

A-11349 / A-11370

3KN-10-01295 CI

SUPPLEMENTAL
PAPERWORK

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

DAVID S. HAEG,)
)
 Applicant,)
)
 v.)
)
 STATE OF ALASKA,)
)
 Respondent.)
)

No. 3KN-10-01295 CI

DEPOSITION OF ARTHUR S. ROBINSON

SEPTEMBER 9, 2011

APPEARANCES:

FOR THE APPLICANT: DAVID S. HAEG
In propria persona

FOR THE RESPONDENT: A. ANDREW PETERSON
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PURSUANT TO NOTICE, the deposition of ARTHUR S. ROBINSON was taken on behalf of the Respondent, State of Alaska, before a Notary Public in and for the State of Alaska at the Office of Special Prosecutions, 310 K Street, Suite 601, Anchorage, Alaska, 99501, at the hour of 10:05 o'clock a.m. on the 9th day of September, 2011.

* * * *

TABLE OF CONTENTS

	<u>PAGE(s)</u>
Examination by Mr. Peterson	5, 213
Examination by Mr. Haeg	87

PROCEEDINGS

1
 2 (On record)
 3 LT. CHASTAIN: Lieutenant Chastain, (indiscernible). C-
 4 h-a-s-t-a-i-n. Yeah, from our headquarters.
 5 MR. HAEG: Are you here for this, kind of a witness so --
 6 the deposition or.....
 7 LT. CHASTAIN: Yes.
 8 MR. HAEG:pro (indiscernible - whispering).
 9 LT. CHASTAIN: Yes. A little bit everything.
 10 MR. HAEG: Okay.
 11 MR. PETERSON: All right. We ready to get started?
 12 MR. HAEG: Yeah, I'm ready.
 13 MR. PETERSON: Okay. All right. So, just kind of some
 14 preliminary information we got to cover. We're here on the
 15 matter of Haeg v. State. It's 3KN-10-1295 CI. This is a
 16 post-conviction relief application out of Kenai. My name's
 17 Andrew Peterson with the Office of Special Prosecutions. The
 18 deponent here today is Mr. Chuck Robinson and we've got Mr.
 19 Haeg in the room. If I get this right, we have Tim -- Tim,
 20 I'm sorry, your last name so I pronounce it right?
 21 MR. DOOLEY: Dooley.
 22 MR. PETERSON: Dooley? We have Mrs. Haeg. We have Dave
 23 Brummel and Lieutenant Chastain here in the room. I -- I'm
 24 sorry?
 25 MR. ROBINSON: I don't think you mentioned Tom.

1 MR. HAEG: Forgot him.
 2 MR. PETERSON: You know, I'm sorry, Tom Stepnosky?
 3 MR. STEPNOSKY: Yes, sir.
 4 MR. PETERSON: There we go. All right. I skipped you
 5 because I was going to his name first so sorry about that. I
 6 appreciate it.
 7 MR. STEPNOSKY: That's all right.
 8 MR. PETERSON: So we've identified all the parties that
 9 are in the room. This is civil deposition so the way the
 10 civil rules provide, we will -- state will start with asking
 11 us questions. Mr. Haeg's entitled to ask some cross
 12 examination questions afterwards. The state can redirect if
 13 there is any. The witnesses in here are merely witnesses,
 14 like any other court proceedings, not to be asking questions
 15 or interjecting. The rules provide for the discovery
 16 obligations and objections to be made if there is one but not
 17 a speaking objection. I assume you probably know that from
 18 reviewing it but if you don't, it's Civil Rule 30(d)(1) so if
 19 there's any question -- I mean, you can make an objection if
 20 you have an objection to a question I ask but they're not
 21 supposed to be speaking objections in the manner of explaining
 22 why you're objecting unless it's asked for.
 23 Okay. So, again, my name is Andrew Peterson with the
 24 Office of Special Prosecutions. We are here at 310 K Street
 25 in Anchorage, Alaska, Suite 601. The date and time of this

1 deposition, it's starting at 10:05 and it is September 9th,
 2 Friday, September 9th, 2011. We've already read the caption
 3 of the case. The witness is Mr. Robinson being deposed on
 4 behalf of the state. I don't believe there are any
 5 stipulations between the parties and I need to administer an
 6 oath to you, sir, if you'd raise your right hand?
 7 (Oath administered)
 8 MR. ROBINSON: I do.
 9 ARTHUR S. ROBINSON
 10 called as a witness, testified as follows on:
 11 EXAMINATION
 12 BY MR. PETERSON:
 13 Q And would you please state and spell your name for the
 14 record?
 15 A My name is Arthur S. Robinson. A-r-t-h-u-r. S. R-o-b-
 16 i-n-s-o-n.
 17 Q Okay. Thank you, sir. And I will try to remember to do
 18 this at each time but when we switch the tapes or turn
 19 them, we're supposed to indicate if we notice it's
 20 happening prior to the change of time to indicate that
 21 the tape's changing and if we miss it, just indicate when
 22 we start over on the other side that -- what we've done.
 23 All right. Mr. Robinson, have you seen a copy of
 24 Mr. Haeg's post-conviction relief application?
 25 A No, I haven't.

1 Q Okay. I've got a copy for you here.
 2 MR. PETERSON: Mr. Haeg, do you have a copy?
 3 MR. HAEG: I do but.....
 4 MR. PETERSON: I'll refer to it occasionally. If you want
 5 a moment or two to look through it, you certainly are entitled
 6 to.
 7 A Yeah, let me take a look at it.
 8 (Pause)
 9 MR. HAEG: You ought to just stop it now. You can
 10 probably stop now by pausing this or you could just pause it
 11 if you want.
 12 (Off record)
 13 MR. PETERSON: All right. We all back recording?
 14 MR. HAEG: Yes, sir.
 15 MR. PETERSON: Okay. Took a brief break while Mr.
 16 Robinson reviewed the PCR filed by Mr. Haeg.
 17 Q Mr. Robinson, I notice you marked a few pages there. Why
 18 don't we just.....
 19 A I dog-eared a few pages here.
 20 Q Why don't we just go through some of those and.....
 21 A I'll tell you -- well, I'll just tell you the pages and
 22 you can ask the first one if you want -- if you want.
 23 (Whispered conversation)
 24 Q Do you need a pen by any chance?
 25 A No.

1 Q All right.
 2 A Page seven of 19.
 3 Q Okay. Well, let's start -- we'll just work our way
 4 through. What about page seven caused you to dog-ear it?
 5 A This paragraph number W.
 6 Q Okay. And what about it -- in that paragraph, he's in --
 7 talking about termination of Mr. Cole and hiring you, is
 8 that correct?
 9 A Right.
 10 Q And what about paragraph W.....
 11 A Well, it says in here that nothing could -- that I --
 12 Haeg hired Cole who hired attorney Robinson, told Haeg
 13 nothing could be done about anything Cole had done. That
 14 isn't true.
 15 Q What did you tell Mr. Haeg about what could or couldn't
 16 be done?
 17 A Well, when Mr. Haeg first came to see me, he came to see
 18 me with Tom Stepnosky. They both came to see me and we
 19 went over the complaint or the information that they had
 20 in a Search Point document. I didn't have any police
 21 reports at the time. So I -- I specifically just talked
 22 to him about the case, asked him some questions about
 23 what happened with him and Mr. Zellers and when he told
 24 me about the plea agreement issue that he had -- thought
 25 he had with the state when Mr. Cole was representing him

1 and I said well, then there might be something we could
 2 do about that at that meeting. Then we had later
 3 meetings with myself and Mr. Haeg and at one point, I
 4 said David, you're going to have to make a decision that
 5 either we're going pursue the plea agreement or we're
 6 going to go to trial and he decided to go to trial. So
 7 this business about I said there was nothing he could do
 8 about what Cole had done, that's just not true.
 9 Q And so if I understand what you're saying correctly, you
 10 kind of indicated it was an option, we could try to force
 11 the plea agreement.....
 12 A Correct.
 13 Qbut if you don't want the agreement as it was set
 14 forth, trial, it wasn't an option to do both?
 15 A I -- I believe Mr. Stepnosky was there when I said you're
 16 going to have to make a decision on which route you want
 17 to pursue and David wanted to pursue going to trial.
 18 Q Okay. Let me ask you this with respect to the plea
 19 agreement. What did you think might be able to be done
 20 about that?
 21 A Well, as I told David at the time, I said it seems to me
 22 that if the state made an agreement to go through with
 23 this plea agreement, that, you know, we might be able to
 24 enforce the agreement, had the court say well, you know,
 25 the state made this agreement. As it turned out later,

1 it wasn't clear that -- as far as Mr. Leaders was
 2 concerned, that there was, in fact, an agreement.
 3 Q So explain to me, as you went through this process, what
 4 was your understanding of what the terms of the agreement
 5 were or do you recall?
 6 A Oh, it's been a long time ago but -- I can't remember
 7 exactly what the -- all the terms were but -- you know
 8 it's just been so long ago, you know.....
 9 Q Your understanding was though that there wasn't a clear
 10 agreement between Leaders and.....
 11 A Well, later on when Scott Leaders was trying to say there
 12 wasn't an agreement and then it was a question as to
 13 whether there was an agreement. In other words, there
 14 was -- there was a dispute between Scott and Brent as to
 15 whether there was an agreement and so, you know, I wasn't
 16 there. I don't know exactly what happened. All I know
 17 there was a dispute between the two of them at some point
 18 in time as to whether there was an agreement.
 19 Q Okay. And when you indicated to Mr. Haeg he had two
 20 choices, either to do a plea agreement or trial, did you
 21 recommend to him that trial was a viable option?
 22 A Well, what I told him about trial was this, I said that I
 23 -- and still believe that there was a defect in the -- in
 24 the information -- sorry, circumstances -- because it
 25 wasn't sworn to under oath by either the police officers

1 or the prosecutor and my understanding is that if there
 2 is a criminal complaint, even if it's in the form of
 3 information, it has to be sworn to under oath and neither
 4 Mr. Leaders nor the officer who was involved in the
 5 investigation of the case did that. So what I told
 6 David, I said we'll have to go to trial. They could put
 7 on their case perhaps or at least swear the jury, get a
 8 -- so the trial starts and then have the court dismiss on
 9 the basis that there was no probable cause for the
 10 information; therefore, no subject matter jurisdiction.
 11 In fact, I've been researching and found out I have to
 12 make a motion first which I did and then we'd have to go
 13 to trial and if you got convicted, then we -- and if the
 14 court didn't grant the motion and he went to trial and
 15 got convicted, then we'd have to appeal the question. So
 16 that was it.
 17 Q And did you raise that issue in a motion prior to trial?
 18 A Yes, I did.
 19 Q And how did the court rule on that issue?
 20 A Denied the motion.
 21 Q And you file.....
 22 A And -- and allowed Mr. Leaders to amend the information.
 23 Q Okay. So the -- so prior to actually completing the
 24 trial, the information was amended.
 25 A Yes.

1 Q Curing this defect?
 2 A Yes.
 3 Q You initially filed -- and I -- I'm going to jump ahead
 4 from time to time and I'll come back to this but you
 5 initially filed the notice of appeal for Mr. Haeg?
 6 A Yes.
 7 Q Did you include that issue as part of the notice of
 8 appeal?
 9 A Yes, along with an equal protection question on that
 10 issue which was related which isn't mentioned in this to
 11 David's application....
 12 Q Okay.
 13 Aand I noticed that issue but I also noticed that it
 14 would be a denial of equal protection, that if people
 15 charged with complaints had to have their complaints
 16 verified under oath, that it would be a denial of equal
 17 protection for people who were charged with defamation
 18 (ph) not to have the same necessity.
 19 Q Okay. Was there anything else about paragraph W that
 20 caused you to dog-ear that page?
 21 A First of all -- and I could be wrong about my memory but,
 22 as I remembered the evidence that the State of Alaska had
 23 concerning the locations of Mr. Haeg's hunting guide
 24 area, that that....
 25 Q Is this the locatio -- I apologize, is this the locations

1 to the -- of the wolf kills or his guide area?
 2 A So there was nothing Haeg could do about it so -- the
 3 State of Alaska falsifying all evidence location to
 4 Haeg's hunting guide area when Haeg specifically asked
 5 what could be done and, as I recall, with regard to all
 6 evidence of his locations, that wasn't the case. There
 7 was a misnumbering of a location on the information but
 8 as far as the rest of his hunting area was concerned,
 9 there didn't seem to be any falsification as that was
 10 concerned. So when he says falsifying all evidence
 11 location as to Haeg's hunting guiding area, that -- I
 12 don't think that was the situation.
 13 Q Okay. And we'll come back to that issue later. Anything
 14 else in paragraph W?
 15 A Yeah, we talked -- I -- in fact, he says there was
 16 nothing -- he said I told him there was nothing he could
 17 do about all the search and seizure warrants which
 18 falsified all evidence locations to his hunting guiding
 19 area. Well, that isn't true because I had a very long
 20 discussion with David about the possibility of filing a
 21 motion to suppress because of some of the problems that
 22 they had mentioned in the -- as to what they saw in their
 23 investigation, tracks where they were located why they
 24 thought they were plane tracks instead of some other kind
 25 of tracks and so we went over those things at the time

1 that he hired me. So when he says I told him there was
 2 nothing I could do about it, that's not true.
 3 Q Okay. So you went over potentially filing a motion to
 4 suppress?
 5 A Yeah.
 6 Q Did you ever file a motion to suppress?
 7 A No, after I looked at it -- after I got the police
 8 reports and stuff and got, you know, looking at it, then
 9 it seemed to me that that would have not been a prudent
 10 thing to do at the time.
 11 MR. HAEG: Would have been a.....
 12 A Would not have been.
 13 MR. HAEG: Okay.
 14 A In other words, I -- my strategy by the time I'd
 15 researched it further was that, in all likelihood, he was
 16 not going to win a motion to suppress.
 17 Q He was not going to. Okay. And did you -- you conveyed
 18 that to Mr. Haeg?
 19 A Yes.
 20 Q And what was his response to that?
 21 A Well, I -- I don't remember exactly word for word what
 22 his response was but he agreed with me convincingly (ph)
 23 and he didn't protest it, didn't say no, I want you to do
 24 this right now and get what you can, et cetera.
 25 Q Okay.

1 A The other thing in here says that Haeg had no right to
 2 prompt, procedure hearing. Well, that isn't true.
 3 Before David hired me, after me hired Mr. Cole, he
 4 contacted me in the spring of 2004 and I was on my way
 5 outside the country to Costa Rica but I told David then,
 6 I said David, I believe that you have a right because you
 7 used that claim as your livelihood to have a seizure
 8 hearing and you might have to post the bond but, you
 9 know, it'd be denial of due process for them to -- to
 10 take your plane, like if they took a fisherman's boat, a
 11 commercial fisherman's boat, without a hearing but I
 12 don't know what happened with that issue but that -- I
 13 told him that even before I hired him, that he had a
 14 right to procedure hearing.
 15 Q Would that have been the -- you told him that and that
 16 was before he hired you, that was be.....
 17 A That was back in the spring of 2004.
 18 Q That would have been before he hired.....
 19 A Mr. Cole. I don't know whether he already hired Brent by
 20 that time or not, all I know he called me, kind of gave
 21 me a brief summary what happened, telling me they seized
 22 his plane. I said well, you know, it seems like you fit
 23 in the same category as a commercial fisherman does and
 24 you should have a hearing before they can actually keep
 25 the plane.

Page 15

1 Q And when were you retained?
 2 A I wasn't retained until December of 2004.
 3 Q And when you were retained -- or following your being
 4 retained, did you file a motion to bond out and take the
 5 plane?
 6 A Later on, I did file a motion to try to bond the plane.
 7 Q And do you recall when you did that?
 8 A Oh, I can't recall exactly when that happened but I did
 9 file about -- I did file a motion for an ex parte (ph).
 10 I don't recall the date.
 11 Q Does -- there's a copy of a motion for bonding out Mr.
 12 Haeg's airplane. Does that appear to be.....
 13 A Yeah, that's -- that's the.....
 14 Qa true and accurate copy?
 15 A So that had been back in July of 2005.
 16 Q Okay. So it -- it's your understanding of the law you're
 17 entitled to a -- more or less, an immediate hearing
 18 to.....
 19 A Depending on what the asset is. I mean, you know, there
 20 are some cases concerning boats. The commercial
 21 fishermen use their boats for a livelihood and,
 22 therefore, they have a special property interest in
 23 it.....
 24 Q Right.
 25 Aand Dave's allegations and claims were that he used

Page 16

1 that plane as part of his livelihood like a fisherman
 2 would use a boat and so I thought well, did you
 3 (indiscernible) as well as the class of the commercial
 4 fisherman.
 5 Q And did you -- you obviously -- you filed an application
 6 to post a bond for the seized property.
 7 A Yeah, but that was long after the fact though. I mean,
 8 it was -- I mean, by 2005.
 9 Q Sure.
 10 A There was.....
 11 Q Well, if you were retained in December of '04, did you
 12 and Mr. Haeg discuss this matter between December of '04
 13 and July of '05?
 14 A We discussed it sometime between those two dates but I
 15 can't tell you now when it was.
 16 Q It -- but, I mean, you -- was there a strategy reason?
 17 Why did you wait until July to ultimately file the
 18 motion? And that was just prior to trial, correct?
 19 A I don't remember what date the trial was then either but
 20 we were trying to get the plane in a position where the
 21 state couldn't just automatically keep it and we were
 22 also negotiating with Scott Leaders on a new plea deal
 23 too, I think, that's before the state during this period
 24 of time.
 25 Q And are you aware there's case law that indicates if a

Page 17

1 bond is successfully posted for an item, the state would
 2 have to forfeit the bond, not the.....
 3 A Right.
 4 Q So is that the strategy here was to get a bond in place?
 5 A Right, in place of the airplane.
 6 Q And then if the state were successful in forfeiting the
 7 airplane, they'd have to take the bond.
 8 A Right.
 9 Q Mr. Haeg would get to keep his plane?
 10 A Right.
 11 Q And your plea negotiation that you were working on with
 12 Mr. Leaders involved Haeg forfeiting his airplane but
 13 having the option to buy the airplane back, is that
 14 correct?
 15 A Exactly. Yes.
 16 Q So you were taking two different routes to come to the
 17 same end which was.....
 18 A Right. So he could keep his plane.
 19 Q Okay. And in your discussions with Mr. Haeg, was that
 20 the bottom line was.....
 21 A To try to get him to keep the plane.
 22 Q Okay. Was there anything else about paragraph W?
 23 A Yeah, in number six, he says -- well, number five, he
 24 says he had no right to bond the property out which I
 25 never told him that he didn't have a right to do that.

Page 18

1 Number six, it says there was no defense that the State
 2 of Alaska told and then do take or take wolves outside
 3 the WC area but claimed they were taken inside when he
 4 specifically asked what could be done. We needed a
 5 witness to corroborate.....
 6 Q Okay.
 7 Aand he didn't have one. He didn't have a witness
 8 who was willing to say that he was told that if he took
 9 wolves outside the area where he could take them to tell
 10 people that he took them himself.
 11 Q Did you attempt to contact a witness that would say that?
 12 A I attempted to -- he -- he told me that this came from
 13 Ted Spraker.....
 14 Q Okay.
 15 Aand so I talked to Ted Spraker about it. He didn't
 16 confirm or corroborate that.
 17 Q Did you subpoena Mr. Spraker for trial?
 18 A Yes, I did.
 19 Q And did you inquire about this at trial?
 20 A No, I didn't because there was no corroboration of it.
 21 Q And was it your understanding that if you had asked him
 22 that question, he was going to deny it?
 23 A He was going to deny it.
 24 Q And so the strategy decision there was why put something
 25 out there that he's going to deny?

1 A Yeah, why put something in dispute like that.
 2 Q Is part of that because it seemed like it would almost be
 3 admitting to the jury that he, in fact, took them
 4 outside?
 5 A Well, it would be -- it would be a double-edged sword for
 6 -- for David. One, true, it might create some suspicion
 7 in the mind of a jury that Mr. Spra -- that -- but at the
 8 same time, it was clear that he had taken wolves outside
 9 the area.
 10 Q Okay.
 11 A So that could have been a double-edged sword.
 12 Q Okay. So the strategy -- the -- ultimately, the strategy
 13 decision that you came to was not to ask that
 14 question.....
 15 A No.
 16 Qfor fear of the -- it being worse than the benefit?
 17 A Well, I did -- didn't think it was a good strategy to
 18 make that allegation without some corroborating proof.
 19 Q Okay. Did Mr. Haeg agree with you on this matter?
 20 A On what matter?
 21 Q On not asking that question of Mr. Spraker.
 22 A I didn't tell Mr. Sprague [sic] I wasn't going to ask him
 23 that question. I just wanted to find out -- do my
 24 investigation whether or not he had said it.
 25 Q Okay.

