson?

22 PETERSON: May it please the Court my name is Andrew Peterson. I am an assistant
23 attorney general at the office of Special Prosecutions. The – the claims set forth by Mr. Haeg in
24 his brief can really be lumped into kind of two categories. There are those claims which should
25 be brought as part of a post conviction relief application with trial court in McGrath and then
26 there are claims which are being raised for the very first time in this appeal. I'm starting with the
27 PCR issues. Mr. Haeg alleges a number of wrongs that he believes demonstrates ineffective
28 assistance of counsel by his -uh- 2 prior trial attorneys. Issues -uh- committed by prosecutors,
29 which they never objected to, and acts by the judge in that case, which his lawyers never
30 objected to as well. (12:51)

31 This Court has held that ineffective assistance of counsel claims is not appropriate on
32 direct appeal absent plain error and the problem here for Mr. Haeg is showing plain error. -Uh-

1 in Barry this court held that it will seldom find ineffective assistance of counsel for the simple
2 reason that there's no explanation in the record for the Court that tells the Court why the trial
3 attorneys did what they did. Was it tactical decision or not? We don't have that information
4 before us. It's not in the record. His attorneys never challenged any of the issues that he raises.
5 And therefore there was no hearings; there was nothing in the trial court that would give this
6 Court an understanding of why his lawyers did what they did. (22:33)

7 Now Mr. Haeg has indicated in his briefing that he's been denied the right to file a post
8 conviction relief application. In part that's true. He filed a PCR application in McGrath while
9 he was still represented by counsel. But he filed it himself. He was told once he was determined
10 that he could not be pro se he could re-file his post conviction relief application. He hasn't done
11 so yet. And this Court should indicate that that is how he should address most of the wrongs that
12 he's alleging. (23:02)

13 The second grouping really falls into waiver. -Um- these claims that he's raising for a
14 first time on appeal. Monroe addresses those. He not only has to show plain error. He has to
15 show substantial prejudice and that these errors he alleges are not tactical and he has to overcome
16 the presumption that his trial attorneys were competent. (23:26)

17 Starting with the issues that he raises. The first one is the constitutionality of his property
18 seizures. -Uh- he alleges that he was violated – he was denied due process because he wasn't
19 told he had immediate right to a hearing to get his property back. That simply isn't true. He had
20 immediate right under Criminal Rule 37(c) to seek the return of his property and the suppression
21 of evidence, which is (c). -Uh- his property was seized subject to a valid -uh- validly executed
22 search warrant. -Uh- Mr. Haeg was present during the seizure on March 29th of 04. Less than
23 two weeks later he hired Mr. Cole. No motion was ever filed under Criminal Rule 37(c) to seek
24 the return of his property. When he was ultimately arraigned on the original or the amended
25 information Criminal Rule 12 takes like – it's 45 – he or his counsel has 45 days to file a motion.
26 No motion was ever filed -uh- seeking the return of his property. The only motion that was filed
27 -uh- was in April – actually I'm sorry July 8th of 2005 – a motion seeking to bond out his
28 property. In the State's opposition the State indicated that it was seeking the forfeiture of the
29 property under -uh- the applicable statutes and that it -uh- it objected to the return of the property
30 and the Court denied his request for bonding the property out. Bottom line here is that Mr. Haeg
31 wasn't denied due process. He had the right to seek -uh- the return of his property under

1 Criminal Rule 37. He didn't ... he didn't veil himself that right and consequently he can't now
2 come in before this Court and claim he's been denied due process. (25:09)