1 A I didn't reveal to him what my strategy might be on that.
 2 Q And you said through your investigation. What.....
 3 A Well, I talked to Mr. Spraker.....
 4 Q Okay.
 5 Aprior to the investigation. I interviewed them,
 6 talked to them prior to.....
 7 Q And I know you said that. Was there anything else that
 8 you did as part of your investigation with respect -- I
 9 mean, did you have a paralegal or an investigator or
 10 anybody else or was it yourself?
 11 A I talked to Sprague. I talked to a couple other people
 12 too whom I called as witnesses at the trial and Mr.
 13 Malatesta was my investigator. He may have talked to
 14 some people too. I'm not sure how many people he talked
 15 to, it's been so long ago, but it was primarily just he
 16 and I -- doing it, interviewing and stuff.
 17 Q Okay. All right. Thank you. Anything else in
 18 paragraph W?
 19 A Yeah, December, I never told him that he couldn't tell
 20 anybody.....
 21 Q What number are we looking at?
 22 A Number seven, that he could tell no one that the State of
 23 Alaska told him, induced him to take wolves outside the
 24 area but claimed they were taken inside. I never -- I
 25 never told him that he couldn't tell no one.

1 Q Would there be a reason why he couldn't tell anybody?
 2 A I couldn't think of any reason why he couldn't tell
 3 anybody. I did tell him that Sprague didn't back him up.
 4 I think -- believe I told him that but I never told him
 5 he couldn't tell nobody.
 6 Q So that was number seven. Anything about.....
 7 A Or Spraker, I guess his name is, didn't. And then number
 8 eight, he says I told him he could do nothing for all he
 9 had done for the plea agreement when asked what he --
 10 specifically could be done. I'm not sure what he means
 11 by that but -- you know, I'm not sure what he means by
 12 all that he had done for the plea agreement.
 13 Q There's multiple allegations in the PCR that Mr. Haeg
 14 gave up a year of guiding as part of the anticipated plea
 15 agreement. It may be that that's what he's referencing
 16 to. Did he ever indicate that to you that he had given
 17 up a year of guiding?
 18 A Yeah, he indicated that he had given up -- he said --
 19 according to him, in exchange for him giving a statement
 20 to the prosecution and not guiding for a period of time
 21 and that that would be part of this agreement that he had
 22 with -- or he thought he had with the State of Alaska but
 23 I don't believe I ever told him that there was nothing
 24 that he could do for all he had done for the plea
 25 agreement.

1 Q Okay.
 2 A I never said that to him.
 3 Q Let me ask you this, there is -- there are -- from my
 4 review of the record, here -- here's my understanding and
 5 I'd like to see if you have any knowledge from either Mr.
 6 Haeg or from speaking with Mr. Leaders about when you
 7 were trying to clarify the plea agreement. My
 8 understanding is there was, essentially, two deals being
 9 worked out. One, that there would be a one-year
 10 revocation of his license and a forfeiture of his
 11 airplane but Mr. Haeg did not want to forfeit his
 12 airplane. He wanted to go open on the issue of the
 13 airplane and so that if he went open on the issue of the
 14 airplane, he was going open to a different charge which
 15 would require a mandatory three-year revocation of his
 16 license at a minimum. Were you ever informed that there
 17 was kind of this dual option?
 18 A Well, what Scott told -- yeah, what Scott told me was
 19 that -- I mean, the way the plea agreement was presented
 20 to me, there was, according to Brent, an open sentencing
 21 with regard to the plane but that Scott told him just
 22 before they were going to change his plea that if that
 23 was the case, then he'd have to plead to a different
 24 charge which would require more revocation of his
 25 license.

Page 23

1 Q And so.....

2 A And Scott was saying I never really agreed to the open
3 sentencing on the airplane.

4 Q So Scott's position was the offer was one-year revocation
5 which it sounds like Mr. Haeg may or may not have already
6 done but mandatory forfeiture of the plane.....

7 A Right.

8 Qbut if -- that was Scott's offer.

9 A That's what Scott said his offer was. Brent said it was
10 different. I'm saying, you know, it was disputed.

11 Q Okay. When you spoke with Brent, was there -- did Brent
12 indicate whether or not he had recommended Mr. Haeg go
13 open with respect to sentencing or.....

14 A Brent thought, according to what he told me, that the
15 question of the airplane was going to be tried at open
16 sentencing. Scott didn't see it that way, apparently.

17 Q So that was number eight. Anything else there in
18 paragraph W?

19 A The State of Alaska did not have to honor the plea
20 agreement for the charges they had agreed to and Haeg
21 specifically if it could be done. I didn't tell him
22 that. Like I told you, we came to a fork in the road
23 because we were pursuing for awhile the idea of having
24 the state live up to the plea agreement and then, you
25 know, the dispute arose as to whether there was or wasn't

Page 24

1 one and exactly what was the deal, et cetera, but the
2 question put to David was you can either pursue this as
3 the plea agreement enforcement or go to trial and he
4 chose to go to trial. So I never told him that there was
5 nothing that could be done about this plea agreement.

6 Q And Mr. Haeg understood that if he chose to go to trial,
7 he was waiving the issue of forcing the state to honor
8 the plea agreement?

9 A Well, I don't know if he thought or understood or
10 whatever but my point was that the balance of the
11 resources that we had to defend him in this case are
12 going to be used at trial and strategies of trial as
13 opposed to strategies of enforcing the plea agreement.

14 Q Okay.

15 A That he understood.

16 Q That was number nine. Anything else through the rest of
17 W?

18 A He says in number 10 that the -- that I told him the
19 State of Alaska will use his statement against him but I
20 told him no that, I said David, that statement cannot be
21 used against you because it was part of a plea agreement.
22 In fact, I argued that at trial and, in fact, Scott
23 Leader didn't use his -- that statement in his case in
24 chief against Mr. Haeg. It was only after Mr. Haeg chose
25 to testify at trial that he used the statement but before

Page 25

1 that, Scott never used the statement even in his case in
2 chief. He did use it in the information which I thought
3 was improper and brought that out in the motion but I
4 never told him that the -- he could use the statement
5 against him and there was nothing he could do about it.

6 Q And, to the best of your knowledge, throughout the
7 state's case in chief, it was never utilized?

8 A Not in its case in chief.

9 Q And can you think of anything improper about the State of
10 Alaska using a failed police statement for cross
11 examination purposes?

12 A Mean once he took the stand?

13 Q Correct.

14 A Well, once he took the stand, then his credibility's an
15 issue in any statement that he's given before to law
16 enforcement or prosecution. It's open for (simultaneous
17 speaking).

18 Q And so you didn't object then to Scott utilizing.....

19 A Not after he took the stand.

20 Q Okay. Let's talk about the issue of taking the stand.
21 Mr. Haeg was -- you advised Mr. Haeg of the risk of
22 taking the stand?

23 A Yes, I did.

24 Q Did you recommend that he take the stand?

25 A No, I did not. He wanted to testify. He wanted to

Page 26

1 testify.

2 Q Okay. Did you advise him of this prior to trial?

3 A Well, yeah, I told him -- when I -- when I told him about
4 the strategy concerning the lack of probable cause for
5 different -- the information, I talked to him about then
6 the fact that, you know, we may not even need to put on
7 any evidence because this is, you know, a legal thing. I
8 did tell him.

9 Q Okay. And then once you were at trial, he has a choice
10 prior to taking the stand whether he wants to or not. He
11 was advised of his choice?

12 A Yes, and the -- the -- Judge Murphy talked to him about
13 it as well.

14 Q And then and you attempt -- it sounds like you attempted
15 to dissuade him from testifying?

16 A I didn't try to dissuade him from testifying. He wanted
17 to testify so I said okay, if you want to testify, you'll
18 testify.

19 Q And, in fact, it's true that the right of testifying
20 belongs solely to the defendant, correct?

21 A Solely to David, exactly.

22 Q Okay.

23 A And I believe -- you know, and my memory -- it's been so
24 long ago, seven or eight years ago, but I believe that
25 Judge Murphy before he testified gave him the judicial

1 warnings about, you know, making sure that it was his
 2 decision that he wanted to testify.
 3 Q Okay. And would you agree that when he testified, he
 4 acknowledged in his testimony to having taken wolves
 5 outside of the predator control area?
 6 A He did.
 7 Q And that was the basis of the charges, correct?
 8 A Sure. Well, some -- some of the charges, not all of them
 9 and so.....
 10 Q But then some of the charges were unsworn falsification
 11 as well.
 12 A Right.
 13 Q And the sealing certificates claimed they were taken
 14 inside of the area.
 15 A Right.
 16 Q So that also would have spoken to the unsworn
 17 falsification charges as well, correct?
 18 A Right.
 19 Q And then some of the charges involved trapping after
 20 season, having traps out still actively working after the
 21 trapping season closed, is that right?
 22 A Yeah, there was some trapping season charters. I can't
 23 remember exactly what they were, the specifics of -- of
 24 the charges but they're.....
 25 Q Okay.

1 A Correct. The only difference between Zeller and -- and
 2 David was that David had more to lose than Zeller did.
 3 In other words, Zeller had a plea agreement but his plea
 4 agreement wasn't going to result in the same kind of
 5 consequences that Dave would face if he got convicted.
 6 Q Okay. That was number 10. Anything in number 11?
 7 A I don't remember ever telling him that he would lose at
 8 trial because Cole had given the -- the State of Alaska
 9 everything. If I -- I know Cole didn't give them
 10 anything. It was David and Mr. Zeller who gave the
 11 state (indiscernible).
 12 Q So let me ask you about that. If by this -- by number
 13 11, Haeg is referring to his statement to the State of
 14 Alaska -- we'll make that assumption. If he's referring
 15 to his statement to Mr. Leaders and Trooper Givens, would
 16 it not, in fact, be true that -- you indicated earlier
 17 Scott Leaders could not use any of that in his case in
 18 chief against Mr. Haeg. So if Mr. Haeg chose not to
 19 testify, his statements made couldn't be used to impeach
 20 him, is that correct?
 21 A Correct.
 22 Q Now, if Mr. Fitzgerald and Tony Zellers chose to talk to
 23 Scott Leaders to make a plea agreement with Scott Leaders
 24 and then to testify, there's nothing that Mr. Cole could
 25 do about that, wouldn't that be fair to say?

1 A I know he got found guilty of everything except two and I
 2 -- and two of them had to do with trapping.
 3 Q Okay. And you were aware that Mr. Zellers also made a
 4 statement to the State of Alaska?
 5 A He also made a statement and he testified at trial.
 6 Q And anything inconsistent about the statement made by Mr.
 7 Zellers that you're aware of during his initial statement
 8 and his trial testimony?
 9 A No.
 10 Q And did -- was his testimony both at the debriefing and
 11 at trial consistent with what Mr. Haeg said, more or
 12 less?
 13 A Repeat that?
 14 Q Mr. Zellers testified about the events, the touting (ph).
 15 A Yeah.
 16 Q Was there anything that was inconsistent about his
 17 version of the events and Mr. Haeg's when Mr. Haeg
 18 testified?
 19 A Not that I recall.
 20 Q No? And, in fact, Mr. Zellers had made a plea agreement
 21 with the State of Alaska, correct?
 22 A Correct.
 23 Q And, according to that agreement, he had to testify
 24 truthfully at the trial regardless of who called him for
 25 -- as a witness?

1 A Right. I mean, that would be up to Mr. Zeller.
 2 Q Okay. So that.....
 3 A As long as they weren't going to use anything that David
 4 said during his plea negotiation.
 5 Q And, to the best of your knowledge, they did not?
 6 A Best of my knowledge, they did not and I protested.
 7 There's a claim in here that says I didn't protest
 8 against that but I certainly did because I wanted to make
 9 sure that he didn't use David's statement in his case in
 10 chief and he didn't.
 11 Q Okay. So that's 11. Number 12, the information with the
 12 affidavit?
 13 A Right, so -- yeah, I never told him that there was no
 14 doubt that he would win on appeal. I have never known --
 15 never ever told a client that anything is guaranteed and
 16 I never told David that it was guaranteed he would win on
 17 appeal, like no doubt he would win on appeal. That's
 18 just not true.
 19 Q You still believe that he had a valid argument for the
 20 subject matter jurisdiction?
 21 A I do. Yes, I do but he chose to abandon it later so that
 22 was his choice but I definitely never told him that no
 23 doubt there -- that then would no doubt win on appeal.
 24 Q Okay. It appears number 13 kind of comes back to what we
 25 talked -- have been talking about, that Mr. Haeg

Page 31

1 shouldn't tell anyone about the plea agreement or what he
 2 had done because that would be admitting to subject
 3 matter jurisdiction before the court?
 4 A No, I don't believe I ever told him that either. Should
 5 tell no one about the plea agreement.
 6 Q Oop, hold on one.....
 7 A No, I didn't say shouldn't tell anybody about the plea
 8 agreement. How -- specifically talked to him about
 9 enforcing the plea agreement.
 10 Q Hold on one second. Give me just a second.
 11 (Tape changed)
 12 MR. PETERSON: Okay. We're back on the record in Haeg v.
 13 State, 3KN-10-1295 CI. This is Side B of Tape One. We just
 14 had to turn the tape over and Mr. Robinson was answering about
 15 number 13 and paragraph W and, I'm sorry, Mr. Robinson, would
 16 you just -- would you repeat what you said?
 17 A Yeah, this -- this makes it sound like I told him he
 18 should say nothing about the plea agreement which isn't
 19 true because we had an ex -- we had extensive discussions
 20 about whether or not to pursue enforcement of it so I
 21 didn't tell him he shouldn't tell anybody about the plea
 22 agreement.
 23 Q Okay. Thank you. It looks like you've dog-eared page
 24 eight. Can you tell me what paragraph on page eight or
 25 paragraphs caused you to dog-ear that page?

Page 32

1 A Yeah, paragraph Y says on May 6th, 2005, Robinson replied
 2 to SOA's opposition to my motion and never brought up
 3 Haeg's statement, used claim prosecutor Leaders was
 4 reciting the -- was violating the rule. Then he says he
 5 didn't protest Haeg's statement, had been compelled by a
 6 grant of immunity. I don't re -- I have never heard that
 7 David Haeg was granted any immunity until I read this
 8 application for post-conviction relief. My understanding
 9 was that he was never granted any immunity from
 10 prosecution. I didn't -- I mean, if you'd been granted
 11 immunity from prosecution, we wouldn't be here.
 12 Q Okay. So the grant -- or the agreement was that his
 13 statements wouldn't be used against him under the
 14 evidentiary rules.....
 15 A Under the evidentiary rules.....
 16 Qbut under the evidence.....
 17 Abut I have no understanding that he'd been granted
 18 immunity. That's a whole different issue.
 19 Q Okay. So he never told you -- he never made the claim to
 20 you previously that he'd been granted immunity?
 21 A No.
 22 Q Okay:
 23 A That he'd -- that he'd been granted immunity, when I --
 24 when I see grant of -- of immunity, I think of being
 25 granted immunity against prosecution.

Page 33

1 Q Right. Okay. And.....
 2 A And, obviously, that couldn't have been the case. If he
 3 agreed to change his plea and take a deal and be found
 4 guilty, why would he do that if he had immunity?
 5 Q And, again, to reiterate, if there was any grant, it
 6 would be that his statements wouldn't be used against him
 7 in his case in -- in the state's case in chief?
 8 A Well, you know, I asked Brent whether or not he and Scott
 9 talked about that when they took the statement and Brent
 10 wasn't very clear as to whether or not he and Scott
 11 actually talked about it but the evidence rule is clear
 12 enough that any statements that you make during plea
 13 negotiations cannot be used against you.
 14 Q Okay.
 15 A So -- unless you, you know, take the stand and then
 16 different story at that point but as far as up to that
 17 point, you know, they couldn't use it to convict him
 18 because it was part of a plea negotiation but this
 19 business about immunity, I -- I don't believe that David
 20 ever had a grant of immunity.
 21 Q Okay. So you don't believe he ever had a grant of
 22 immunity?
 23 A Not from prosecution, no.
 24 Q Okay. And that's evidenced by the fact that there was a
 25 plea negotiation following his statement to Scott Leaders

Page 34

1 and Givens that he was going to plea to certain
 2 charges.....
 3 A Right.
 4 Qand that was being negotiated actively by Brent
 5 Cole?
 6 A And would be sentenced to certain things.
 7 Q Okay.
 8 A That didn't sound like immunity to me.
 9 Q Correct. Okay. Anything else in paragraph Y?
 10 A Well, he says I didn't protest the enumerable other ways
 11 Haeg's immuni -- immunized statement was being used
 12 against him. I'm not sure what other ways we talked
 13 about but in -- in a reply to -- either it was in the
 14 reply or in the -- the (indiscernible) motion -- I can't
 15 remember now -- I did mention to Judge Murphy that part
 16 of the basis of information, this information that he'd
 17 been given during plea negotiations, 'should not have been
 18 used for the information.
 19 Q Now, you said Scott.....
 20 A So I don't know how he -- how David thought I did not
 21 protest at least that but it -- the other enumerable
 22 ways, I'm not sure what he means.
 23 Q And you said Scott had done an amended information to
 24 correct your subject matter jurisdiction.....
 25 A That was after the motion.

Page 35

1 Q After? All right. Okay.
 2 A After Judge Murphy denied the motion, then she allowed
 3 him to amend and what not.
 4 Q Okay. And did he take out the iss -- the portion of the
 5 information then?
 6 A No, he didn't.
 7 Q He didn't?
 8 A In fact, he left that in but he did do an oath.
 9 Q Okay. Now, he also claims in Y that you didn't protest
 10 the use of Zellers' testimony. Did you believe you had
 11 any grounds to protest Zellers testifying?
 12 A No. No, I didn't have any reason to take that -- to
 13 protest his testimony.
 14 Q Anything else in paragraph Y?
 15 A Well, he says although this reply and affidavit was given
 16 to both the court and to prosecutor Leader, nothing was
 17 done about the irrefutable violation of his
 18 constitutional right against self-incrimination law. If
 19 nothing wasn't done about it, it wasn't needed to do
 20 anything about it. I tried to protect him.
 21 Q Okay. Anything in Z, AA or BB? Anything on the rest of
 22 that page?
 23 A Well, he says that -- in Z, he says even though the State
 24 of Alaska's argument was to great economic benefit, Haeg
 25 received (indiscernible) rules where he guides, Robinson

Page 36

1 never told his jury or judge that this argument was the
 2 fruit of the State of Alaska's falsified evidence
 3 locations and that not a single wolf was killed where
 4 Haeg guides. Well, I'm not sure -- quite understand what
 5 he means by that. I'm -- I'm not sure what he means by
 6 that statement because.....
 7 Q Well, if the state's theory of the case was that part of
 8 the reason why Mr. Haeg was killing wolves.....
 9 A Was to promote his other business?
 10 Q Was to promote his business or to increase the population
 11 of moose which would benefit, indirectly or directly, his
 12 business, would there be a reason to challenge that?
 13 A Well, you know, that came up at trial when David was on
 14 the stand. Mr. Leaders asked him about some
 15 advertisement that he'd done concerning his guiding
 16 business because in the state's case -- case in chief,
 17 Trooper Givens had stated that David was trying to use
 18 the increase in moose population to promote his business.
 19 So when Dave was questioned about that on the stand, he
 20 admitted to some degree that, you know, he was into the
 21 wolf thing and worked to increase his business, right.
 22 That came from Mr. Haeg, not from me.
 23 Q Okay. Anything else?
 24 A Well, that's true I never told the judge or jury that he
 25 was induced to take rules outside (indiscernible) but

Page 37

1 claimed he would take it inside the area. That's true
 2 because I didn't have any corroboration on that.
 3 Q So you investigated that claim but since you didn't have
 4 any corroboration, you didn't raise it?
 5 A Right.
 6 Q Anything else?
 7 A I'm not sure I understand this last sentence. He says
 8 without ever knowing any of Judge Murphy's rule -- or of
 9 this -- Judge Murphy ruled that Haeg should be charged
 10 with hunting and guiding violations instead of WCT
 11 violations and granted the state's protection order that
 12 Haeg be prevented from arguing at trial he could not be
 13 convicted of hunting violations because the -- because
 14 the WCT law specifically prevented these charges. I'm
 15 not sure what he means by that.
 16 Q You recall that Mr. Haeg was charged under Title 8 which
 17 is a guiding offense for.....
 18 A For a hunting offense.
 19 Qa hunting offense.
 20 A Right.
 21 Q And he was claiming that he couldn't be charged for a
 22 hunting offense because he was involved in the wolf
 23 control program.....
 24 A Correct
 25 Qwhich was a trapping program.

Page 38

1 A Correct, and we argued that to Judge Murphy.
 2 Q And I was going to say do you recall raising that issue
 3 with Judge Murphy?
 4 A Yes, I do.
 5 Q And, in fact, you -- do you recall raising that issue
 6 prior to trial.....
 7 A I think.....
 8 Qlike prior to actually beginning the trial?
 9 A I think I might have raised it before trial but I know
 10 for sure we raised it at trial.
 11 Q And I'm showing you page 23 of the transcript from the
 12 trial. If you wanted to scan 23 and 24.....
 13 A Yeah, I -- now, what I did is I analogized this situation
 14 with David with that of a commercial fisherman fishing in
 15 closed waters. In other words, he had a permit to trap.
 16 There's no question about that. The question was whether
 17 he trapped in an area where the permit allowed him to
 18 trap or not which would, in my estimation, be whether he
 19 was trapping in a closed area because this permit did not
 20 allow him to trap there and so my analogy was well, if
 21 this had been a commercial fishing case and Mr. Haeg had
 22 been fishing in closed waters, then he would be charged
 23 with that violation, not some other violation and so I
 24 was trying to convince Judge Murphy that by him fishing
 25 in a closed area, that that's what he should have been

Page 39

1 charged with, not with, you know, what he was actually
 2 charged with.
 3 Q Okay. And so you raise this issue and, as a matter of
 4 law, you were denied by Judge Murphy.
 5 A Right. Yeah.
 6 Q Anything else on page eight?
 7 A Well, apparently, I did question Givens about the
 8 misidentification of the area in which they did these --
 9 some of these things were taken -- some of these wolves
 10 were taken and I questioned him about that at trial, the
 11 difference between GME Unit 19-C and 19-D.
 12 Q We are -- you're aware that Mr. Haeg -- well, let me ask
 13 you were you aware that Mr. Haeg alleged that Trooper
 14 Givens falsified the search warrant affidavit?
 15 A Yeah, he's -- he claimed that he searched it, that he --
 16 that he did that.
 17 Q Okay. And you were aware of this contention before
 18 trial?
 19 A Yeah.
 20 Q Okay. Do you recall cross examining Trooper Givens?
 21 A About that issue?
 22 Q About that issue.
 23 A I remember cross examining him about the difference
 24 between GME 19-C and GME 19-D.
 25 Q Okay. I'm showing you a copy of the trial transcript.

Page 40

1 This is page 478 and 479. I've highlighted what I think
 2 are the relevant portions but if you'd look at those
 3 pages? I didn't highlight your copy though.
 4 A Yeah, you said that they were always in 19-D.
 5 Q Okay. So he clarified.....
 6 A Right.
 7 Qthe issue for you there.
 8 A Right.
 9 Q Did you -- why didn't you raise that issue further? Is
 10 there a reason you didn't go after that further, kind of
 11 dive into the affidavit or the search warrant?
 12 A The problem was -- that -- that I saw was that there was
 13 this map that, apparently, David and Zeller pointed out
 14 on at the time that they talked to Scott Leaders and the
 15 trooper way back when. I didn't go out in an airplane
 16 and try to figure out where these spots were so I didn't
 17 have any other thing to go on other than what was on the
 18 map and what the trooper said and what David said and
 19 so.....
 20 Q And.....
 21 Ahe clarified that and said no, he said they were all
 22 within D. I left it at that.
 23 Q And you had no reason at that point to believe that he
 24 was lying?
 25 A Well, I just had no reason to go any further with the

Page 41

1 questioning.
 2 Q Were -- was his response consistent with the map?
 3 A As far as I could tell they were.
 4 Q Okay. And was there ever a discussion between you and
 5 Mr. Haeg about filing a motion on this issue pretrial?
 6 A No.
 7 Q And would that.....
 8 A Well, I mean, other than sitting down and talk to him
 9 about at first I thought there may have been some
 10 problems with some other parts of the boring (ph) but not
 11 this particular D -- 19-D.
 12 Q Okay.
 13 A I mean 19-D, 19-C issue, not that I recall.
 14 Q And it -- let's look at it this way, if a trooper --
 15 we've got 19, there's different subsections. If a
 16 trooper had misstated which subsection the wolves were
 17 killed in, you think that alone would be sufficient
 18 to.....
 19 A Probably not unless you could show that it was reckless,
 20 or intentional.
 21 Q Okay. And so if there's a misstatement that's not
 22 reckless or intentional and, from what you saw, did you
 23 think it was intentional or reckless on the trooper's
 24 part?
 25 A Well, I -- you know, I couldn't say -- I couldn't say

Page 42

1 that it was reckless or intentional.
 2 Q Okay.
 3 A That was the problem.
 4 Q And that only spoke to a portion of the wolves, is that
 5 correct?
 6 A Yeah, they -- there were nine wolves involved and there
 7 was five others that were clearly taken where they said
 8 they were taken so.....
 9 Q Okay. So even if the misstatement was with respect to
 10 four of them, there was five that were still clearly.....
 11 A Exactly.
 12 Q Okay. So that was paragraph -- was that paragraph Z?
 13 A No, that was par -- wait a minute, we're on page nine
 14 now? Is that right? Page nine?
 15 Q That was BB that kind of crossed over?
 16 A Yeah.
 17 Q Okay.
 18 A Mr. Haeg is right, I never demanded a mistrial for
 19 Givens' proven perjury but whether it was proven or not I
 20 don't know. It was claimed that it was perjury but
 21 whether it was a proven fact of perjury is.....
 22 Q Well, let me ask you this, if you believed that there was
 23 proven perjury, would you have asked for a mistrial?
 24 A Yeah, under the rules, I would have asked, you know, for
 25 some kind of sanction and maybe a mistrial would have

1 been included but.....
 2 Q But that would require you.....
 3 Abut that would be -- would have required some proof,
 4 real proof.
 5 Q Now, and are you familiar with the laws of perjury?
 6 A Yeah, you have to know your line. In other words,
 7 basically, the way perjury works in Alaska, you have to
 8 know your line. In other words, you have to say
 9 something you know you don't believe when you say it.
 10 Q And if you're given an opportunity to correct that, does
 11 that rectify the situation?
 12 A Yeah, and -- and especially if you correct it within the
 13 same proceedings.
 14 Q So when Trooper Givens.....
 15 MR. HAEG: It changes.
 16 MR. PETERSON: Okay. We're going to pause for a second
 17 while we change the audio -- or the.....
 18 MR. HAEG: Video.
 19 MR. PETERSON: Video.
 20 UNKNOWN MALE: Want some help?
 21 (Tape changed)
 22 MR. PETERSON: Okay. We are back on the record in case
 23 3KN-10-1295 CI. Just took a brief break.
 24 Q Mr. Robinson, I was asking you about Trooper Givens'
 25 statement and -- with respect to the allegation of

1 perjury. Would it be your understanding if he corrected
 2 any potential misstatement by clarifying it there at
 3 trial during your cross examination that he would have
 4 clarified that issue, thus.....
 5 A Well, it wouldn't be perjury under Alaska law because it
 6 was straightened out.
 7 Q So it wouldn't qualify as perjury?
 8 A No.
 9 Q You could -- if it was -- if there was an advantage to
 10 it, you could have pointed out the conflicting statement?
 11 A Sure.
 12 Q But the conflicting statement would have been it was
 13 killed outside the area or outside the area in a -- not
 14 the location was different, it was just the.....
 15 A Right.
 16 Qclassification of the location, is that correct?
 17 A Right.
 18 Q Anything.....
 19 A And the other thing said in here was that I never
 20 told.....
 21 Q Where are you at, sir? I'm sorry.
 22 A I'm still on CC.
 23 Q Okay.
 24 A Never told Haeg's jury or judge that the State of Alaska
 25 told him to do take -- to take -- well, I never -- it's

1 true I didn't do that but there was no corroboration -- I
 2 mean, I didn't bring up -- I didn't have any evidence to
 3 back up what they said and this business that the State
 4 of Alaska's entire case was based upon material false
 5 evidence, I mean, he got on the stand and admitted just
 6 to -- to a violation so it couldn't all be materially
 7 false evidence.
 8 Q Okay. So he acknowledged that nine wolves were taken
 9 outside of 19-D east which was a predator control
 10 program, correct?
 11 A He admitted to taking wolves outside the per -- outside
 12 the area, yeah.
 13 Q Outside of the area.
 14 A Yeah.
 15 Q Just.....
 16 A So the whole thing couldn't be based upon -- the entire
 17 case could not be based upon materially false evidence.
 18 Q Okay. Anything about DD?
 19 A The only time that David's statement was used against him
 20 was after he testified. It was not used in Scott
 21 Leader's case in chief.
 22 Q And, as we've previously discussed, that would not be a
 23 violation of the evidence rules because.....
 24 A No.
 25 Qit's authorized to use it to impeach him?

1 A Right, and he says afterwards, I told him that he should
 2 not have testified. Well, he probably shouldn't have and
 3 I may have told him that. I may have told him that.
 4 Q But, to clarify, prior to him testifying, did you advise
 5 him to testify?
 6 A No, I didn't advise him to or not to. He wanted to. He
 7 wanted to tell his story. He wanted to get up and tell
 8 his story that he was doing this to the benefit of
 9 everybody because the rules would have decimated the
 10 moose population.
 11 Q Okay. Did you advise him of the risks of testifying?
 12 A I'm not sure wheth -- whether I told him about the risk
 13 or no risk issue.
 14 Q Okay. You knew Mr. Haeg pretty well by this time?
 15 A I've known David since he was a kid.
 16 MR. HAEG: A long time.
 17 Q Okay. And did you think he was pretty set on testifying?
 18 A He was absolutely determined to testify. He wanted to
 19 testify.
 20 Q Anything you could have done to change his mind you
 21 think?
 22 A I don't know. I can't say yes or no to that. All I know
 23 is that he wanted to testify and Judge Murphy explained
 24 to him about testifying and wanted to know whether it was
 25 his choice to testify and he said yes.

Page 47

1 Q Okay. Yeah, I might be mistaken. I thought maybe
2 earlier you had said you had advised him of the risks of
3 testifying.
4 A I may have. I'm just saying it's been so long ago, I
5 can't remember now, you know, whether we sat down and I
6 said David, you shouldn't say anything except that I did
7 tell him about the strategy of the probable cau -- lack
8 of probable cause on the information.
9 Q Okay. And so, by him testifying, he would kind of -- he
10 could implicate though?
11 A Well, that issue was off -- by the time that came up --
12 by the time he was going to testify, that issue had
13 already been decided by the judge.
14 Q Okay. Now, you have -- you've previously aided other
15 individuals in trial, correct?
16 A Yes.
17 Q Do you make a common practice of advising your clients
18 prior to them testifying?
19 A Usually I do.
20 Q Okay. And if you normally do so, would it be fair to
21 assume you did so in this case?
22 A Yeah, I might have.
23 Q I mean, the trial was in 2005, correct....
24 A Yeah.
25 Qso it's six years ago.

Page 48

1 A Yeah, I don't -- I just -- yeah, I don't have any
2 specific memory. I've represented so many people between
3 the time I rep -- you know, I represented David until the
4 time I retired, I just -- I can't tell you exactly what I
5 said and exactly what happened.....
6 Q Okay.
7 Aother than I ti -- talked to him about this issue of
8 not putting on any evidence with regard to the case
9 because we were trying to get the thing thrown out for
10 lack of probable cause. I did talk to him about that.
11 Q And is that all for paragraph DD?
12 A Yeah.
13 Q Anything in paragraph EE?
14 A Well, that's just what David's opinion is. He....
15 Q With respect to the jurisdictional tactic?
16 A Yeah, that he -- yeah, he didn't think it was
17 (indiscernible). He abandoned it on his appeal.
18 Q Now, let me ask you, it -- following his conviction
19 though, do you recall getting a number of e-mails from
20 Mr. Haeg?
21 A After he was convicted?
22 Q Correct.
23 A I have.....
24 Q I'm looking here at a -- this is some of the discovery
25 you provided me today.

Page 49

1 A Yeah.
2 Q See if I can find the location. Here's an e-mail from
3 October 14th, 2005 to you from Mr. Haeg....
4 A Mm-hmm.
5 Qand wanted to remind you again what he thinks you
6 should include on the appeal.
7 A Mm-hmm.
8 Q He talks about due process, equal protection along with
9 our stated defense of lack of jurisdiction.
10 A Mm-hmm.
11 Q So this was following his conviction.
12 A Right.
13 Q It appears at this time, he still has some belief or
14 faith in the jurisdictional....
15 A I can't remember exactly when he decided that he didn't
16 think the jurisdictional issue was going to be beneficial
17 to him so I can't say whether it happened before or after
18 that e-mail.
19 Q Okay.
20 A I just don't remember.
21 Q All right. And, and so we're clear, the jurisdictional
22 issue is you're thinking it's because neither Leaders nor
23 the trooper swore to the affidavit because there was....
24 A There was no affidavit.
25 Q There was no affidavit; therefore, no probable cause to

Page 50

1 proceed?
2 A That's true. Yeah.
3 Q Okay.
4 A In the information, there was no affidavit.
5 Q Okay.
6 A So that was not a issue and, like I said, the -- you
7 know, there was also the equal protection issue, that if
8 he required that of other people charged with criminal
9 complaints, why wouldn't he require that of people who
10 have been charged with defamation....
11 Q Okay. And, to....
12 Aand the (indiscernible) people.
13 Q And, to be fair, this hadn't been previously raised or
14 litigated prior and state -- and the State of Alaska had
15 a....
16 A In Alaska. No, exactly, it was an open question.
17 There's no question about that but I thought it was worth
18 a try.
19 Q And with respect to the evidence in the case, it appeared
20 that there was pretty solid evidence that he had, in
21 fact, taken the nine wolves outside of the predator
22 control area?
23 A It was pretty clear that he'd taken wolves outside of the
24 -- outside of the area. Whether or not all nine of them
25 but there was no doubt that at least five of them were.

1 Q Okay. So, in your mind, no doubt at least five, he's
 2 probably going -- if he goes to trial, he's going to get
 3 convicted. This new -- potentially new open question of
 4 needing a sworn.....
 5 A Probable cause, right.
 6 Qprobable cause statement from either the officer or
 7 the troop -- or the prosecutor.....
 8 A Right.
 9 Qmay be his best tactic?
 10 A Right.
 11 Q Okay. Did you see any other potential defense that you
 12 could run?
 13 A Not really.
 14 Q Would you have -- absent the jurisdictional issue, would
 15 you have categorized this as a tough case for a defense?
 16 A Yeah, it would have been tough. It was no slam dunk for
 17 the defense, that's for sure.
 18 Q Okay. And just -- I don't know you personally, Mr.
 19 Robinson. So I'm clear, how long have you practiced law
 20 in the State of Alaska?
 21 A I got my license in Alaska in 1974.
 22 Q And were you previously licensed elsewhere prior to that?
 23 A No, only in Alaska.
 24 Q And in Alaska from '74 until present, have you always
 25 worked as a defense lawyer?

1 Q Okay.
 2 Awhen I was a law student.
 3 Q Does that completely cover paragraph EE?
 4 A Yeah.
 5 Q Okay. How about paragraph FF?
 6 A Okay.
 7 Q Any issues there?
 8 A He asked me to subpoena Cole to testify at the
 9 sentencing. I did. I'm not sure about Fitzgerald.
 10 Fitzgerald, I think, was the lawyer for Zeller. I didn't
 11 -- I didn't subpoena him but I did subpoena Zeller.
 12 Q Okay. Brent Cole ultimately did not show up at the
 13 sentencing, is that correct?
 14 A That's correct.
 15 Q Did you file a motion or seek to compel his presence?
 16 A No.
 17 Q And why not?
 18 A Well, at the time that he was being sentenced, we weren't
 19 trying to enforce the plea agreement. That was out the
 20 window. That was gone and now he's going to be subject
 21 to sentencing for his conviction at trial.
 22 Q Okay. So did you see any relevant basis for having Mr.
 23 Cole there?
 24 A Not really.
 25 Q Did you see any potential downfall to having Mr. Cole

1 A No.
 2 Q Okay. What did you -- just so I understand your history
 3 and your background?
 4 A Oh, I've done civil work, I've done prosecution.
 5 Q Okay.
 6 A In fact, I started out as a prosecutor and was a
 7 prosecutor for a couple years. I've done civil defense
 8 as well as plaintiff work and -- and I've done criminal
 9 defense work.
 10 Q And when did you primarily -- or in recent years, have
 11 you primarily been a defense attorney?
 12 A Well, what do you mean by recent years?
 13 Q In the last 10 years or so.
 14 A Well, in the last 10 years, I've done quite a bit of
 15 criminal work. It wasn't exclusive.
 16 Q Wasn't exclusive?
 17 A No.
 18 Q So you've got kind of a mixed practice?
 19 A Right.
 20 Q Okay. And did you ever work as a public defender as well
 21 or no?
 22 A I worked as a -- in the public defender agency when I was
 23 an intern. I worked as an intern in the public defender
 24 agency between 1972 and the time that I -- well, let's
 25 see, twice, in '72 and once again in '73.....

1 there?
 2 A No, I didn't see it as an up side or down side, it's just
 3 that with Dave's authorization, we abandoned the
 4 enforcement of the plea agreement that he had -- or he
 5 thought he had set up with Brent Cole and Scott Leaders.
 6 What was relevant now was what he was going to be
 7 sentenced for for being convicted at a trial.
 8 Q Okay. So there was no real -- in your mind, there was no
 9 relevant purpose for having Brent Cole there?
 10 A Right.
 11 Q Now, if Brent Cole had come and taken the stand and
 12 started talking about attorney.....
 13 A Oh, and there was another issue too. Brent wasn't real
 14 -- like I said, Brent was kind of backing away from the
 15 idea that there really was a plea agreement, you know,
 16 and Scott Leaders, obviously, was saying that there
 17 wasn't so he was going to do this match between, you
 18 know.....
 19 Q Okay. Well, let me ask you this, if Brent had come and
 20 testified and started to -- and had waived
 21 attorney/client privilege issues by testifying, would you
 22 agree that he would have been subject to examination by
 23 Scott Leaders?
 24 A Sure.
 25 Q And would you agree that if he was asked questions by

Page 55

1 Scott Leaders about comments that Mr. Haeg had made to
 2 him about his conduct, that those issues may have
 3 been.....
 4 A Which conduct?
 5 Q About his taking wolves outside of the area.
 6 A Okay.
 7 Q That that may have been an issue that would have been
 8 waived by his -- by Brent Cole's testimony?
 9 A Yeah. I mean, if he'd have asked Brent if Mr. Haeg
 10 admitted to him that he took these wolves illegally and
 11 that privileged attorney/client was gone, Brent would
 12 have to tell them what Dave told him.
 13 Q So you would agree that there was a potential risk of
 14 having Mr. Cole.....
 15 A Right.
 16 Qput on the stand?
 17 A Correct.
 18 Q Now, is there any merit to the allegation that you were
 19 not calling Mr. Cole to protect him or to benefit him?
 20 A No. No, I wasn't -- I didn't -- I wasn't trying to
 21 protect Brent Cole.
 22 Q Were you and Brent Cole ever working together against Mr.
 23 Haeg?
 24 A No. No.
 25 Q At any point in time did you ever -- was your allegiance

Page 56

1 towards your attorney/client relationship or allegiance
 2 towards Mr. Haeg impacted by a desire not to impact
 3 another lawyer or to hurt another lawyer's career?
 4 A Not at all. Nothing to do with that.
 5 Q Okay. Mr. Haeg had wanted Fitzgerald subpoenaed. Was
 6 there a reason that he was not subpoenaed?
 7 A I didn't see what Mr. Fitzgerald could even say about the
 8 plea agreement. I didn't even know whether he knew that
 9 there was disagreement with David and -- and Scott and
 10 the nuances involved in it, the disagreement about it. I
 11 didn't know whether he knew either.
 12 Q Is it fair to say that Mr. Fitzgerald's testimony or
 13 involvement would have been really to the debriefing
 14 issue and, potentially, the plea agreement issue?
 15 A Right.
 16 Q And you've previously said he's being sentenced for his
 17 conviction, not trying to force the plea agreement?
 18 A Right.
 19 Q Okay. Now, is it possible that if Mr. Haeg was wanting
 20 them there to say look, they originally had this
 21 agreement; therefore, in my sentencing, you should give
 22 me the same agreement? Any merit to that argument?
 23 A I mean, you know, an agreement is an agreement. You got
 24 to get both sides to agree to it and if Scott felt that
 25 he had gone through a trial with Mr. Haeg and he didn't

Page 57

1 want to go through that agreement again, he was perfectly
 2 right to feel that way.
 3 Q And to present whatever arguments he wants to the court?
 4 A Right.
 5 Q Okay. Did you ever at sentencing -- I know you argued
 6 for a lighter sentence than he ultimately received.
 7 A Yes, I did.
 8 Q You argued for a substantially lighter sentence, in fact.
 9 A Yes, I did.
 10 Q Did you ever point out to the court that Mr. Haeg had
 11 refrained from guiding for.....
 12 A Yes, I did.
 13 Q Okay. Anything else in FF?
 14 A No.
 15 Q How about GG?
 16 A I don't know if all the questions were exclusively of all
 17 Haeg had done for the plea agreement and how Cole said it
 18 could not be enforced. That's a prosecut -- you need to
 19 break it -- that part I'm not sure about but Dave did
 20 send me some questions to ask Brent.
 21 Q Oh, and this is part of FF where he said he had.....
 22 A Yeah.
 23 Q Okay.
 24 A Well, it's part of GG now.
 25 Q Okay. All the 56 questions?