3 The next issue he - he raises is that of the alleged perjury by -uh- Trooper Gibbens.
4 Trooper Gibbens stated in his affidavit for the search warrant that he saw sign of somebody -uh-
5 committing act of same day airborneing of wolves in a subunit of 19 -uh- game management unit
6 19. And then he indicated he went back the next day - followed -uh- the tracks and found the -
7 the wolf kills, which were outside the predator control zone. -Uh- Trooper Gibbens testified at
8 trial consistent with what was in his affidavit and then upon cross-examination he corrected
9 himself. He said no actually it wasn't in 19C it was in 19D but it was outside of the wolf control
10 program. The importance here is anytime you go outside of this predator control program area -
11 the boundary you are now committing the act of same day airborne. It doesn't matter if it was in
12 19D - 19C - where it was - as long as you're outside of that zone which allows you legally be
13 same day airborning wolves you're committing the act of ... the crime of same day airborne. In
14 his... As the Court's already pointed out not only did Trooper Gibbens testify at trial consistently
15 with what was in the affidavit and correct his mistake but then Mr. Haeg testified at trial and
16 admitted to killing the wolves outside of the predator control zone. He testified at sentencing
17 and admitted again and then he submitted excerpts to this Court which indicate that he was
18 outside of the -uh- the control zone so the State would argue there is no -um- there's no error
19 here. He's waived this issue. It was never raised -um- but even if the Court was to consider
20 whether or not there's plain error -uh- there's certainly no substantial prejudice to Mr. Haeg
21 because he admitted committing the crime repeatedly. (27:04)

22 The next issue he raises is -uh- the State's violation of using his plea agreement
23 statements against him. The - the State's first argument with respect to that would be that he's
24 waived any right to raise this claim. His lawyers never raised it at - when he was arraigned -um-
25 it was never raised prior to trial. Now Mr. Haeg indicated it - it was raised in a reply brief filed
26 by his attorney prior to trial. It was actually raised in an affidavit attached to the reply brief by
27 Mr. Haeg -um- which the State would argue doesn't preserve it for -uh- appeal. (27:46)

28 -Um- the second thing that Mr. Haeg overlooks in this case is that his codefendant Mr.
29 Zellers also gave a statement -uh- to the prosecutor and the trooper in this case. His codefendant
30 waived Evidence Rule 410 and his codefendant testified at trial. -Uh- there's no indication that
31 any of the information used in the amended information -uh- or used to prosecute him at trial
32 was information that could not have been gathered from Mr. Zellers. -Uh- so again the State

1 would argue that there's – this issues been waived – that even if the Court were to consider
2 whether or not there was plain error here it would be that there's no prejudice to Mr. Haeg
3 because all that information came out – or could have come out through his codefendant. Mr.
4 Haeg raises a number of claims with respect to judicial misconduct ... (28:37)

5 JUDGE: Before we leave this issue...

6 PETERSON: Certainly.

7 JUDGE: -um- Mr. Haeg also raised the issue of a detrimental reliance on the plea
8 bargain and then the State changing the charges at the last moment.

9 PETERSON: Certainly your honor and your honor I would ar[gue] ... I would answer
10 that by saying first of all his attorney never raised any objection. We don't know why. It's not in
11 the record before this Court. The only reas– the only way we are ever goanna know why is
12 through post conviction relief application where his attorney can be deposed and we can ask
13 why. Now through other proceedings I believe I know why there was no objection raised and
14 why the plea negotiations broke down but that's not in the record before this Court. (29:16)

15 JUDGE: Ok.

16 PETERSON: The next area of -um- claims Mr. Haeg raises is a number of issues of
17 alleged judicial misconduct. The State intends to rely on its pleadings for most of them. –Uh-
18 the only issue that the State would like to briefly address is that of -uh- -um- the judge's failure
19 to give the required jury instruction. Essentially in Mr. Haeg's briefing he claimed there was a
20 required accomplice instruction that needed to be given -uh- in order to – it – it is required by
21 law. –Uh- first of all the State would argue that he's waived this issue. He lawyer – his own
22 lawyer never asked for this instruction. But second -uh- no accomplice instruction has been
23 required in the State of Alaska since 1975. Long v. State sets that forth. And Mossberg -
24 Mossberg v. State states that the decision to give an accomplice instruction is generally a tactical
25 decision. Again this would indicate to the Court that -uh- the decisions not to give this
26 instruction or at least not to ask for it is certainly an issue for PCR and not for a merit appeal.
27 (30:27)