Page 58

1 A Right.
 2 Q Okay. He did submit you questions?
 3 A He did.
 4 Q Did you review those questions?
 5 A I did.
 6 Q And what did you feel about those questions?
 7 A Well, I -- I basically felt the problem was, first, there
 8 wasn't a clear indication of what the agreement was
 9 anymore and, two, he was being sentenced for his
 10 conviction at trial.
 11 Q And that, in part, explains your answers to FF, why you
 12 didn't.....
 13 A Right.
 14 Qseek to enforce Mr. Cole coming?
 15 A Right. And then HH. That's true, he didn't show up at
 16 sentencing.
 17 Q Did you ever tell him there was nothing that could be
 18 done about him not -- Mr. Cole not appearing?
 19 A I don't remember telling him there was nothing that could
 20 be done about it.
 21 Q Well, let me ask you this, if.....
 22 A I just don't remember saying nothing could be done abo
 23 it. I don't remember saying that.
 24 Q It sounds like you didn't believe that having Mr. Cole
 25 there was going to be a beneficial aspect.

1 A Correct.
 2 Q If you had wanted to have Mr. Cole there, do you believe
 3 that you could have forced him to come?
 4 A Well, I could have asked the court to have the troopers
 5 go pick him up because he had a subpoena.
 6 Q Okay. So the fact -- the statement that there's nothing
 7 that could have been done wasn't true?
 8 A Yeah, I don't believe I'd say that there was nothing that
 9 could be done.
 10 Q Did you have any conversations with Mr. Cole prior to
 11 sentencing?
 12 A Yes, I did talk to Brent prior to sentencing and he
 13 didn't think he had anything to add.
 14 Q And did you agree with that?
 15 A I did.
 16 Q And did you agree not to call him prior to....
 17 A Well, I chose not to enforce his appearance.
 18 Q And did you convey that to Mr. Cole?
 19 A Yeah.
 20 Q And was that conveyed to Mr. Haeg?
 21 A Yes, I told him I wasn't going to bring him to
 22 sentencing.
 23 Q And what was Mr. Haeg's response to that?
 24 A I can't remember what his response was. We were in
 25 McGrath. I don't remember everything about his response.

1 He was a little disappointed. That's about all -- I
 2 mean, he was -- but I can't remember what he said, what I
 3 said. It's been too long ago.
 4 Q Fair to say he was disappointed or unhappy with the
 5 decision?
 6 A He was disappointed.
 7 Q But this is a strategy decision?
 8 A Right.
 9 Q And that falls within your realm as the attorney?
 10 A Correct.
 11 Q How about paragraph II?
 12 A Well, it says here that the State of Alaska testified
 13 that they did not know why Haeg had not got it for a
 14 previous year yet Cole testified on tape and under oath
 15 that he had previously agreed to share with the
 16 (indiscernible) for the plea agreement and that Haeg
 17 would get credit for it. Although Robinson knew all
 18 this, he did not object or cross examine the State of
 19 Alaska on false testimony. I don't -- I'm trying to
 20 think of what witness testified. Maybe it was Trooper
 21 Givens, I think, testified at sentencing. There was some
 22 -- what I thought was irrelevant and unrelated charges
 23 about a suspected illegal moose hunt that somebody
 24 testified about at -- at sentencing but....
 25 Q And, in fact, the judge found there was no probable cause

1 to believe that had happened, correct?
 2 A She wasted our time. I must say that. I mean, I have to
 3 say that. I asked in the beginning that that issue not
 4 be brought up because it was totally irrelevant and had
 5 nothing to do with these charges but, out of curiosity,
 6 she wanted to hear it so we spent hours going over that
 7 and then in the end, she ruled that it wasn't relevant
 8 and she wasn't going to consider it....
 9 Q Okay.
 10 Abut, of course, once the bell was rung, it's kind of
 11 hard to unring it but -- but, anyway, I'm not -- not sure
 12 who testified. He says that somebody testified at trial
 13 -- at the sentencing about they didn't know he had given
 14 up a year previous guiding. I don't know who that was,
 15 who he's referring to.
 16 Q Well, let me ask you this, if Scott Leaders had made a
 17 statement that was not consistent with Haeg's theory of
 18 the case, could you have cross examined Scott Leaders
 19 about that?
 20 A No.
 21 Q So you could only cross examine witnesses that took the
 22 stand?
 23 A Right, and Scott wouldn't have been a witness so he -- if
 24 he was, he wouldn't have been able to prosecute the case
 25 so.....

1 Q Okay. So anything that Mr. Leaders said, obviously, the
 2 only recourse you have is just to make a counter-
 3 argument?
 4 A Right.
 5 Q Okay. So....
 6 A But I did -- but I did bring out to -- to Judge Murphy's
 7 attention that he had given up a previous year of
 8 hunting.
 9 Q And she did not take that into consideration at
 10 sentencing?
 11 A No, but she -- but I made her aware of it.
 12 Q And, as far as you know, there was no court order barring
 13 him from hunting or guiding during that....
 14 A No.
 15 Qthe period of time, correct?
 16 A No, it was David's position that this was part of the so-
 17 called plea agreement that he would not guide
 18 voluntarily.
 19 Q And if he had taken the state's original offer of
 20 forfeiting the airplane and one year off, is there a
 21 possibility he would have gotten that time counted?
 22 A I have no idea.
 23 Q Oh, you had no conversation with Scott Leaders about
 24 that?
 25 A No.

Page 63

1 Q Okay. Anything else in II?
 2 A Yeah, he says he was sitting next to me when he asked me
 3 to question somebody on the stand about it but, first, I
 4 don't remember who testified for the state and made that
 5 comment that they didn't know he had give -- three years
 6 -- had given up a year guiding.
 7 Q See if they have a index here. Mr. Elnore? That may be
 8 part of the moose? Mr. Zellers testified.
 9 A Mm-hmm. And, according to II, it was a state witness,
 10 State of Alaska witness.
 11 Q Trooper Doerr?
 12 A Trooper Doerr.
 13 Q D-o-e-r-r.
 14 A Yeah, he testified but I'm not sure he testified about
 15 that. I think he testified about the moose issue.
 16 Q And.....
 17 A Givens testified, I think, for the state. I mean, I --
 18 I'd -- I remember -- I -- as I already testified before,
 19 I do remember Givens testifying at sentencing but I don't
 20 remember him saying that he didn't know or that the state
 21 didn't know.
 22 Q Okay. Any -- anything -- you've been handed a note by
 23 Mr. Haeg saying Givens testified. Anything.....
 24 A Yeah, I already mentioned that he testified at
 25 sentencing.

Page 64

1 Q Sure. Anything about -- you don't recall.....
 2 A I don't recall Givens testifying or any other state
 3 witness testifying that they didn't know that Haeg had
 4 not got it for -- previously.
 5 Q Okay. And, again, the questions to ask within that realm
 6 of -- at sentencing would be strategy questions that
 7 would fall to -- under kind of the purview of the
 8 lawyer's determination, is that correct?
 9 A Right.
 10 Q Anything else from II?
 11 A No.
 12 Q How about JJ?
 13 A There was no question that that was part of the state's
 14 theory that he was trying to eliminate rules to improve
 15 his business or guiding.
 16 Q Is there anything that's inconsis.....
 17 A And.....
 18 Q Oh, I'm sorry, go ahead, sir.
 19 A And they did admit that was false and Trooper Givens got
 20 on the stand in the state's direct -- I mean, the state's
 21 case in chief and testified about some advertising that
 22 Dave had done and implied from that advertising that it
 23 was meant to increase his guiding business if he could
 24 eliminate wolves. He was als -- I think there was also
 25 something in there about providing wolf hides or

Page 65

1 something to the -- anyway, I asked David about it. I
 2 said, you know, is that true and he -- he kind of hemmed
 3 and hawed and said well, you know, maybe but when he got
 4 on the stand and Scott Leaders asked him about it, he
 5 admitted it. I mean, what -- at that point, it
 6 would.....
 7 Q Okay. And is there anything inconsistent about a defense
 8 theory of a case and a prosecution's theory of the case
 9 conflicting at sentencing, both sides present what their
 10 theory of the case and a justification for sentencing?
 11 A No, that's -- that's usual.
 12 Q That's usual. And so in this case, the state's theory is
 13 that he was trying to eliminate wolves from his guide
 14 area in an attempt to benefit the game populations?
 15 A His answer is -- the theory was that he wanted to
 16 eliminate wolves so the moose population would increase
 17 and that would benefit his guiding business because he'd
 18 be able to get more clients that were moose hunting.
 19 That became an issue at the trial when Givens said that
 20 on the stand and I cross examined him about it
 21 extensively, I think. Then when David took the stand,
 22 Leaders cross examined David about it and David admitted
 23 it so.....
 24 Q So is it fair to say that the allegation that you did
 25 nothing about.....

Page 66

1 A Yeah, that's -- that's not true.
 2 Qabout this false claim by the state.....
 3 A Right.
 4 Qit's not true?
 5 A That's not true.
 6 Q And, to some extent -- you did so during the trial but,
 7 to some extent, you had no recourse during sentencing
 8 because he had admitted it during trial?
 9 A That's correct.
 10 Q How about KK? This is talking about Mr. Haeg's property
 11 being forfeited if he's (simultaneous speaking).
 12 A Well, the property was forfeited before I even -- I mean,
 13 before I even became his lawyer.
 14 Q Was it forfeited or seized?
 15 A Well, seized for forfeiture and, you know, it was
 16 forfeited as part of his sentencing which they can --
 17 which the law allows to -- to happen.
 18 Q Okay.
 19 A So I don't quite understand how it's.....
 20 Q Now, if the court's justification for forfeiture was that
 21 the wolf.....
 22 A Well, but, see, he says it was constitutionally --
 23 without constitutionally-adequate notice in the charging
 24 information.
 25 MR. PETERSON: Whoop. One second here.

1 (Tape changed)
 2 MR. PETERSON: Okay. We're back on record with the tapes
 3 in 3KN-10-1295 CI, Haeg v. State. The -- Tape One just ended
 4 and this is beginning of Tape Two.
 5 A Yeah, in KK, it says when Haeg's property was forfeited
 6 without constitutionally-adequate notice in the charging
 7 information, Robinson did not protest. Well, I protested
 8 the seizure without a bond and all that stuff and with
 9 regard to the forfeiture itself once he was sentenced and
 10 his property was subject to forfeiture, it was used in an
 11 illegal act.
 12 Q Okay. And you -- did you argue against the forfeiture at
 13 sentencing?
 14 A No.
 15 Q You.....
 16 A Well, I mean, I argued that it was too severe but I
 17 didn't argue that it was unconstitutional.
 18 Q Okay. And do you believe that there was a constitutional
 19 challenge to the forfeiture statute?
 20 A Well, what I was -- when I filed that motion back in
 21 July, what I was trying to point out was that he was
 22 entitled to some posting of a bond before it was
 23 forfeited.
 24 Q The court denied that ultimately?
 25 A Right.

1 about the atmosphere surrounding these charges because at
 2 the time, there was a lot of protests on the part of the
 3 environmentalists about the predator control program and
 4 -- but, obviously, Judge Murphy saw -- saw that as well.
 5 Q Okay. Anything in LL?
 6 A I don't know what he means by was barely there by 11:00
 7 p.m. but I.....
 8 Q Well, let me ask you this, the sentencing went pretty
 9 late, didn't it?
 10 A Yeah, it did and I -- and I believe I asked -- I believe
 11 I mentioned to -- to Judge Murphy that it -- that I
 12 didn't think it was too cool to be having sentencing this
 13 late and then I really told her that if we were going to
 14 have it this late, we really didn't need to be talking
 15 about the moose.....
 16 Q Okay.
 17 Abecause it was totally irrelevant and the reason
 18 that sentencing went on as long as it did is because she
 19 allowed these people to come in and testify about the
 20 moose incidents.
 21 Q Were you able to effectively represent him in sentencing?
 22 A Well, I was able to convince the judge to throw out that
 23 stupid moose thing but I'm not sure what you mean by
 24 effectively. I mean, I wasn't.....
 25 Q Well, let me ask you this, if it went until 2:00 in the

1 Q Okay.
 2 A And this business about the completely false court-
 3 specific justification for Haeg's severe sentence or
 4 since the majority, if not all, the wolves were taken in
 5 19-C, where were you hunting -- but, anyway, Trooper
 6 Givens explained the difference between 19-C and 19-D at
 7 trial so.....
 8 Q Okay. And the testimony appears to be that between
 9 Givens and Mr. Haeg and Zellers that all of the wolves
 10 were taken outside of.....
 11 A Right.
 12 Q19-D east which is the.....
 13 A Right.
 14 Qpredator control area, right?
 15 A Right.
 16 Q And.....
 17 A I mean, it -- it -- the evidence at trial pretty much
 18 showed that all the wolves were taken out of the legal
 19 area.
 20 Q So whether it was one subsection or another, they were
 21 all taken outside of the legal area?
 22 A Right.
 23 Q And, you know, I don't -- I don't have anything to say
 24 about the politics involved and the effects of the wolf
 25 kill program though I did have some discussion with David

1 morning, were you too tired at that point in time to
 2 effectively represent Mr. Haeg at sentencing?
 3 A Not -- I mean, I wasn't unconscious, I wasn't delirious,
 4 I wasn't, you know, so tired I didn't know what I was
 5 doing or anything like that.
 6 Q You were still aware of what was going on?
 7 A Yes.
 8 Q And, in fact, the sentencing arguments ended a couple of
 9 hours earlier. Judge Murphy had to take some time to
 10 deliberate, correct?
 11 A Right.
 12 Q And anything about that day that caused you concern at
 13 this point other than Judge Murphy wanting to go all day?
 14 A Other than she just dragged this thing out longer than it
 15 should have. That -- I mean there's no doubt about that.
 16 She -- she had really no justification to prolong the
 17 sentencing hearing listening to those charges as she
 18 ultimately said were irrelevant and had no (indiscernible
 19 - whispering) and that took awhile, I mean, because there
 20 was outside people calling in and another trooper and, I
 21 mean, it was just.....
 22 Q It delayed the process?
 23 A Quite a bit.
 24 Q In MM, Mr. Haeg alleges that you.....
 25 A I.....

Page 71

1 Qwhen you filed his appeal, you.....
 2 A Yes.
 3 Qchecked conviction only instead of conviction and
 4 sentence.
 5 A Yeah, I did -- I don't -- I don't know whether I checked
 6 both at the time.
 7 Q Would there have been a reason that you wouldn't have
 8 checked sentence?
 9 A Well, the sentence, as far as the jail time was
 10 concerned, was within the limit.
 11 Q Okay.
 12 A So I didn't think that would have been excessive and I
 13 did get into a discussion with Judge Murphy about the
 14 license revocation though later on but -- but if his --
 15 the point is that if his conviction was reversed, his
 16 sentence would be reversed. He wouldn't have a sentence.
 17 Q Okay. Now, you rep -- did you initially intend to
 18 represent him on appeal?
 19 A Yeah.
 20 Q And did you -- other than filing the notice of appeal,
 21 did you do anything else towards preparing for
 22 representing him on appeal?
 23 A Well, I never got around to writing a brief but I'd done
 24 the research on these questions of probable cause and
 25 equal protection and that sort of thing but David didn't

Page 72

1 want me to pursue that so he got another lawyer.
 2 Q Okay. And would you classify that as the reason for him
 3 seeking other counsel was that he.....
 4 A Well, no, he also accused me of ineffective assistance of
 5 counsel and I said well, if that's the case, we got a
 6 conflict here and then I asked to withdraw on that basis.
 7 Q Okay. And -- all right. How about NN, anything in that
 8 paragraph?
 9 A Well, this statement that the State of Alaska's entire
 10 case was based on false evidence location and his
 11 immunized statement which it wasn't an immunized
 12 situation. I mean, that's just David's rendition of what
 13 he thinks happened because, first, he didn't have
 14 immunity and the entire case was not false.
 15 Q As demonstrated by Mr. Haeg's testimony at trial?
 16 A At the trial.
 17 Q Okay.
 18 A And, again, I want to -- you know, he says I filed a
 19 statement of points on appeal that the court lacks
 20 subject matter jurisdiction without mentioning Haeg's
 21 immunized statement was used to prosecute him but it
 22 wasn't.
 23 Q So if you had.....
 24 A So he testified.
 25 Qclaimed his immunized statement was used to

Page 73

1 prosecute him, that would have been a false claim?
 2 A Well, first, it wasn't an immunized statement to begin
 3 with and the other thing was that the prosecution did not
 4 use his statement until he got on the stand.
 5 Q Okay.
 6 A And that changed his circumstances.
 7 Q And, again, then he makes allegations about the falsified
 8 evidence locations and we.....
 9 A Right.
 10 Qpreviously addressed that, is that correct?
 11 A Right.
 12 Q Anything different at this point?
 13 A No.
 14 Q How about OO?
 15 A Yeah, that's when he told me he found this ineffective
 16 assistance of counsel -- of counsel defense and, you know
 17 -- but he says Robinson may have probed Givens -- I
 18 didn't say -- I don't -- I don't want this to -- to sound
 19 like I told David that Brent Cole, in fact, gave him
 20 false advice. I didn't say that. I may have said of
 21 course, if an attorney does that, that could be
 22 ineffective assistance of counsel but I didn't say that
 23 Brent actually did that because I had no way of knowing.
 24 Q Did you ever decline to represent him on -- in a PCR for
 25 ineffective assistance defense?

Page 74

1 A Well, what I told him was that, you know, he hired me to
 2 represent him on this criminal case and that's what I was
 3 representing him on. I wasn't representing him on going
 4 after Brent Cole or ineffective assistance of counsel.
 5 Q If he had.....
 6 A That's not what he hired me to do.
 7 Q Could he have hired you to do that as well?
 8 A Yeah, he could have. I mean, not -- I don't know whether
 9 I would have done it but he could have asked me to do a
 10 separate agreement to deal with a separate civil issue
 11 but that didn't occur.
 12 Q Do you have.....
 13 A I never told -- I never told Dave that trooper and
 14 prosecutors could like with immunity.
 15 Q And then that's in paragraph PP?
 16 A Yeah.
 17 Q And how about that they're in the fold of the good old
 18 boys system, the group they protect and don't do anything
 19 against. He kind of goes into that.
 20 A What I told him was my observation during the time that I
 21 had practiced law was that very rarely have I seen
 22 troopers be prosecuted by prosecutors for lying on the
 23 stand and that's just an observation and troopers do lie
 24 on the stand sometimes but I've never seen them go after
 25 them for anything like that.

Page 75

1 Q And is that....

2 A But I didn't necessarily say that, you know, they are
3 immune from it.

4 Q Which is the laws of perjury don't make them immune. Is
5 that your understanding?

6 A Right. Exactly. And I'm not sure I told him that they
7 take care of their own either.

8 Q Okay. Seems like we've addressed a lot of QQ. This goes
9 back to why Brent Cole wasn't there.

10 A Right.

11 Q Did you, in fact, say Mr. Cole's presence wasn't relevant
12 to his guilt?

13 A Right.

14 Q Would you agree with that statement still today?

15 A Yes.

16 Q Haeg goes on to make a claim that he would have, in fact,
17 been relevant for sentencing purposes. Again, you --
18 you've previously said you don't believe so. Is that
19 still.....

20 A Yeah, I still believe that and then that's when he, you
21 know, claimed that he had a -- that I was ineffective and
22 at that point, when he considered his attorney to be
23 ineffective in terms of assisting him in his case, I
24 filed to withdraw and was allowed to withdraw on the
25 basis of conflict of interest.

Page 76

1 Q Okay. The next portion seemed to move into Mr. Osterman.
2 Was there anything....

3 A I don't really know much about what happened between
4 David and -- and Mark Osterman.

5 Q Okay.

6 A I never talked to Mark about David until after he fired
7 Mark and Mark just told me that he fired him.

8 Q I notice that a few pages later, you have one of the
9 pages dog-eared after....

10 A Oh, right here.

11 Q Let's hold on one second.
12 (Tape changed)

13 UNKNOWN MALE: Okay. We're.....

14 A Are we back on?

15 MR. PETERSON: Okay. We're back on.

16 A And this is on page 16 but it's part of triple B.

17 Q Okay. So it's kind of wrapping around?

18 A It's about him filing a bar complaint against Scott and
19 then on that sec -- on the next page, on page 16, it says
20 yet Robinson's reply brief certified it was copied to
21 prosecution. We approved that -- yeah. Well, when I
22 made the motion regarding the lack of probable cause, I
23 mentioned that it was not right for him to use that
24 statement to -- to -- to support the information.

25 Q Okay. Did you -- were you part of a bar complaint

Page 77

1 against Mr. Leaders?

2 A No.

3 Q Were you asked to?

4 A No. You mean was -- did anybody contact me and ask to
5 testify? No.

6 Q Okay. Anything -- was there another.....

7 A Well, these are just -- I did give my (indiscernible).

8 Q Okay.

9 A Let's see what the allegations were by -- the legal
10 allegations were by Mr. Haeg as to why he thought that he
11 was entitled to post-conviction relief. That's on
12 (indiscernible) that.

13 Q Okay.

14 MR. PETERSON: And, just so the record's clear,
15 Lieutenant Chastain's actually -- appears to be leaving and I
16 think Trooper Hightower is coming in to replace him.

17 Q Let's kind of go to -- I think we -- what paragraph did
18 we start on?

19 A We started on W.

20 Q W? Okay. So I'm going to kind of go through. I've got
21 a number of questions I want to ask you that I had
22 previously jotted down. I'll try not to have you
23 repeating yourself if I can. (Pause) Let me ask you
24 about this, do you recall....

25 MR. PETERSON: Just so the record's clear, Trooper

Page 78

1 Hightower has just come in.

2 Q So, Mr. Robinson, do you recall an issue of Judge Murphy
3 receiving a ride from Trooper Givens?

4 A Yeah.

5 Q Okay. Now, I'm handing you a copy of the transcript from
6 the trial case. This is page 1262, 1263. I've
7 highlighted the portions there if you'd take a look at
8 that.

9 A Okay. Yeah, this issue was commandeered by the troopers.

10 Q Okay. And so there was a period there where you guys
11 were taking a break and she wanted to go and get some
12 diet Coke, it appears, from the record.

13 A Yeah, she drank a lot of diet Coke.

14 Q Did you object to the trooper giving her a ride?

15 A No, but she said she was commandeered.

16 Q Were you concerned about her receiving a ride to the
17 store from the trooper?

18 A Well, I mean, I know McGrath is a small town, you know, a
19 small village and I know that the court personnel and
20 then the troopers and magistrate and all them, they hang
21 out together pretty much. I mean, I think the troopers'
22 station is right there in the courthouse. So I didn't
23 think that she would necessarily allow the influence of
24 the troopers transferring her to go get a Coke to
25 interfere with how she felt about Dave.

Page 79

1 Q Okay. And you, in fact, were asked by Mr. Leaders if
2 there was any objection, right?
3 A Yeah.
4 Q And you indicated there wasn't?
5 A Right, as long as she was being commandeered, right,
6 which indicated to me that the trooper was sort of like
7 telling her to use the car to go get a Coke.
8 Q Okay. Were you aware of during the trial or the
9 sentencing of other rides or other interaction
10 between.....
11 A Well, you know, I've been trying to go through that in my
12 mind because David asked me that quite some time ago and
13 I can't remember whether it was during trial or during
14 sentencing or before sentencing and after trial. I can't
15 -- it's been so long ago, I can't put this stuff together
16 but I do remember seeing Judge Murphy get in the car with
17 Trooper Givens and him driving away from the courthouse.
18 Q All right. Did you.....
19 A I do remember that.
20 Q And you saw it yourself?
21 A Yes.
22 Q Did you object to it?
23 A I don't think -- it may have been after sentencing. I'm
24 not -- that's what I'm saying, I don't-- I just.....
25 Q Okay. So it could have been after sentencing was over?

Page 80

1 A Right, I just don't know when it was -- when it -- I just
2 don't remember when it was but I do remember seeing it.
3 Q To the best of your knowledge, you didn't object to it?
4 You didn't raise it as an issue?
5 A No.
6 Q And you didn't have any concern about it for the reasons
7 previously stated?
8 A Right.
9 Q Did Mr. Haeg ask you to raise it as an issue or an
10 objection?
11 A No, not at the time. I had a question about that issue.
12 Mr. Haeg told me that he was informed that one of the
13 attorneys that works for your office or works for the
14 district attorney's office, I'm not sure which, but,
15 anyway, he works for the state or she worked for the
16 state testified -- he said she swore or testified that
17 somebody had contacted me from this office or your office
18 and asked me about it. I don't think that ever happened.
19 Q Okay. So you're just saying you don't recall ever being
20 contacted by anybody from the state and asked about the
21 rides issue?
22 A No.
23 Q Okay. Just going through, I think you hit most of the
24 questions that I had highlighted but I want to just --
25 part of the post-conviction relief process requires that

Page 81

1 a PCR applicant seek a affidavit of prior counsel.....
2 A Right.
3 Qasking the prior counsel if they would sign
4 affidavit stating to the effect that they were
5 ineffective. Has Mr. Haeg asked you if you would sign an
6 affidavit to that effect?
7 A I don't know whether David asked me to sign an affidavit
8 saying I was ineffective. I don't think he's ever asked
9 me to admit to him that I was being ineffective. I can't
10 recall the specifics of an affidavit coming up between
11 us. He may have asked me would I be willing to do an
12 affidavit based on your questions, I guess, but nothing
13 specific.
14 Q Okay. Well, let me ask you this, if you were asked,
15 would you sign an affidavit?
16 A Saying I was ineffective?
17 Q Yes.
18 A No.
19 Q And why not?
20 A Because I don't believe I was ineffective.
21 UNKNOWN MALE: Well, maybe I'll have to call you back.
22 Okay. Oh, bye. I guess I can turn this off. Sorry about
23 that.
24 Q If you were asked to sign an affidavit stating that you
25 believe you were effective, would you do that?

Page 82

1 A Probably.
2 Q But you're saying right here on the record that you
3 believe you were effective counsel for trial.
4 A Yes, I do believe so.
5 Q And you don't recall him asking you specifically please
6 sign an affidavit?
7 A Not saying that I was ineffective in assisting him at
8 sentencing.
9 Q Okay. With respect to the subpoena, you were asked to
10 bring all documents, correspondence, everything you had.
11 You've brought a binder here. A copy will be made and
12 provided to Mr. Haeg. Did you have any other documents?
13 A As far as I know, the physical file has been destroyed.
14 The only thing I had left was some parts of the
15 electronic file which is -- I had my legal assistant look
16 up and that's what we found.
17 Q Okay. Is there anything from the physical file that you
18 believe would have been relevant for these proceedings?
19 A I have no idea. You know, I -- you know, I haven't
20 looked at the whole file. I just couldn't say.
21 Q Based upon the questions that you've been asked today and
22 your recollection of the physical file, is there anything
23 that may have been beneficial?
24 A Beneficial to.....
25 Q To answering any of the questions that you've an -- been

1 asked today or to address any of the allegations.
 2 A Well, it may have been -- you know, I mean, it may have
 3 been really beneficial to have this all happen sooner
 4 before my memory faded and I was -- long after the fact
 5 but, I mean, it might have if I'd have been able to have
 6 something physical like that earlier.
 7 Q Okay. All right. Now, on May 11th, it appears that you
 8 sent a letter to Scott Leaders attempting a -- it was --
 9 I have to get the exact date here -- in an attempt to
 10 negotiate an additional plea.
 11 A Right, additional agreement.
 12 Q Or an additional agreement. That's right. Thank you.
 13 In that letter -- get the date here -- so it's May 11th,
 14 2005 so this would have been before trial.
 15 A Mm-hmm.
 16 Q You indicate that Mr. Haeg realizes what he did was
 17 against the law. How did you come to that realization?
 18 A Through my discussion with David.
 19 Q So, based upon your discussion with David, it was evident
 20 that he had acknowledged he had, in fact, taken wolves
 21 outside the predator control zone?
 22 A Yeah, but his belief was that it was a necessity and
 23 justified because of the fact that where they had set up
 24 the wolf hunts for predator control was not going to
 25 accomplish the goal. In other words, it -- it would be

1 with Mr. Haeg up -- not social but about this case?
 2 A I haven't had any personal contact with David about this
 3 case except for that one time when we talked in
 4 February.....
 5 Q Okay.
 6 Aother than the fact that I'm on some list of his
 7 that he sends out his pleadings about this case.
 8 Q And do you review those pleadings when you get notice of
 9 them?
 10 A I think I may have looked at a couple early on but, as
 11 time went on, I stopped reviewing them but I think that's
 12 because I'm just on some e-mail list of his.
 13 Q Okay.
 14 A But I've never talked to him about anything that he's
 15 said in any of those documents.
 16 Q Okay. I don't have any additional questions for you at
 17 this time, sir. I believe Mr. Haeg probably does and do
 18 we want to -- do you want to continue for awhile?
 19 MR. HAEG: I could use a break.
 20 MR. PETERSON: It's your call. Any idea how long you plan
 21 to go?
 22 MR. HAEG: I don't know, do we want to try to get lunch or
 23 just keep going?
 24 FEMALE: Right. When's the next one?
 25 MR. PETERSON: The -- this is the only one for today.

1 difficult to get wolves in that area so he thought that
 2 if they really wanted to go after wolves, he'd go get
 3 them.
 4 Q And he would go where the wolves were?
 5 A Well, where he thought they were.
 6 Q All right. You indicated you'd had a conversation maybe
 7 with -- since your attorney/client relationship with Mr.
 8 Haeg ended on this case, you just previously indicated
 9 you may have had one conversation about an affidavit with
 10 him.
 11 A I had a conversation with David earlier this year. I was
 12 in Washington, DC after the death of my mother. David
 13 didn't know about that but, anyway, he called me on my
 14 cell phone and I called him back and he wanted to know if
 15 I had ever talked to someone from the State of Alaska
 16 about this issue of Judge Murphy and Trooper Givens
 17 riding together in a car and I said I don't know,
 18 nobody's ever ta -- nobody's ever come to me and talked
 19 with me or called me or anything else to talk to me about
 20 that and then he told me that -- I believe it was a woman
 21 but I don't remember her name but an attorney for the
 22 state had said that they had contacted me and talked to
 23 me about it but I told him that it didn't happen but
 24 that's the only (simultaneous speaking).
 25 Q Other than that contact, have you had any other contacts

1 FEMALE: Oh, Osterman or anything?
 2 MR. PETERSON: No.
 3 FEMALE: Okay. How about.....
 4 MR. HAEG: What do you want to do? Get over it or go have
 5 a bite to eat or what?
 6 A Well, I don't like to usually bring this up but I'm a
 7 diabetic. I got to eat something. When I eat is a
 8 different story though. In other words, I haven't been
 9 able to eat on the way up, you know, grab the bacon and
 10 egg and cheese thing from the cooks and.....
 11 MR. HAEG: It's my personal, I'd like to get -- maybe go
 12 get something and come back.....
 13 A All right. So.....
 14 MR. HAEG:if that's okay.
 15 Abut my question is -- and I know you haven't done a
 16 deposition before, David, but when we come back, how long
 17 you think you're going to be?
 18 MR. HAEG: I don't know but maybe as long as we've been
 19 going, I guess.
 20 A Okay. Couple hours maybe?
 21 MR. HAEG: I think.
 22 A Okay.
 23 MR. PETERSON: So.....
 24 MR. HAEG: If that's okay.
 25 MR. PETERSON:can we be back here at 1:00 o'clock?

Page 87

1 Forty minutes, would that be enough?
 2 MR. HAEG: I suppose so. Is there somewhere kind of close
 3 by we could walk to get a bite to eat or.....
 4 MR. PETERSON: Yeah, I'm going to -- let's take the tapes
 5 off the record unless anybody objects.
 6 A There's a place right on the corner.
 7 MR. PETERSON: Yeah, there's the Teriyaki Box.....
 8 (Off record)
 9 MR. PETERSON: You about ready to start?
 10 MR. HAEG: Oh, I'm getting there.
 11 MR. PETERSON: Okay. We're back on record in 3KN-10-1295
 12 CI, Haeg v. State, following a lunch break and continuing with
 13 the deposition of Mr. Robinson.
 14 EXAMINATION
 15 BY MR. HAEG:
 16 Q Okay. I guess I just start with things. Well, I had
 17 actually got on the Internet and found a -- kind of a way
 18 to start off and I guess I apologize if some of this
 19 seems a little strange but they said to ask have you ever
 20 been arrested or anything?
 21 A Have I ever been arrested? Yeah, when I was a college
 22 student long, long time ago.
 23 Q And were you convicted?
 24 A No.
 25 Q Okay. And I -- can you tell me what it was about or not

Page 88

1 or.....
 2 A Yeah, I had some outstanding parking tickets at UCLA that
 3 I hadn't paid and one evening, I was driving down West --
 4 Western Boulevard and the cops pulled me over and checked
 5 my license and found out I hadn't paid these parking
 6 warrants so.....
 7 Q Okay.
 8 Athey took me downtown.
 9 Q Okay. Well, it doesn't sound very major and I may not
 10 even -- shouldn't -- may not even have -- or should ask
 11 this one but have you ever been deposed before?
 12 A Yes.
 13 Q Okay. And I assume just for court cases and.....
 14 A Yeah.
 15 Q Okay. Let's see here. Did you meet with the -- oh,
 16 state before this deposition?
 17 A I didn't meet with Mr. Peterson but I did call him up to
 18 find out what the deposition was about and about payment
 19 of witnesses. That was about a week ago.
 20 Q So you didn't really talk about like what your answers
 21 would be, you were just asking about.....
 22 A No, he just told me about you filing a -- a complaint for
 23 post-conviction relief and that he was going to ask me
 24 about my representation of you during the time that I
 25 represented you and that he'd make sure he paid the

Page 89

1 witness fees that they incurred for deposing a witness.
 2 Q Okay. And that was just like phone call?
 3 A Yeah, that's the only time I ever talked to him.
 4 Q Okay. Do you know how long it was or.....
 5 A Maybe 10 minutes, 15 at the most.
 6 Q Okay. Have you -- and, like I said, some of that stuff,
 7 I don't -- have you signed any written statements or made
 8 any recorded statements, spoken to any -- anyone about
 9 the events related to my PCR? You know, I know during
 10 trial, you did lots of things, you know, but.....
 11 A But no, I have not written anything, given any written
 12 statements or oral statements, for that matter,
 13 concerning your application for conviction relief.
 14 Q Okay. Did you read any witness statements or depositions
 15 or live report or listen to anything recorded or look at
 16 any -- anything else or did anybody else read you any
 17 statements before this deposition?
 18 A No.
 19 Q Okay. And, I guess, what all did you do to get ready for
 20 this deposition?
 21 A The only thing I did in preparation for the deposition
 22 was Mr. Peterson asked me if I had your file and I said
 23 I'm pretty sure that your physical file, it's gone
 24 because it's been a long time since I represented you and
 25 he asked me if -- if I had any electronic stuff and I

Page 90

1 don't know whether I told him at the time whether I did
 2 or didn't but after that conversation with him, I had my
 3 paralegal look up to see if there was any electrical --
 4 you know, electronic amount of material.....
 5 Q Okay.
 6 Aand so she found some, prepared it and that's what I
 7 gave to Mr. Peterson today because it was part of the
 8 subpoena that I bring any records that I had but that's
 9 it. I didn't read them. I don't know what's in them. I
 10 just brought the notebook.
 11 Q Okay. And did you just give them to Mr. Peterson when
 12 you got here?
 13 A Yeah, this morning.
 14 Q So you -- and you said you just got here like at -- I
 15 mean, I think you were a little late, 9:30 or whatever.
 16 A No. Yeah.
 17 Q Okay. Before I forget, I'm just going to ask you if I
 18 decide to subpoena you to any hearings after this, is
 19 there a for sure way I can get you to appear or -- I
 20 mean, I know you've got a condo or something in Costa
 21 Rica, is that correct, or you still have that?
 22 A Oh, I've got some property in Costa Rica, yeah.
 23 Q Okay. And if the time comes for me to -- where I'd like
 24 to have your testimony, do you, you-know -- I guess I'm
 25 concerned about being able to get you to testify again.

1 Is there some way to get ahold of you and would you agree
2 to come back? I know I may have to pay for this or that
3 or the other thing but is there.....
4 A Well, you can always get ahold of me. My address and
5 phone number is still the same as it was years ago.
6 Q Okay. You still living on Mackey Lake here?
7 A Still living on Mackey Lake, still have the same home
8 phone number. All that's still the same.
9 Q Yeah, and I think the state actually mailed your subpoena
10 to your office and you.....
11 A Yeah, I still have that. I still use the office address
12 for some -- you know, I don't work there much but I still
13 use it.
14 Q Okay. And I don't think the state actually had -- it
15 didn't appear like you had to sign personally for the
16 subpoena. Is that true? I mean, if I just mail it
17 there, is that service good enough?
18 A Well, I think this was mailed because I wasn't around to
19 be served personally when the subpoena came. I was gone
20 out of -- out of the country when the subpoena came down
21 so he must have mailed or they must have mailed it but I
22 wasn't personally served with it.
23 Q Okay. And so not -- I've always -- isn't -- don't
24 subpoena's have to be signed in person?
25 A No, I think that the rule allows for the mailing of

1 subpoenae for which it says.....
2 Q Correct, but isn't it restricted to the individual to who
3 it's for?
4 A That I don't know but.....
5 Q Okay. But you did not actually sign for yours and you
6 were.....
7 A No, but my office signed for it.
8 Q Okay.
9 A So that might -- like your representative that means.
10 Q Okay. And so that's good enough is just to have somebody
11 in your office sign for it?
12 A Well, you know what, David, I haven't looked at the rule
13 lately.
14 Q Okay. Well, I'm just.....
15 A All I know is that I was told I was subpoenaed while I
16 was gone. I wasn't around.
17 Q Okay. So.....
18 A And then, you know, I came back, I saw the subpoena, I
19 called Mr. Peterson to find out what it was all about and
20 he told me what it was going to be about.....
21 Q Okay.
22 Aand I showed up. I -- I considered myself
23 subpoenaed.
24 Q Okay.
25 A Now, whether technically I was or not I don't know.