28 And finally Mr. Haeg -uh- raises – he - he asks for a number of forms of relief. I believe
29 I have addressed most of those or all of them -uh- in my briefing and I'm goanna rely on the
30 briefing with respect to everything except for -uh- his guides license issue. –Uh- he claims first
31 that the Courts order is illegal because its - it calls for a revocation and not a suspension. Alaska
32 Statute 8.54.720(f)(3) provides that the Court shall suspend a license for a minimum of 3 years or

1 may permanently revoke the license. So that the Court has the option. Now in this case the
2 Court stated that it would – it was revoking it for a period of 5 years. There’s certainly no
3 indication first off that that’s an illegal sentence. And second -um- ... (31:21)

4 JUDGE: Doesn’t it sound like Judge – Judge Murphy intended to suspend it for 5?
5 Because the - your options are revoke perm – end of story – or suspend (talk over each other) ...
6 Ok so...

7 JUDGE: On the judgment form there’s only the word revoke. There’s not the word
8 suspend. It looks like Judge Murphy just kind of without thinking used the form and didn’t
9 strike out revoke and say suspended. (31:47)

10 PETERSON: And I don’t disagree with that. But Mr. Haeg could have raised this issue
11 as this Court has indicated with the trial court and I’m not certain ... I - I don’t know that I
12 would have objected to him asking to have ... (31:58)

13 JUDGE: Would you object now if it’s modified to being a 5-year suspension? Shouldn’t
14 we modify it to that? (32:03)

15 PETERSON: Certainly if – if the Court feels it has the authority to modify it now despite
16 him not originally raising it with the trial court.

17 JUDGE: Well it...

18 PETERSON: ... I don’t have an objection...

19 JUDGE: ...Not if we told the trial court to do it. (32:12)

20 PETERSON: Now the only issue though... This brings me to the next issue whether it’s
21 a suspension or a revocation – it makes no difference. Occupational Licensing treats it the exact
22 same. Because of the -uh- the 2-year periods in which guide licenses are valid for – a 5-year
23 suspension or a 5-year revocation – at the end of that period Mr. Haeg is going to have to reapply
24 for his guides license. I don’t believe under either scenario he has to start it over as an assistant
25 guide. He still has on the records experience to become a master guide again. He just needs to
26 reapply for his license. (32:45)

27 JUDGE: Well...regardless of what consequence it might have he’s entitled to have the
28 judgment amended, right? (32:50)

29 PETERSON: Certainly.

30 JUDGE: Ok...

31 PETERSON: ... Right...

32 JUDGE: And then the consequences are not really before us at this point. (32:55)

1 PETERSON: Exactly. The – the last issue with respect to his guides license is the – his
2 request to stay the revocation or if the Court’s goanna change it – the suspension of his license.
3 And the State would oppose that as it has in the past for a number of reasons. First of all if the
4 Court -uh- were to stay the suspension of his license at this point in time -uh- the State would be
5 entitled to bail conditions. Trial court has the option -uh- the authority and the broad discretion
6 to issue bail conditions. One of the conditions the State would ask for is that he not be involved
7 in any type of guiding activities pending his appeal. And there’s good reason for that. –Uh- Title
8 8 regulates the activities of big game guides. They have the privilege of guiding in the State of
9 Alaska. And one of the things that the State requires is not only that they not commit crimes
10 while they’re actually guiding somebody but title 8 requires they not commit any fish and game
11 violations and in fact it authorizes prosecution under title 8 – if somebody commits any State or
12 Federal -uh- wildlife -uh- violations – even the regulation ... and it doesn’t even have to be a
13 violation committed in the State of Alaska. And - the explanation’s obvious. We trust them to
14 follow the law when they’re guiding somebody in the field for monetary gain. We don’t want
15 that same person then on their own to be going around committing fish and game crimes but at
16 the same time think we’re goanna trust them when they’re guiding. So the State would be asking
17 for a bail condition prohibiting him from guiding if -uh- his revocation or suspension was stayed.
18 In - with that I don’t believe I have any additional comments unless the Court has any questions
19 for me? (34:39)

20 JUDGE: Thank you Mr. Peterson. Mr. Haeg it is your time to respond to the arguments
21 that - that Mr. Peterson has raised. (35:00)