1 Q Okay. Well, I'm just -- you know, I'm new at this, don't
2 know how to -- you know, I watch what the state does, try
3 to learn on how to do this stuff but, anyway, that's --
4 you know, I guess we went over that enough.
5 A Well, but, to answer your question, it depends on when
6 you want me to be a witness in any subsequent proceeding.
7 I mean, if I'm available and I get subpoenaed, then,
8 obviously, I'll have to come at that time.
9 Q Okay. Yeah, and, like I said, this is just -- you know,
10 I had actually tried to subpoena you one other time and
11 we never could get you subpoenaed and it was for another
12 thing.....
13 A Right.
14 Qand so we.....
15 A I didn't know about that.
16 Q I'm just wondering how the state has been doing it
17 because they seem to be able to get you successfully when
18 I couldn't. You had testified earlier that it was my
19 decision to go to trial, is that correct?
20 A Correct.
21 Q Okay. Do you remember ever telling me that why should I
22 -- why should we try to make a plea agreement and sustain
23 a conviction when I could go forward with a trial and win
24 and come out of it without a conviction?
25 A I don't think I put it to you that way, David. What we

1 talked about was the fact that if you went to trial,
2 there was a chance that you could win on this issue that
3 I brought up and it would leave you without a conviction
4 but if we pursued the plea agreement, you would wind up
5 with a conviction and I wasn't sure what the sentence was
6 going to be because there was no agreement that I could
7 really put my hands on after talking to Leaders and --
8 and Brent Cole.
9 Q Okay. And I guess that brings up then did you have a
10 investigator at that time?
11 A Yeah, to (indiscernible).
12 Q Okay. And did he do any investigating into the.....
13 A Yeah, he contacted Brent Cole and talked to Brent about
14 the plea agreement or the alleged plea agreement.
15 Q Okay. And I know -- I think you -- do you realize I tape
16 recorded you at different times when we were discussing
17 this stuff?
18 A Yes. Yeah.
19 Q Okay. And did -- during those conversations, did you
20 tell me that you had Joe investigate whether there was a
21 plea agreement and that Joe had never -- he's -- he
22 hadn't found one or found that there was an agreement?
23 A Yeah, I told you that from his investigation with Brent,
24 that he couldn't come back and tell me for sure that
25 there was an agreement. Now, he never talked with Scott

1 Leaders so I don't want you to think I had him draw up --
 2 do that.
 3 Q But he did talk to Brent Cole.....
 4 A Brent Cole, right.
 5 Qand from his conversations with Brent Cole, from
 6 what he told you, your belief was that there was not an
 7 enforceable agreement.
 8 A No, what he told me -- from what I took from what he told
 9 me, that it didn't sound like there was an agreement
 10 between you and Leaders as to what was going to happen.
 11 In other words, there was still a dispute. It was not a
 12 firm agreement. At least there was no contradiction on
 13 their question.
 14 Q Again, so what Joe -- and when I say Joe, it's Joe
 15 Malatesta with -- so what Joe told you, would you -- lead
 16 you to believe there would have been no reason for filing
 17 a motion to enforce the plea agreement?
 18 A No, I didn't -- no, I didn't say that and I believe when
 19 we had the conversation, I said we can still pursue it or
 20 we can go to trial but I need to know now which course of
 21 events we're going to take. So I didn't tell you we
 22 wouldn't pursue it, it's just that it wasn't a slam dunk
 23 issue.
 24 Q Well, I guess.....
 25 A In other words, it wasn't something that was not going to

1 that.....
 2 A Right.
 3 Qand that by everything you knew including what your
 4 investigator dug up, you were still not sure that there
 5 should be a motion to be filed to enforce the plea
 6 agreement.
 7 A No. I brought it to you and put it in your lap.
 8 Q Okay. So I decided what Joe said?
 9 A And I -- no, you didn't decide what Joe said but I
 10 explained to you what Joe said and I explained to you
 11 this other theory that I had and I said now we're at this
 12 fork in the road and you have to decide which way you
 13 want to go. You want to go with the plea enforcement,
 14 plea agreement enforcement, or go to trial.
 15 Q Okay. Have you ever said that -- something very close
 16 along the lines that I put my man or I put Joe on it and
 17 for what he found out, there was no enforceable agreement
 18 so you would have never anything like that?
 19 A I believe that the context of what I was trying to get to
 20 you was that what you had told me was different than what
 21 Joe had found out.
 22 Q Okay. So.....
 23 A In other words, it wasn't an undisputed fact that there
 24 was an agreement.
 25 Q Okay. And that -- he got that from talking to Brent

1 be disputed.
 2 Q Okay. But I guess what I'm getting at is from what you
 3 obtained from Joe or what you heard from Joe was that it
 4 wouldn't be -- we wouldn't be successful at.....
 5 A No. What I heard from you and what you told me was that
 6 it was an agreement, there was no dispute there was an
 7 agreement, everybody was in agreement that there was an
 8 agreement but after Joe talked to Brent, he came back
 9 with the -- you know, from what I found out from Brent,
 10 I'm not sure that there was a undisputed agreement. And
 11 that doesn't mean that we might not have been able to go
 12 to court and say to a judge, you know, this is our
 13 understanding of the facts and the prosecution gets up
 14 and says this is our understanding of the facts and,
 15 therefore, you know, the judge would make a decision
 16 based on which side to believe. So that was the issue.
 17 In other words, there wasn't, according to Joe, as you
 18 had said, that everybody agreed that there was an
 19 agreement.
 20 Q Okay. I don't know, you got me confused here a little
 21 bit. I guess what I was getting at is that you made
 22 efforts to see if there was an agreement that could be
 23 enforced or whether there was, you know, whatever.....
 24 A Okay.
 25 Qand you delegated your investigator to help you with

1 Cole.....
 2 A Right.
 3 Qthat there was a -- that.....
 4 A He did.....
 5 Q I guess what I -- I guess my question is is I believe it
 6 goes without saying that the state disputed there was an
 7 enforceable plea agreement.
 8 A Right.
 9 Q Okay. No one has ever disputed that. I'm just saying
 10 that did Brent Cole ever lead you to also believe in his
 11 conversations with either you or I believe he actually
 12 talked to.....
 13 UNKNOWN MALE: Joe.
 14 Qto Joe about it.
 15 MR. PETERSON: Let's pause for a second. I'm going to do
 16 the same thing so.....
 17 (Tape changed)
 18 UNKNOWN MALE: Okay?
 19 MR. PETERSON: Okay. We're back on tape. It's 3KN-10-
 20 1295 CI. Just turning over the tape to -- for the state,
 21 Side B of Tape Two.
 22 Q And so what -- I guess what I was getting at is from the
 23 available information and, you know, for you to help you
 24 build your knowledge of the plea agreement, you had
 25 employed an investigator to help you investigate.....

1 A Whether there was.....
 2 Qwhether there was a plea agreement or not that could
 3 be enforced?
 4 A Right.
 5 Q Okay. And your investigator, was his investigation that
 6 there was no -- or that there wasn't an enforceable plea
 7 agreement or that there was or did he -- did you even --
 8 did he even talk to you? Did he even give you anything?
 9 A He gave me the impression from my talking with him after
 10 he talked to Brent that there was a question that's out
 11 there as to whether there was a plea agreement.
 12 Q Okay. So, on the whole, the information that Joe gave to
 13 you would make you less apt to seek enforcement of the
 14 plea agreement?
 15 A No, that was up to you. The point was that all I was
 16 trying to convey to you, that it wasn't an open and shut
 17 situation that there was a plea agreement because of what
 18 Brent had told Joe. So.....
 19 Q Okay.
 20 Athat raised the question as to whether or not we
 21 could be successful in pursuing the enforcement of the
 22 agreement but not whether we should or shouldn't. The
 23 question whether we should or shouldn't was when I
 24 explained to you this other theory of perhaps being able
 25 to find that there was no probable cause for the

1 telling me that you put Joe on the issue -- or, you know,
 2 I think it was something, I put Joe or Matt -- I think it
 3 was Joe -- put Joe on it to investigate whether there was
 4 a plea agreement or not and, from what he found out, you
 5 know, it didn't seem like there was one or an enforceable
 6 one and do you ever remember.....
 7 A Didn't seem like there was a -- no dispute over whether
 8 there was one, David.
 9 Q Okay. So what you're saying is.....
 10 A That's what you.....
 11 Qno matter how much evidence there could have been
 12 that there was a plea agreement, if the state just said
 13 no, there ain't, you'd never try to seek enforcing it?
 14 Is that what you're saying?
 15 A No, because I.....
 16 Q Because there would be a dispute?
 17 Abecause I told you that there was a dispute. I told
 18 you that there wasn't necessarily one, that there was no
 19 dispute and that what -- what did you want to do, you
 20 want to still pursue this or you want to pursue that.
 21 Q Well, so you don't remember me acknowledging there was a
 22 dispute and, thus, it fell down to whether we would
 23 prevail in court and whether it would be.....
 24 A Well, you could have weighed that. You could have
 25 weighed the pre -- prevailing on the plea agreement

1 information to begin with so we had to, you know, settle
 2 for trial to -- to get that point across or we could
 3 continue with trying to enforce the plea agreement.
 4 Q Okay. And did -- was it Joe's -- did Joe do most of the
 5 investigation about whether there was an enforceable plea
 6 agreement or did you or did you guys share the burden?
 7 A I talked to Brent after Joe did. I can't remember
 8 exactly when but most of the information that I got about
 9 the plea agreement came from Joe.
 10 Q Okay.
 11 A From Brent's story.
 12 Q Yup. Okay. And, as I said, since that was maybe most of
 13 the information, that would have been a critical -- that
 14 would have been critical in our decision whether we
 15 should go for a plea agreement, whether it was
 16 enforceable or not or take your course or pursue the
 17 subject matter jurisdiction out. I'm just -- I guess
 18 would you agree that the -- that what came out of Joe's
 19 investigation was critical to which path we took?
 20 A Well, what do you mean by critical?
 21 Q If he did most of the investigation on whether there was
 22 a plea agreement or not, that's the information we had to
 23 go on.
 24 A The information was important, yes.
 25 Q Okay. And, as I said, do you remember telling -- ever

1 enforcement versus a trial but the point is I did explain
 2 it to you. I did put it in your lap and you made a
 3 decision.
 4 Q Correct, but you told me that Joe had investigated for
 5 you and, according to Joe, there was a -- an enforceable
 6 plea agreement.
 7 A I don't know if I used the word enforceable plea
 8 agreement.
 9 Q Okay. But would you admit that there -- that you could
 10 have said something -- and I'm -- I don't have the
 11 transcriptions right here in front of me. I'm just
 12 saying that is it possible that there was a conversation
 13 in which you said David, I put my man, Joe, on it, he
 14 investigated, there's a -- you know, it's not apparent
 15 whether there was a plea agreement that we could enforce
 16 or.....
 17 A I may have told you that it may have been apparent that
 18 there wasn't a plea agreement that was not disputed and
 19 that, from what Joe told me, Brent Cole hadn't confirmed
 20 that there was, in fact, a plea agreement.
 21 Q Yeah, but you understand what I'm saying is that there
 22 never was a dispute, the state disputed, you know, that I
 23 -- that there was a plea agreement with these parameters
 24 and so.....
 25 A Yeah, but do you understand.....

Page 103

1 Qthen you have to look at the evidence that you could
 2 win on that and it -- just because you don't win, it
 3 doesn't mean that you couldn't still go to trial, it just
 4 means that there may be a little evidentiary hearing on
 5 whether there was a plea agreement or not.
 6 A But the question at the time is where did you want us to
 7 put our resources, in the continuing to try to enforce
 8 the agreement or going to trial.
 9 Q Okay. But what I'm saying is that it would have been
 10 important to know what the investigator found out. If --
 11 I'll put it this way, if Joe would have came back and
 12 said hey, we should seek enforcement of this, that there
 13 is the thing, we would have probab -- that would have
 14 been important to me in contrast to you saying I put Joe
 15 on it and there isn't evidence of an enforceable plea
 16 agreement.
 17 A Whether I told you there was no evidence of an
 18 enforceable plea agreement, I don't believe that's the
 19 way I put it to you. The way I was -- what I was trying
 20 to convey to you was that Brent, from what Joe told me,
 21 wasn't backing one hundred percent that there was a plea
 22 agreement.
 23 Q Okay. Or that there was a plea agreement and Scott
 24 Leaders:....
 25 A Bowed out of it.

Page 104

1 Qbowed out of it.
 2 A Right.
 3 Q Okay. So there -- that wasn't clear.
 4 A It just wasn't clear.
 5 Q Okay. I -- this is some of the stuff that I have some
 6 heartburn over is that after trial and all this, in some
 7 of the stuff that you gave me, the boxes or whatever, I
 8 found a note from Joe Malatesta to yourself saying that,
 9 you know, he had contacted Brent Cole, blah, blah, blah.
 10 He actually -- I then got a tape of the actual
 11 conversation and in it, Brent Cole, Joe did a wonderful
 12 job. Brent was evading one way and the other....
 13 A Right.
 14 Qand, finally, Joe got Brent to say yes, Scott
 15 Leaders backed out of a deal, he reneged on it and -- you
 16 know, and it took a lot for Joe to get that out of him
 17 because Joe -- you know, Brent was -- because without a
 18 doubt....
 19 A Him and his (simultaneous speaking).
 20 Qbecause Brent knew that if there was an enforceable
 21 plea deal and he had told me we couldn't enforce it
 22 which, in fact, happened, that he could be liable for
 23 some of the damages that occurred from him not enforcing
 24 agreements that I had....
 25 A Mm-hmm.

Page 105

1 Qand what really....
 2 MR. PETERSON: Is there a question to him or....
 3 MR. HAEG: Yeah. Well, and, like I said, I'm new at this.
 4 I don't really know....
 5 MR. PETERSON: You know what, it -- I understand you got a
 6 story you want to tell but, I mean, I just -- I would
 7 appreciate if you were asking him that.
 8 MR. HAEG: I understand. Well, what I'm getting at is,
 9 you know, under oath, Chuck Robinson has said that from Joe
 10 Malatesta's investigation and from what he told me from that
 11 investigation that it wasn't clear that -- whether there was a
 12 enforceable plea agreement....
 13 A An agreement, right.
 14 MR. HAEG:and that, from what Joe said, there should
 15 have -- you know, it wasn't apparent that we should file a
 16 motion to enforce or whatever and what I'm saying is that when
 17 I got -- afterward, I never -- or at the -- you know, I never
 18 got....
 19 Q Would you agree that I didn't get all the information
 20 about what was occurring with Joe or especially between
 21 Joe and you at that time, you were just letting me know
 22 what Joe had done? I mean, at the very time that this
 23 occurred, is that fair to say is that....
 24 A Well, I don't know what the....
 25 Qafter I got the files from you after I fired you, is

Page 106

1 it possible I gained more information between -- from
 2 what your conversations with Joe was?
 3 A Anything's possible.
 4 Q Okay.
 5 A All I'm telling you is that the impression I got from
 6 Joe's investigation was that Brent called, was not firm
 7 that there was an agreement.
 8 Q Okay. Well....
 9 A In other words, there was a lot of hemming and hawing and
 10 what not.
 11 Q Okay. And so Joe would not have been -- you know,
 12 wouldn't have been suggesting filing a motion to enforce
 13 or anything, he would have said there was a lot of
 14 hemming and hawing, there was -- it wasn't clear.
 15 A Well, it wasn't up to Joe to talk about filing a motion.
 16 I just wanted to know what he found out. I brought the
 17 information to you so you would make the decision.
 18 Q Okay. But I didn't get the information from Joe, it went
 19 from Joe to you and then to me.
 20 A Yeah, but I brought it to you.
 21 Q Okay.
 22 A I brought up the issue.
 23 Q Okay. Yeah.
 24 A I brought up the de -- I brought up the problems.
 25 Q The issue I have is -- I guess I should just find it here

1 maybe is how you're supposed to do this stuff and, like I
 2 said, I'm not the best at this. Does this look like
 3 something Joe -- a document that Joe would have made?
 4 MR. PETERSON: Would you be willing to -- I need you to
 5 identify the document for the record.
 6 MR. HAEG: It says Jampy Private Investigation, P. O. --
 7 or Box 318, Clam Gulch, Alaska, 99568.
 8 MR. PETERSON: Is there a date?
 9 A 1/25/05.
 10 Q Yeah, and I'm not really concerned with most of that --
 11 that first part but where there's a little tab there, I'd
 12 like you to read that part and could you read it out loud
 13 so.....
 14 A Well, let me read it first this way.
 15 Q Okay.
 16 (Pause)
 17 A Okay. It says -- where you got it underlined right here?
 18 You want me to read this part right here?
 19 Q Yeah, just the stuff inside.
 20 A Well, I got to read the whole thing and put it in
 21 context.
 22 Q Okay. I mean, I don't have a problem.
 23 A Just to avoid -- or read.....
 24 MR. PETERSON: Well, and, just so we're clear, any of the
 25 exhibits you use, the documents.....

1 A Right.
 2 MR. PETERSON:I -- I'm going to ask for a copy of
 3 them, of course.
 4 A A copy.
 5 MR. PETERSON: I mean, I've given you a copy of all mine
 6 so.....
 7 MR. HAEG: Okay.
 8 MR. PETERSON:what I'd ask is once he's done with
 9 it, we set it to the side so that we can get a copy done
 10 afterwards.
 11 MR. HAEG: Okay. Not a problem.
 12 A Okay. I have a.....
 13 MR. HAEG: And I believe you already have a copy in my
 14 application for PCR as.....
 15 MR. PETERSON: I may. I just -- just so I have a copy.
 16 A It says I have attached a clean copy of the permit
 17 application and permit for your review. My only question
 18 is the authority to charge David with big game violations
 19 instead of just charging him with violating the permit
 20 conditions. Department was trying to eradicate the five
 21 wolf packs in the area so what actual harm did David do.
 22 The only mission and action to extending the expandable
 23 area twice the size of the original area and the
 24 statement that the wolf packs travel in four or 500
 25 square miles area clearly gives me the impression that

1 the objective was to accomplish their goal of eradication
 2 of the five packs. There is probably only good -- there
 3 is probably only good for argument sake to make a better
 4 deal and don't forget to remember the -- the motion on
 5 the DA backing out of the original offer. Is that what
 6 you wanted me to read?
 7 Q Okay. Yeah.
 8 A Okay.
 9 Q And maybe if you can just read this up here.
 10 A And note to attorney.
 11 Q Okay. And that would have been Joe's note to yourself?
 12 A That'd have been his note in this report.
 13 Q To you?
 14 A To me.
 15 Q Okay. And so you would admit that after Joe conducted
 16 his investigation with Brent Cole.....
 17 A Well, I don't -- I'm not sure whether or not he -- did he
 18 mention Brent in here? I don't know whether he'd talked
 19 to Brent by then or not.
 20 Q Well, I guess would you agree that I -- well, I don't
 21 know if you know but is it your impression that I only
 22 had Brent Cole as an attorney prior to you? I mean.....
 23 A From what you told me, Brent had represented you but I'm
 24 just saying.....
 25 Q Yeah.

1 Afrom this report, I can't tell whether Joe had
 2 talked to Brent before or after this report. That's all
 3 I'm saying.
 4 Q Okay. So if -- what you're saying is if Joe had talked
 5 to Brent before this note, that likely would have
 6 referenced.....
 7 A His discussion. In other words, he.....
 8 Qhis discussion with Brent Cole?
 9 Ahe told me about everybody else he talked to.
 10 Q Okay. Yeah.
 11 A But he didn't mention Brent in this particular
 12 report.....
 13 Q Okay. But.....
 14 Abut he knew about the issue.....
 15 Q Okay.
 16 Aof what he was saying about the plea agreement.
 17 Q Okay. And you agree that it says.....
 18 A That I could track (simultaneous speaking).
 19 Qthis is probably only good for argument sake to make
 20 a better deal and I assume to me -- would you assume that
 21 he's making a plea deal to make a better deal?
 22 A Mm-hmm.
 23 Q And don't forget to remember to motion on the DA backing
 24 out of the original offer. I mean, that is what it says
 25 and it most likely was.....

Page 111

1 A But not that a decision had been made to go ahead and do
 2 the motion. It was a question of whether we should do
 3 the motion, not oh, we're going to do it and then change
 4 our mind not to do it.
 5 Q Okay.
 6 A That wasn't the situation.
 7 Q So you don't think that when it says don't forget to
 8 remember to motion on the judge backing out of the
 9 original offer, you wouldn't agree that that's a
 10 statement that that should be done?
 11 A No, not necessarily. That was a statement by Joe that
 12 it's something that we should consider.
 13 Q Okay. And in -- did you -- I -- put it this way, did you
 14 ever listen to the recording of Joe and.....
 15 A Yeah.
 16 QBrent Cole?
 17 A Mm-hmm. I did.
 18 Q Okay. And, from your remembrance that there was -- you
 19 know, that Brent didn't ever admit that Scott Leaders had
 20 reneged or backed out of a deal?
 21 A What I remember about that conversation was that there
 22 was a lot of hemming and hawing on the part of Brent as
 23 to whether or not there was a deal. That's what I
 24 remember.
 25 Q Yeah, but Joe being good at what -- is -- I guess I'll

Page 112

1 put it this way, is Joe good at what he does? Joe
 2 Malatesta is an investigator?
 3 A He's a -- in my opinion, he's a good investigator.
 4 Q Okay. And do witnesses that may or people that have done
 5 something wrong; do they just willingly just own up to
 6 that they did something wrong or do they sometimes try to
 7 hide it?
 8 A Well, that all depends on the person, David. I can't
 9 really say that, as a general rule, that happens. It
 10 doesn't happen.
 11 Q Okay. But I'm just saying that if, indeed, Brent Cole
 12 had not done his duty by me, it is possible that he was
 13 trying to not be forthcoming on what occurred for the
 14 plea agreement. It's possible that if he had not.....
 15 A Anything's possible.
 16 Q Okay. And is it not possible that Joe being good at what
 17 he did, even though Brent hemmed and hawed, got Brent to
 18 admit yes; Scott Leaders reneged and backed out of a
 19 deal? Is it -- I mean, I actually have the transcription
 20 somewhere.
 21 A Well, what the deal was was not clear.
 22 Q Well, if there was a deal that the state reneged on,
 23 isn't that important no matter what the deal was to
 24 present to the judge because it shows that the state is
 25 not being fair with someone like me that doesn't have the

Page 113

1 resources of the state?
 2 A I can't answer that question, I don't know.
 3 Q Okay. So if you were prosecuted by the state and they
 4 had offered you things, let's just say, and you -- we'll
 5 just say that you were an attorney and that's all you
 6 did, you didn't ever get into commercial fishing. This
 7 is a hypothetical. And they said Mr. Robinson, give up a
 8 year of your law practice for this deal and then no
 9 matter how unclear it was, at the end, they backed out
 10 and your year of livelihood was going out the window,
 11 wouldn't you believe that it would be important no matter
 12 how many -- how fuzzy the deal was to get it on the
 13 record that you in your own mind thought there was a
 14 deal? Whether there was or not may not be able to be
 15 proved but wouldn't it be important to bring to the court
 16 that you had given up a year of your livelihood for
 17 something you felt you never received? You understand
 18 the question?
 19 A Yeah, I understand the question and, as I understand it,
 20 I thought we did bring that up to Judge Murphy's
 21 attention at sentencing about the fact that you had
 22 voluntarily given up a year of hunting -- or a year of
 23 guiding.
 24 Q But it never was brought up that the state had agreed to
 25 give me credit for the year. You -- everybody said oh,

Page 114

1 he voluntarily did and yet I had subpoenaed Brent Cole
 2 there, I had wanted Kevin Fitzgerald there who was
 3 representing Tony Zellers but I think -- did you ever
 4 hear that Kevin Fitzgerald and Brent Cole were working
 5 together on a case for Brent and I? Did you ever -- were
 6 you ever privy to that?
 7 A I didn't know what the relationship was between Brent
 8 Cole and -- and Fitzgerald other than I knew that
 9 Fitzgerald was a co-defendant in your case and he was
 10 represented by Fitzgerald.
 11 Q Okay.
 12 A The dynamics of the relationship between Brent Cole and
 13 the.....
 14 Q Okay. Did I ever say to you that I knew Kevin Fitzgerald
 15 knew a lot about my plea agreement and that I wanted to
 16 subpoena him to my sentencing? Did I ever tell you that
 17 I wanted Kevin Fitzgerald subpoenaed to my sentencing
 18 because he knew a lot about my plea agreement?
 19 A I'm not sure whether you told me that he knew a lot about
 20 your plea agreement. I remember you said you wanted him
 21 to come there but I don't.....
 22 Q Okay. And what happened with that?
 23 A I wouldn't have subpoenaed him.
 24 Q Okay. Why not?
 25 A Because I didn't think what he had to say would be

1 relevant in terms of your sentencing on a new conviction
 2 as opposed to some plea agreement that never went
 3 through.
 4 Q So let me get this straight, Chuck, is I told -- I
 5 believe I told you that me, a working person, had given
 6 up a year of my livelihood for an agreement the state
 7 swindled me out of, for a better word, and the attorney
 8 that I claimed allowed that to happen, it wasn't
 9 important for my sentencing that a whole year -- do you
 10 realize how important that was? To me, that year of
 11 income was worth more than a year in jail if I could have
 12 done the year in jail in wintertime when I wasn't
 13 working. I would have rather spent a year in jail and
 14 you're saying that that wasn't important for my
 15 sentencing court.....
 16 A No, what I'm saying.....
 17 Qto possibly find out.....
 18 Ais that I thought it was important, I presented it
 19 to the judge. She didn't think it was important.
 20 Q No, you are misconstruing and twisting the facts. She
 21 was presented that Dave Haeg voluntarily gave up guiding
 22 for a year and everybody -- and the state -- and don't
 23 you remember the state said -- Trooper Givens, to be
 24 exactly -- we've all kind of heard that Dave Haeg gave up
 25 guiding for a year but we have no idea why that is

1 A I thought you told that to the judge yourself.
 2 Q No, I did not.
 3 A Hmm.
 4 Q I said that it's -- so much stuff has -- I believe, if
 5 you remember -- and I got to keep these as questions, I
 6 believe -- is that I believe I said so much stuff has
 7 went on, I can't even think straight and we had done all
 8 this stuff.....
 9 A Yeah, but I believe that -- I believe that he.....
 10 Qbut it never came out.
 11 A I believe that in your allocution.....
 12 Q Okay.
 13 Ayou explained to the judge you're giving up the
 14 hunting for a year -- I mean, the guiding for a year,
 15 didn't you?
 16 Q I may have said it but what I'm saying is that's one
 17 thing and it's a whole 'nother thing -- what's that?
 18 That's.....
 19 A This is the one he wants to copy for himself. This is
 20 the stuff I brought up this morning.
 21 Q Okay.
 22 MR. HAEG: And, I'm sorry, you don't have to do this now.
 23 I'm just setting it here because I was taking that. At some
 24 point, would you just sign indicating you've got all these
 25 copies?

1 and.....
 2 A I don't recall that (indiscernible - whispering).
 3 Q Okay. Well, it's in the sentencing record. Okay?
 4 A Okay.
 5 Q So it's there. That -- without any doubt that it's.....
 6 A I'm not saying that -- I'm not saying.....
 7 Q Okay. And do you -- would you agree that for a defendant
 8 like me with a wife and two kids, that for it to come out
 9 to the sentencing judge that I didn't give it up
 10 voluntarily, that the state told me I would get credit
 11 for it, Brent Cole told me I would get credit for it --
 12 he says Scott Leaders promised I would get credit for it
 13 and then Scott Leaders, as he's eliciting this testimony
 14 from Trooper Givens, to give the impression to the judge
 15 that the state did not know that I had actually given up
 16 that year in reliance on a promise from the state. I
 17 didn't just go through life, says I got so much money in
 18 my pocket, I can go a year without my livelihood? You
 19 don't think that that would be important for the court to
 20 know that I had done it upon the promise of the state I
 21 would get credit for it?
 22 A I thought you told that to the judge yourself.
 23 Q At 1:00 in the morning.
 24 A Well, regardless of the time of day, I thought.....
 25 Q I did not -- I -- well.....

1 MR. PETERSON: Okay.
 2 MR. HAEG: Or we can just actually put it on the record
 3 right now, you're -- you received all the copies.
 4 MR. PETERSON: Okay.
 5 Q Do you agree that having Brent Cole, my attorney, that
 6 was dealing with the state would be a far more compelling
 7 argument that I was led to believe by my attorney that
 8 there was a plea agreement that the state had promised me
 9 and I had given up a year of guiding, if that came from
 10 Brent Cole under oath rather than a defendant that was
 11 stressed out at whatever it was, 1:00 in the morning, and
 12 that attorney could have been cross examined by yourself
 13 and by the state to get to the bottom of what occurred
 14 that affected my life so much and my family's life?
 15 Don't you agree that that would have been important for
 16 me?
 17 A I don't know.
 18 Q Well, I felt it was so important, Mr. Robinson, that I
 19 wanted to subpoena not only Brent Cole but also Kevin
 20 Fitzgerald and you had told me we don't need Kevin
 21 Fitzgerald, I'm not going to subpoena him. That's what
 22 you've said, got.....
 23 MR. PETERSON: Mr. Haeg, I'm sorry, can we try and keep
 24 these as questions? Because he needs to be asked a question.
 25 MR. HAEG: Okay.

Page 119

1 Q Anyway, I'll put it this way, at the time, was I pretty
2 adamant I wanted Brent Cole subpoenaed and to testify
3 about this?
4 A You wanted Brent to come and testify at your sentencing,
5 yeah.
6 Q And tell me, please, why that did not happen.
7 A I did, I already told you that. I already mentioned why
8 it didn't happen.
9 Q Okay. So that's asked and answered then?
10 A No, I'm -- I'm just saying that I came to the decision
11 that I didn't think it was going to be relevant.....
12 Q Okay. And I believe there was.....
13 Abecause.....
14 Q And I believe there was test.....
15 Abecause there was no plea agreement to enforce at
16 that time.
17 Q You don't believe that I could have still got some
18 benefit from what a year of guiding I'd given up if the
19 court knew that the state had swindled me out of it? And
20 I guess I'll.....
21 A You were allowed to tell the court what you thought
22 happened to you and you did including you thought that it
23 wasn't -- that it was part of some credit.
24 Q I don't believe so.
25 A You don't remember what you told the court?

Page 120

1 Q Well, not like I wanted to. I wanted it to come from my
2 attorney at the time because I wasn't negotiating with
3 the state, my attorney was, and so everything was
4 filtered through my attorney and to me, it was important
5 for the court to know and I bel -- and correct me if I'm
6 wrong, if, indeed, it went down as I believe, is it
7 possible that at this sentencing hearing, the judge may
8 have heard things that would have negated the whole
9 trial? Is it possible.....
10 A No.
11 Qthat if.....
12 A No, the.....
13 Qevidence came out -- let me just get this out. If
14 evidence came out.....
15 A (Simultaneous speaking). No.
16 Q Okay. I'm going to ask you again in a different way, I
17 guess. If evidence came out that I had an enforceable
18 plea agreement and my attorney at the time had lied to me
19 about being able to enforce it and I felt that there was
20 no way I could receive the benefit of the year and the
21 concessions I had made driving all the witne -- flying
22 witnesses in from Illinois for the change of plea and to
23 be sentenced, all this stuff, if that judge knew that I
24 had been led to believe something that was not true and I
25 had been -- felt -- forced that I could not enforce that

Page 121

1 plea agreement by, what I had been falsely told, there was
2 no possibility the judge would say hold it, you mean to
3 tell me this guy did all this for a plea agreement that
4 he could live with, his own attorney and the state told
5 him he could be screwed out of it and he believed that he
6 had to go to trial on these harsher charges and get a --
7 get convicted and sentenced for these when, in fact, had
8 his attorney told him the truth back then, he would never
9 have went to trial. He would have had a minor.....
10 A I can't answer what just -- you're coming up with
11 something I can't.....
12 Q I know but I'm just saying is it poss -- theoretically,
13 is that possible?
14 MR. PETERSON: Mr. Haeg.
15 A I can't tell you even whether even theoretically it's
16 possible, David.
17 MR. PETERSON: Please.
18 Q Okay. And I -- you know.....
19 MR. PETERSON: And, Mr. Haeg, just -- this may not be
20 helpful. If you have a whole series of things, break it into
21 small, individual questions and I'll tell you what, if we'll
22 take five minutes or I'll use the restroom and I'll get you
23 some more water. All right?
24 MR. HAEG: Okay. That would be great.
25 MR. PETERSON: And if you can just try to take your seri

Page 122

1 that you have and just break it into individual questions to
2 get to the same point, then he can actually be answering
3 questions because he's the only one under oath. So your
4 statements are.....
5 MR. HAEG: Okay. And I -- I'm doing the best I can.
6 MR. PETERSON: (Simultaneous speaking).
7 MR. HAEG: I just -- you know, I haven't went to law
8 school. I just -- I have all this.....
9 MR. PETERSON: No, I understand, I'm just trying to help
10 you out.
11 MR. HAEG: No. Okay.
12 (Whispered conversation)
13 (Tape changed)
14 MR. PETERSON: All right. We're back on tape, 3KN-10-1295
15 CI, Haeg versus State. We just took a short break and we're
16 back on record with Mr. Robinson.
17 MR. HAEG: Okay.
18 Q If there is a dispute in a plea agreement, who decides
19 whether there was one or not in the end?
20 A I guess the court might be a place where they could
21 decide whether there was or wasn't a dispute.
22 Q Okay. And will -- can the court decide that if it's
23 never presented to them?
24 A No.
25 Q Okay. And so if me -- if a client really wanted to

1 litigate whether there was a plea agreement, the proper
 2 procedure would be to present it to the court?
 3 A True.
 4 Q Okay. We can move on on that one. You had testified
 5 that my sentencing was kind of an ordeal?
 6 A Well, I wouldn't know what you mean by an ordeal. What I
 7 testified to was that it was rather long and, in my
 8 opinion, the length of it was unnecessary because the
 9 court allowed a great deal of it to be consumed by issues
 10 that really were not relevant to your case.
 11 Q Okay. And would you.....
 12 A And I asked the court before we started sentencing not to
 13 consider that evidence.
 14 Q Okay. But it was considered?
 15 A She overruled me.
 16 Q Okay. And I believe you had told me at some point after
 17 the sentencing that by 11:00 a.m., I believe you said,
 18 you were barely there? Is that something that you said
 19 or could have said?
 20 A 11:00 a.m.?
 21 Q Or 11:00 p.m., sorry. It went so long, I.....
 22 A I don't recall ever saying that, David. It's just too
 23 long ago to remember everything that was said about my
 24 feelings about her in the sentencing.
 25 Q Okay. And you are diabetic, as you said?

1 A Yes.
 2 Q Okay. And you said you'd need to eat and things like
 3 this can affect your ability to function?
 4 A Depends. Yeah. It all depends on when I ate last, when
 5 I didn't eat, what I ate and how I ate it.
 6 Q Okay. And so I guess what I'm getting at is your being a
 7 diabetic and the lateness of the hour could have combined
 8 to make you feel even worse than someone that wasn't
 9 diabetic?
 10 A I don't know because I don't know how somebody who's not
 11 diabetic really feels. All I'm saying is that if you're
 12 trying to get me to answer whether or not I was not up to
 13 doing the sentencing because of my health, I can't say
 14 that that was the case.
 15 UNKNOWN MALE: Okay. Switch the tape. Excuse us.
 16 (Tape changed)
 17 UNKNOWN MALE: Bewitching hours.
 18 Q And do you remember what you had to eat or when you ate
 19 during sentencing?
 20 A No, I don't.....
 21 Q Okay.
 22 Athat far back.
 23 Q Did I try to -- as things progressed, did I try to help
 24 with my defense?
 25 A What do you mean help with your defense?

1 Q Research legally, come up with cases, start digging in,
 2 asking you.....
 3 A Well, and you -- later on in the process, you, you know,
 4 came up with your theories of what would and wouldn't
 5 work.
 6 Q Okay. But did I -- like with the set -- or with the --
 7 your jurisdiction defense, did I contact you a lot or a
 8 fair amount of times by e-mail about cases that supported
 9 or didn't support it?
 10 A Well, I don't know about the amount. I couldn't say a
 11 lot or a little. All I'm saying is that I do remember
 12 that you got to a point where you went out and read
 13 cases.....
 14 Q Okay.
 15 Aor read the cases I had read or read other cases and
 16 you didn't think that it would work.....
 17 Q Okay. And.....
 18 Aon appeal. However, you didn't do that before I
 19 filed the motion in trial.
 20 Q Okay. But.....
 21 A Remember?
 22 Q Well, I'm not.....
 23 A In other words, my memory.....
 24 Q I don't think I'm supposed to answer questions here
 25 but.....

1 A Well, my memory is this.
 2 Qyou're not the type.....
 3 A My memory is this, prior to my filing of the motion to
 4 get the charges dismissed for lack of probable cause, you
 5 didn't have a different opinion.
 6 Q Okay. And was there a point that I found case law -- and
 7 I believe it was -- you probably remember -- Albright, I
 8 think, and Gerston versus Pew (ph). I may not be
 9 pronouncing them. Did I find those cases and present
 10 them to you?
 11 A I believe I found Albright but I believe you went back
 12 and read it and you didn't think it said what I thought
 13 it said.
 14 Q Okay. And do you remember making.....
 15 A And the other cases I'm not sure of the names of them any
 16 longer.....
 17 Q Okay.
 18 Aexcept for the old Oklahoma case.
 19 Q Okay. And that was like a 1909 case?
 20 A Yeah, but, as far as I could tell from researching, it
 21 hadn't been all retired.
 22 Q Okay. So the 19 -- yeah, I think that was Salter or
 23 something?
 24 A Yeah, something. I don't remember the name of it now.
 25 Q Salter that you thought upheld your contention that

Page 127

1 because the information was not sworn to.....
 2 A Right.
 3 Qit deprived the court of jurisdiction?
 4 A Correct.
 5 Q Okay.
 6 A Because without -- yeah, I mean, my -- my opinion was
 7 that without probable cause, there was no subject matter
 8 you could do.
 9 Q Okay. Do you remember having discussions where I said I
 10 believed that that was -- the affidavit or the swearing
 11 to the information was only to provide the ability for
 12 the prosecution to issue a search warrant and actually
 13 arrest me and bring me into court and that if I actually
 14 appeared in court voluntarily, I had then submitted to
 15 the court of my own free will and they did not need a
 16 warrant for my arrest and so the issue of whether the
 17 information was sworn to did not invalidate the
 18 prosecution, it just would have invalidated any warrant
 19 issued for my arrest? Do you remember any of that?
 20 A Well, what I remember is that the Albright case had dealt
 21 with a probable cause for an arrest and the reason I
 22 thought that was significant, because they were
 23 explaining what we needed for probable cause and none of
 24 that existed with the information.
 25 Q Okay. Probable cause for arresting me or probable cause

Page 128

1 for the charges?
 2 A Char -- the charges.
 3 Q Okay.. And do you remember me -- do you remember agreeing
 4 with me that the law I found would have meant that the
 5 state had jurisdiction, personal jurisdiction, and you
 6 said well, they may have some -- did you ever say
 7 something like this, they may have had personal
 8 jurisdiction but they would not have had subject matter
 9 jurisdiction? So.....
 10 A What I was trying to explain to you was that because
 11 there was no evidence of a crime, there is no subject
 12 matter jurisdiction and, ordinarily, without probable
 13 cause, there is no evidence of a crime; therefore, no
 14 subject matter jurisdiction.
 15 Q Okay. Do you remember me ever pointing out that if a
 16 prosecutor signs an information, he does so under his
 17 oath of office and does not to ac -- actually have to
 18 sign an affidavit?
 19 A Yeah, then I showed you the cases that says that an oath
 20 of office is insufficient for probable cause.
 21 Q Okay. And you're saying that that probable cause is for
 22 the charges and not for a warrant to arrest me?
 23 A Correct.
 24 Q Okay.
 25 A Because Alaska requires that crimes be supported by

Page 129

1 probable cause.
 2 Q Okay. But you had then boiled down -- you just remember
 3 saying that this boils down to they did not have subject
 4 matter jurisdiction?
 5 A In my opinion, they didn't.
 6 Q Okay. And have you ever read what it takes for subject
 7 matter jurisdiction?
 8 A Yes, and, in fact, I researched it in your case.
 9 Q Okay. Do.....
 10 A Then from other jurisdictions, their probable cause is
 11 the evidence upon which a court can say I have jur -- I
 12 have subject matter jurisdiction. In other words, if
 13 someone just went before a judge in a courtroom and said,
 14 you know, Tom Stepnosky went out and killed somebody, I
 15 don't think that would be enough for the court to say I
 16 have jur -- subject matter jurisdiction over him.
 17 However, if a police officer or a district attorney swore
 18 out an affidavit saying here's some evidence that shows
 19 probable cause that Tom Stepnosky killed somebody, then
 20 the court has jurisdiction.
 21 Q Okay. But -- and they're not allowed to just sign that
 22 and say -- you know, have a.....
 23 A From what I researched.....
 24 Q Okay.
 25 Ait required a sworn affidavit of probable cause

Page 130

1 which didn't exist on your information.
 2 Q Okay. And did Mr. Leaders file a opposition to your
 3 saying it was a -- that was a frivolous defense and.....
 4 A No, he didn't claim it was frivolous, he claimed that he
 5 thought that he did have probable cause.
 6 Q Okay. And so what you're saying is for subject matter
 7 jurisdiction, it does not -- subject matter jurisdiction
 8 is not established by statute? Is that what you're
 9 saying is.....
 10 A No, what I'm saying is merely accusing somebody of a
 11 crime does not give the court subject matter jurisdiction
 12 without probable cause. That's what I'm saying.
 13 Q Okay. And you're -- what you're saying is if Mr.
 14 Peterson here, for example, says on this day, you know,
 15 Trooper Givens did this, this and this and we hereby feel
 16 that there's probable cause to arrest Mr. Robinson for X,
 17 Y and Z.....
 18 A And he didn't swear to it?
 19 Qand he didn't swear to it, he just signed it, that's
 20 not good enough?
 21 A In my opinion, it isn't.
 22 Q Okay. And so you would agree that that is how subject
 23 matter jurisdiction is obtained and not by statute?
 24 A Statute says that certain courts have jurisdictions over
 25 certain kinds of cases but it doesn't say what probable

1 cause is.
 2 Q Okay. But -- I can't find it here but would you -- so
 3 you would not agree that if a statute -- I don't have the
 4 exact statute here -- says that -- actually, I do here --
 5 that if AS 22.15.060 says criminal jurisdiction, A, the
 6 district court has jurisdiction of, one, of the following
 7 crimes, A, a misdemeanor, what you're saying is that that
 8 is what gives subject matter jurisdiction?
 9 A Yes, but you have to have a crime first, at least
 10 probable cause of it, in order for there to be
 11 jurisdiction. That's my -- that's my opinion.
 12 Q I guess what I'm saying is your position is that they did
 13 not have juris -- subject matter jurisdiction even though
 14 I was charged in district court with a misdemeanor and a
 15 prosecutor, Scott Leaders, cited all this stuff by
 16 Trooper Givens and other troopers with warrants and said
 17 we hereby are charging Mr. Haeg with these crimes and
 18 just signed it.....
 19 A Well.....
 20 Qand that is not good enough?
 21 A Well, let me give you an example. The statute that gives
 22 courts jurisdiction also gives certain courts like the
 23 Superior Court jurisdiction over felony crimes, right?
 24 Q Yeah.
 25 A But unless there's an indictment from a grand jury in

1 Alaska that says there's probable cause to believe that a
 2 felony has been committed, the court never gets
 3 jurisdiction.
 4 Q Yeah, but isn't that personal jurisdiction and not
 5 subject matter?
 6 A No, that's subject -- no, that's subject matter
 7 jurisdiction. There is no subject without probable cause
 8 is my opinion.
 9 Q Okay. Anyway, I guess this is the time to move on. And
 10 you have testified here that you recommended I not even
 11 put evidence on at trial when we did go to trial?
 12 A Yeah; I said to you that this was a legal defense because
 13 I didn't think they had probable cause to charge you in
 14 the beginning and that after the trial started -- in
 15 other words, after they impaneled the jury and the state
 16 put on their first witness -- that then I could ask that
 17 the charges be dismissed. But I went back to research
 18 that issue more and found out that I'd have to first ask
 19 the court before we went to trial to dismiss for lack of
 20 probable cause which is what I did.
 21 Q Okay. And do you remember telling me and Jackie that
 22 this defense was so great or so compelling that when you
 23 brought it up, you would call the court of appeals and
 24 they would stop the court proceeding?
 25 A No, I never told you that. I never told you I'd call the

1 court of appeals and they would stop the proceeding.
 2 Q Okay. Did you ever say that if they were notified over
 3 what occurred, they would stop the trial?
 4 A No, I didn't say that either.
 5 Q Okay. You -- did you ever say anything about contacting
 6 the court of appeals and they would get involved?
 7 A What I said was and what I -- what I said was that if --
 8 there's a possibility that if they didn't go along with
 9 this, we could ask for a participatory review from the
 10 court of appeals and maybe they might intervene but not
 11 that they for sure would say now the trial's not going to
 12 go forward.
 13 MR. PETERSON: Hold on one second. Sorry about that.
 14 UNKNOWN FEMALE: Dave, changing another tape.
 15 UNKNOWN MALE: Yeah, we run secrets.
 16 (Tape changed)
 17 MR. PETERSON: Back on record in case 3KN-10-1295 CI.
 18 It's state's beginning of tape number three and, I'm sorry,
 19 would you ask Mr. Robinson if he'd repeat what his answer was
 20 there? Because the tapes went off at that point.
 21 MR. HAEG: Okay.
 22 A My answer was that if I told you anything about the court
 23 of appeals, it was that we could petition for a review to
 24 the court of appeals and maybe they would hear it if we
 25 went to trial.