22 HAEG: Ok -um- your honors Mr. Peterson says that -uh- if there even was plain error
23 that this Court shouldn’t do anything. And I think that – that the purpose of the Courts of
24 Appeals are to fix plain error. Especially error that had an effect on the individual. And I think
25 that has been -uh- shown over and over. (35:32)

26 Mr. Peterson also says that there was no need to give me notice of a hearing because the
27 opportunity was available to me. And in essence Mr. Peterson makes the argument that -uh- it’s
28 my own fault I didn’t know I could ask. Ok. And I’d like this Court to read the U.S. Supreme
29 Court case of Memphis Light, Ga, and Water. It states, “*The purpose of notice under the Due*
30 *Process Clause is to apprise the affected individual of, and permit adequate preparation for, an*
31 *impending ‘hearing.’* (PAUSE) *Notice in a case of this kind does not comport with*
32 *constitutional requirements when it does not advise the customer of the availability of a*

1 *procedure for protesting a proposed termination.*” (PAUSE) –Uh- Mr. Peterson also goes on to
 2 kind of allude that since it was a criminal seizure that – that – that -uh- does away with that need.
 3 -Um- and that since it was available that’s all that need be. I’d like this Court to also look at
 4 Fuentes versus Shevin - another U.S. Supreme Court case. *“If an applicant for the writ perceives*
 5 *something - knows that he is dealing with an uneducated, uninformed consumer with little access*
 6 *to legal help and little familiarity with legal procedures, there may be a substantial possibility*
 7 *that a summary seizure of property -- however unwarranted -- may go unchallenged, and the*
 8 *applicant may feel that he can act with impunity. Appellant Fuentes says that in her case she was*
 9 *never told that she could recover the stove and stereo. And, of course, no hearing need be held*
 10 *unless the defendant, having received notice of his opportunity, takes advantage of it.”* I think
 11 it’s pretty clear that there’s an affirmative duty when the State comes and seizes property from
 12 someone who’s not a lawyer that they have to tell them that you have the right to contest this
 13 before a judge and to have the State put on proof for taking away your means for putting food in
 14 your families mouth. –Uh- Perkins versus City of West Covina - Ninth Circuit - the U.S. Court
 15 of Appeals. *“Here, the notice left at Perkins’ home did not mention the availability of any*
 16 *procedure for protesting the seizure of his property, let alone the existence of a formal judicial*
 17 *procedure for obtaining return... The notice was ‘skeletal’, like the notice that the Memphis Light*
 18 *court found unconstitutional.”* This is very close to what Mr. Peterson's telling you right now.
 19 *“The city charges Perkins with the responsibility for his own confusion. It cites his failure to*
 20 *persist and to unearth the proper remedy and the method of its invocation. The risk of erroneous*
 21 *deprivation, especially in the emergency situations often underlying search warrants, is*
 22 *substantial. By contrast, the administrative and fiscal burden of providing adequate written*
 23 *notice is slight.”* (38:55) They – alls they would have to do was write a little note on the search
 24 warrants. Said Mr. Haeg you have the opportunity to go before the judge contest it or maybe
 25 even just to ask to bond the stuff out until a jury determines you should be put out of business. I
 26 didn’t get that. -Um- *“The notice must inform the recipient of the procedure for contesting the*
 27 *seizure or retention of the property taken, along with any additional information required for*
 28 *initiating that procedure in the appropriate court.”* (39:25)

29 And I think I alluded to the – there’s three cases - Baranof - I think the best one is fishing
 30 vessel American Eagle. It says when the property is used by the person in providing a livelihood
 31 that that notice must be given ‘within days if not hours’. I was never given that notice. I hired
 32 an attorney two weeks after they took my airplane and my property and I had clients coming in

1 the very next day. And I told the troopers that and the trooper said ‘you’re never going to get
2 your property back’. That’s the notice I received. (40:03)

3 *"The idea of wage garnishment in advance of judgment, of trustee process, of wage*
4 *attachment, or whatever it is called is a most inhuman doctrine. It compels the wage earner,*
5 *trying to keep his family together, to be driven below the poverty level."* That’s me and my
6 family. (PAUSE) (40:24)

7 Um- Mr. Peterson speaks about -uh- since -uh- during plea negotiations we -uh- said that
8 we took wolves outside the area. I’d like to -uh- let the Court know that a week before we went
9 on the Wolf Control Program I was at the Board of Game meeting in Fairbanks speaking with a
10 sitting Board of Game member who sits today on the Board of Game. And that gentleman told
11 me that with this first experimental wolf control program they had very few wolves. That they
12 had to have more wolves or the program would be seen as ineffective. He then went on to say
13 that if we took wolves outside the area to just mark them on our GPS as inside the area. And that
14 is a person appointed by the Governor that sits on the Alaska Board of Game. And you may
15 think that that was never brought up. That was in my statement that was given to the Court the
16 trial court or the District Court for a plea agreement and that statement remains there. -Um- -uh-
17 as far as the plea agreement I did everything I could to enforce that plea agreement and
18 everybody – my own attorneys told me “there’s nothing you can do”. (41:40)

19 Mr. Peterson -uh- says that you should overlook the use of my own statements because
20 they had my codefendants statement. My codefendant has testified under oath, along with his
21 attorney, that he cooperated with the State because of my statement, which was given first. So
22 that whole things a fruit of my statement. -Um- in other words everything the State got as far as
23 knowledge of what went on - came from my statement. Whether it came from me or not -
24 whether they went to someone else who felt compelled to – to talk that’s -um- you know that’s
25 just the way it was. (42:28)

26 As far as my revocation of a guide license compared to suspension. I want to know
27 whose goanna give me my camps back? (PAUSE) I asked the Courts to fix something that
28 should have been very clear and nobody did and I lost a hundred thousand dollars in camps.
29 Who is going to give me my camps back? (42:48)

30 -Um- Mr. Peterson says that -uh- -uh- since we took wolves outside the area it makes no
31 difference – that automatically turns it into a -uh- fish and game case. I applied for and received
32 a wolf control permit that specifically said anyone participating is intentionally excluded from

1 any fish and game violations. They still could have a violation but it wouldn't affect fish and
2 game. The reason why it affected my guide license is because fish and game violations affect
3 your guide license. I think it's quit the coincidence that the evidence that was found in the game
4 management unit in which the Wolf Control Program was taking place all of a sudden appeared,
5 according to the State, where I guide. I think that's a pretty significant fact. Along with the fact
6 that I paid – we informed them of that and they persisted at trial and Mr. Gibbens – Trooper
7 Gibbens just didn't remember – it was under cross examination. If you look at the – the – the
8 statute for perjury someone can correct themselves up until the time at which it was – it – it is
9 likely or shown that they are going to be found out. It was only when Mr. – Trooper Gibbens
10 knew he had been found out and was being questioned on it he says, "I forgot - it was all in game
11 management unit 19D and not where you guide." You - anybody here believe that if he wouldn't
12 have been cross-examined that that would have ever come out? (PAUSE) It would not have
13 come out. And the prejudice of that – the taint ... And see I never really knew how something
14 could be tainted if you fixed it. But the taint of that is proven by the sentencing judge says, the
15 reason for this severe sentence, even though you have no criminal history whatsoever, is because
16 'most if not all the wolves were taken when you guide'. And that is simply an absolute
17 falsehood. So upon cross-examination there was no – the taint was still there. I want fair
18 proceedings. I would like this court to give me fair proceedings. -Um- I had a closing thing I'd
19 like to say but I'm out of time and thank you.

20 JUDGE: Ok thanks Mr. Haeg. Counsel. We will take the case under advisement and
21 please stand - adjourned. (GAVEL) (45:30)

22

23 I, JACKIE HAEG, being first duly sworn depose and states as follows: I listened to and
24 transcribed the 5/8/08 Oral Arguments before the Alaska Court of Appeals. All transcripts are
25 true and accurate to the best of my knowledge and ability. I, JACKIE A. HAEG, certify under
26 penalty of perjury that the foregoing is true to the best of my knowledge.

27

28 FURTHER AFFIANT SAYETH NAUGHT.

29

30 _____
Jackie A. Haeg

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