1 Q Okay. And did you ever do that?
 2 A No, I didn't do it.
 3 Q And why not?
 4 A Because we were ready to go to trial, remember?
 5 Q Okay. But you had -- had you ever told me that you would
 6 do that, that you would petition the court of appeals?
 7 A No, I never promised you I would do that.
 8 Q Okay. But you had said that you could do -- or would do
 9 it?
 10 A As to the availability. I never promised that I would do
 11 that.
 12 Q Okay. And after I was convicted, you still thought the
 13 subject matter -- that they did not have -- subject
 14 matter jurisdiction was your primary or, you know,
 15 basically, your.....
 16 A David, I thought -- it was my legal opinion that your
 17 best defense was this technicality problem with the
 18 information. Otherwise, the evidence against you was
 19 pretty strong for conviction and I explained that to you
 20 as well. So the course that I took was based on legal
 21 research and my opinion that, in fact, there was a
 22 defective information and even if you got convicted, you
 23 could still have that conviction overturned if the
 24 information was defective.
 25 Q Okay. And that's why you said that you recommended going

Page 135

1 to trial and not putting on evidence?
 2 A I didn't recommend, David, I gave you your choice. I
 3 said here's your choices and you chose to go to trial.
 4 Q Okay. I'm just wanting -- oh, sometimes it's hard to get
 5 this stuff by asking a question. So you -- is it true
 6 that you told me that you recommended going to trial and
 7 not putting on evidence?
 8 A After you decided that we went -- that we were going to
 9 go to trial and not pursue the plea agreement
 10 enforcement, then I said, you know, there's no need
 11 putting on evidence and what we needed to do is to
 12 establish this defect.
 13 Q Okay. In other words, you thought we should just rely
 14 totally on that defect and not actually try to win the
 15 case on the merits?
 16 A Correct.
 17 Q Okay. And you -- do you remember or you've testified
 18 here or you've testified that you discussed or that you
 19 never filed a motion to suppress?
 20 A That's right, I did not.
 21 Q Why not?
 22 A Because after looking at it closely, I didn't think that
 23 we had a shot at it, at getting -- getting the evidence
 24 suppressed. The original issue we were looking at for
 25 suppression had to do with how they were able to

Page 136

1 determine that the tracks belonged to an airplane as
 2 opposed to a snow machine or something else and then when
 3 it came out that, you know, it was tracks for an
 4 airplane, then it was pretty difficult to say it wasn't
 5 your plane since it had a unique pattern to it.
 6 Q Okay. And you couldn't file a motion to suppress because
 7 of the use of my statement?
 8 A Well, usually your state -- well, they hadn't used your
 9 statement yet.
 10 Q Okay. And.....
 11 A They just got an in -- they just got an information and
 12 that was one of the reasons why I said the information
 13 was defective.
 14 Q Okay. Why did you file in a reply then that the state
 15 should not be using my statement if they were not using
 16 my statement?
 17 A Not using your statement for the basis for the
 18 information.
 19 Q Okay. And.....
 20 A Couldn't deny that there wasn't a statement.
 21 Qare you allowed to bring up new contentions in a
 22 reply brief?
 23 A What do you mean?
 24 Q Is it true that you filed a motion to -- about the
 25 subject matter jurisdiction and never brought up the

Page 137

1 issue of my statement being used in the charging
 2 information?
 3 A I did bring it up in the process of the motion practice
 4 and, yes, I did bring it up.....
 5 Q And there was an opposition by the state and then in your
 6 reply.....
 7 A Right.
 8 Qyour first time, you brought up the issue about the
 9 motion.....
 10 A The statement.....
 11 Qor about the statement.
 12 A Because the state raised it and I replied to it and
 13 that's perfectly normal.
 14 Q How come your reply -- your bringing it up in the reply
 15 was never ruled on by the court?
 16 A I don't know, you'd have to ask Judge Murphy that.
 17 Q Well, the -- did you know that the court of appeals ruled
 18 that since it was brought up in a reply brief, it never
 19 had to be addressed?
 20 A I didn't read the opinion from the court of appeals.
 21 Q Okay. If you had brought up a issue such as that in a
 22 manner which could -- would not had to be addressed, was
 23 that ineffective?
 24 A No.
 25 Q And explain why not.

Page 138

1 A Well, first of all, I'm not sure that -- that what you
 2 said the Sup -- the court of appeals said had to do with
 3 my motion or some other aspect of bringing stuff up in
 4 appeals. The point is is that the issue was there to be
 5 talked about at any time during the motion practice and
 6 we talked about it.
 7 Q But if you don't bring the issue up in a manner which the
 8 court has to address.....
 9 A Well, the court did have to.....
 10 Qwhy bring it up at all?
 11 A Well, the court did have to address it because before the
 12 court made a decision, that issue was before it.
 13 Q Well, how come the court never addressed it?
 14 A I don't know. You'd have to ask Judge Murphy that
 15 question.
 16 Q How come that wasn't something in your points of appeal?
 17 A Why would it have been? The point of the -- all I had to
 18 say in the point of appeal was basically what I said was
 19 that it was a defective information and then I could talk
 20 about in the brief why it was defective including why
 21 they shouldn't have used your information that you gave
 22 them to support it.
 23 Q And so is it your opinion that their use of my statement
 24 in the charging information meant the charging
 25 information was defective?

1 A No, it meant that there was a violation of -- of the
 2 evidence rule.
 3 Q What's that mean?
 4 A That they shouldn't have used your statement because it
 5 was part of the plea negotiation to say that you
 6 committed the crime.....
 7 Q Okay. But if there's no penalty for that.....
 8 Abut the main point about that was that if that had
 9 been sworn to under oath, then that really wouldn't have
 10 been an issue as far as the probable cause was concerned.
 11 The real question of your information was whether or not
 12 there was probable cause for the information to begin
 13 with.
 14 Q Okay. What's the punishment for them using my statement
 15 in the charging information?
 16 A I don't know. It would depend -- other than they
 17 wouldn't have been able to use it to charge you with a
 18 crime but that doesn't mean that they -- they wouldn't.
 19 have never been able to use it all ever, depending on the
 20 circumstances.
 21 Q So the state gets to pick and choose when they use my
 22 statement and when they don't?
 23 A It doesn't go to the state.
 24 Q Who's it up to?
 25 A The point is -- well, so it's kind of up to you and the

1 your reasons as to why you did what you did, you'd have
 2 to testify.
 3 Q All right. And you had said that you didn't file a
 4 motion to suppress because there was other evidence that
 5 would have been able to be used to convict me. Is that
 6 correct?
 7 A Well, that's not what I said. What I said is after I
 8 looked further into the affidavits in support of their
 9 warrant, that it didn't appear to me that there was such
 10 defectiveness in it that would warrant a motion to
 11 suppress. Maybe some attorneys file motions just to be
 12 filing motions and maybe that might be competent or
 13 incompetent, I don't know, but in my practice, I never
 14 filed a motion unless I thought there was merit to it
 15 because, as a rule, that could sanction me for bringing
 16 frivolous or non-meritorious motions in court and I
 17 didn't think after looking at the affidavits that there
 18 was really any evidence that we could say, you know, was
 19 not probable, particularly after the airplane track
 20 issue.
 21 Q Okay. But do you remember that even the airplane tracks
 22 and all the evidence there, they had claimed those were
 23 found somewhere else and so even all the tracks could
 24 have been claimed was -- had to be suppressed because the
 25 state had claimed they were all over here where I guide

1 state. So when you ended a plea negotiation with the
 2 state, the evidence rule says anything that you said
 3 during that time can't be used against you at a trial.
 4 That's basically what it says.
 5 Q Does not say -- does it say trial or does it not say will
 6 be used against you?
 7 A Well, I don't -- we have the evidence rule right there if
 8 you want to look it up but the point is that if you do
 9 testify, then because your credibility is at stake, then
 10 they can use whatever they want to use to test your
 11 credibility.
 12 Q But if -- do you remember telling me that I had to
 13 testify because they were using my statement against me
 14 and you pointed to the information that quoted my --
 15 about three or four pages of my statement.
 16 A I didn't remember telling you you had to testify on that
 17 issue.
 18 Q You don't remember telling me that I had to testify
 19 because the state was going to use only all the bad
 20 things I said during my statement and none of the good
 21 things. For the good things to come out, I had to
 22 testify?
 23 A I remember telling you that, specifically that you have
 24 to testify to bring out the good things. What I do
 25 remember telling you, that if you wanted the jury to hear

1 when, in fact, they're in a whole 'nother game management
 2 unit and the state's own GPS coordinates proved that?
 3 A Well, there was some question as to the identification of
 4 the game management unit to some of the wolves, not all
 5 of them, David.
 6 Q Of the evidence the state had, was it true that all of
 7 the wolves that the state had had their locations
 8 falsified?
 9 A Not that I recall.
 10 Q Okay. If I can prove in the state's case that that was a
 11 fact, would you admit that then that was the case?
 12 A Yeah, if it.....
 13 Q Okay.
 14 A If -- as I recall -- my memory is that at least five of
 15 those wolves were not in bad locations that they say --
 16 that, you know, you're saying that they were in. In
 17 other words, there were at least some of those wolves who
 18 were in the location where they shouldn't have been
 19 taken.
 20 Q Okay. And you don't think that it's critical that if the
 21 state's claiming I'm shooting wolves where I guide and in
 22 the warrants putting the guide -- game management unit
 23 where I guide and then saying David Haeg, you'll -- you
 24 know, we found evidence that he shot wolves in this same
 25 game management unit and they write the same game manage

1 unit -- in this case, 19-C -- you don't think that that's
 2 significant -- a significant alterca -- or amendment,
 3 that that wouldn't -- what you're saying is that shifting
 4 over to where a guide would not lead a -- you know, a
 5 reasonable person to be more apt to believe I was doing
 6 it to, you know, benefit my business?
 7 A (No audible answer).
 8 Q I guess put it this way.....
 9 A The -- the.....
 10 Qwouldn't it increase the likelihood that I could be
 11 convicted of guiding crimes?
 12 A No, the way I saw your case, David, that you were on the
 13 way to get convicted of at least some of the wolves
 14 because some of the wolves were taken outside of the
 15 place where you were allowed to have your permit to do
 16 it, undisputably. I also knew just from talking to you
 17 that you admitted that all of them were not in the area
 18 where they should have been taken. So it was a surprise
 19 to me, however, that when the issue came up as to your
 20 motive for doing what you did, that you agreed.
 21 Q Exactly how did I agree?
 22 A Through your advertisement issue that came up at trial,
 23 the -- Trooper Givens, as I recall, testified that you
 24 had put out some advertisements saying (indiscernible -
 25 whispering) because you were given them wolf carcasses or

1 A That may have been a question that came up in cross
 2 examination. I don't remember.
 3 Q Okay.
 4 A All I'm saying is that the end result of all that, David,
 5 was that when you were on the stand being questioned by
 6 Scott Leaders about your motives, you pretty much agreed
 7 to what Trooper Givens had to say.
 8 Q Okay. So if that's not proven in there, you'd have to
 9 retract it?
 10 A I'd have to retract that.....
 11 Q Okay.
 12 Abut that's the way I recall it.
 13 Q Okay. And in -- I guess I could just move on for -- I
 14 could use my list here. And your testimony is is that
 15 you had ran by me that we could file a motion to suppress
 16 but you didn't think it would be prudent?
 17 A Yeah, later on, I told, you know, that I didn't think we
 18 were going to win it because of the fact that, you know,
 19 looking more closely to the affidavit and the evidence,
 20 there wasn't anything in there that really looked like it
 21 was not probable.
 22 Q Or intentional?
 23 A Yeah, intentional or reckless lying or.....
 24 Q Okay. And if the falsification was intentional or
 25 reckless, then that means that you basically have a very

1 cave -- or skins over there and -- and that his deal was
 2 this was all your idea of getting rid of the wolves so
 3 you could have more moose and you could have more clients
 4 and I cross examined him about that quite extensively and
 5 then you kind of agreed that that was -- was the deal.
 6 Q You don't remember that.....
 7 A And you got on the stand and Scott Leaders ask you about
 8 it. You admitted to it then too.
 9 Q You don't remember that the issue was how the state --
 10 you don't remember that how the state pursued that was by
 11 saying Mr. Haeg, no matter where the wolves were killed,
 12 could they have traveled to your guide area and ate
 13 moose?
 14 A I don't recall all the details, all I know is that.....
 15 Q Okay.
 16 Atheir theory which came out through Trooper Givens
 17 which I cross examined him extensively about, then asked
 18 you about it and then Scott Leaders when you got on the
 19 stand asked you about it and you pretty much agreed to
 20 what Givens had to say. Now, that's the way I remember
 21 it.
 22 Q Okay. You don't remember that how that came about was
 23 that the state said hey, irregardless of where the wolves
 24 were killed, could they travel to your guiding area and
 25 eat moose there?

1 good shot at suppressing that evidence?
 2 A Well, not all of it, David, because remember -- and I
 3 don't know how this sits on you but there were certain
 4 locations that weren't in dispute about those wolves.
 5 Whether it was 19-C, 19-B, whatever, it wasn't in the
 6 location where they should have been taken.
 7 Q Okay.
 8 A So whether we'd have got all the evidence suppressed or
 9 not, I doubt it. Even if we'd have been able to show
 10 that there was intentional or reckless or those kinds of
 11 things.
 12 Q Okay. Just because wolves are taken outside the area,
 13 does that mean I automatically get charged with guide
 14 crimes no matter where they're taken?
 15 A They had evidence -- they had probable cause evidence
 16 that led to you.
 17 Q Okay. Does -- can.....
 18 A Whether it was beyond reasonable doubt is not the
 19 question.
 20 Q Can the location, even if they're outside, affect -- make
 21 it more likely or less likely that I would be charged as
 22 a guide or with violating the wolf control program?
 23 A That I don't know, David.
 24 Q In your estimation, could the location -- I'll put it
 25 this way.....

1 A The only thing about location that mattered in your case
 2 was whether or not where these wolves were taken were in
 3 the permitted area.
 4 Q Okay.
 5 A That's it.
 6 Q Okay. Did you know in the open area, the open area,
 7 there were donut holes inside that were closed? Did you
 8 know that?
 9 A Eventually I found that out.
 10 Q Okay. So what you're saying is if I was inside the big
 11 area that was open to killing wolves and I happened to
 12 stray into one of these little donut holes, I could be
 13 charged as a guide for shooting wolves outside the open
 14 area?
 15 A Well, remember, David, I -- my.....
 16 Q I -- please answer the question.
 17 A I'm -- I'm going to answer the question. I never thought
 18 you should have been charged as a guide to begin with if
 19 you recall because I -- my theory of the -- of your
 20 defense was.....
 21 (Tape changed)
 22 A Are we ready? Are we ready, David?
 23 Q Sure.
 24 A So I didn't think you should have been charged with the
 25 guide to begin with and I -- we talked about that pretty

1 Q Okay.
 2 Ashould have been charged with.
 3 Q Okay. And if I could have been charged with that, do you
 4 think locations of where the wolves were actually killed
 5 enter into whether it's more or less likely for a judge
 6 and jury to believe that it was actually guiding or
 7 violating the wolf control program?
 8 A If your question is did it make any difference whether
 9 you killed those wolves in or out of the area, yes, it
 10 would make a difference.
 11 Q Okay. And would have made a difference if I'd have
 12 killed the wolves in or out of my guiding area? That is
 13 the question.
 14 A If your guiding area was not open for the wolf
 15 containment program or wolf control program and you took
 16 wolves in that area, then, of course, that would be
 17 something they could charge you with.
 18 Q So you're saying that it made no difference whether I
 19 shot wolves inside my guiding area or outside?
 20 A No, what I'm saying, the only difference that made any
 21 difference was whether you shot them in the area that you
 22 were allowed to shoot them in, period.
 23 Q Okay. So it made no difference that they took all this
 24 evidence and moved it over into my guiding area, made no
 25 difference moving it from one game management unit legal

1 much to begin with because I thought, first of all, you
 2 were trapping instead of hunting because you had a
 3 trapping permit which is what the permit had said you had
 4 and that you weren't guiding anybody, you were just going
 5 out under this permit to take a wolf -- or wolves.
 6 Q Okay. I don't know, this might be a futile less --
 7 exercise here but if, for sake of argument, you were
 8 charged with murder and the state claimed you committed
 9 murder because the body was found outside your house yet
 10 you were saying it wasn't murder because the body was
 11 found inside your house, don't you think that if you
 12 would have filed a motion and proved that even though
 13 somebody was killed, it may be self defense or
 14 manslaughter because the person was inside your house
 15 rather than outside? So I guess, using that example.....
 16 MR. PETERSON: I'm going to object to the question.
 17 MR. HAEG: Okay. Object.....
 18 MR. PETERSON: I don't understand it.
 19 MR. HAEG: Okay.
 20 Q I'm just saying that are different -- are the same
 21 actions sometimes charged as a different crime? I mean,
 22 could I legally for what occurred or what you know
 23 occurred, could I, theoretically, have been charged with
 24 violating the wolf control program, yes or no?
 25 A That's what I thought you.....

1 entity to another, proven by the GPS, made no difference?
 2 A I tried to des -- determine eventually from Trooper
 3 Givens whether or not -- or where these wolves were
 4 exactly taken but the bottom line still remains that they
 5 could only be taken in the authorized area. Whether that
 6 was your guiding area or not your guiding area, they only
 7 could be taken within a certain location.
 8 Q Okay. If you could prove that the state intentionally
 9 moved them or recklessly claimed they were in, would that
 10 have made a difference on how I was charged, that if you
 11 could prove that they were actually moving them from one
 12 game management unit to another, actually, intentionally
 13 doing that, would that have had any effect?
 14 A If -- only if by moving them to another game area, that
 15 game area would have been illegal and the other would
 16 have been legal.
 17 Q Okay. So what.....
 18 A But if they were both illegal, it wouldn't make no
 19 difference.
 20 Q Okay. All right. Oh, I like that. That's good. What
 21 you're saying is if I'd have shot wolves in the donut
 22 hole surrounded by the open area and they moved them from
 23 that donut hole over to my guiding area, it would have
 24 made no difference?
 25 A No, that's not what I said at all.

Page 151

1 Q No, there -- it's -- yeah, I have a non-open area.
 2 A What I said -- no, that's not what I said at all, all I
 3 said was what mattered is what area is open and where the
 4 wolves were taken.
 5 Q Okay. Doesn't it go to intent?
 6 A What goes to intent?
 7 Q Where the wolves were killed, whether they were -- where
 8 I'm allowed to guide or not. Doesn't that go to my
 9 intent of what's going on?
 10 A I don't know whether or not it goes to knowing versus
 11 specific intent. You weren't charged with a specific
 12 intent crime, just a knowing crime.
 13 Q Okay. So your -- well, okay. We'll try to move on here.
 14 Did you know or did you investigate what was actually
 15 said during the statement I gave to the state?
 16 A What do you mean?
 17 Q Did you actively seek.....
 18 A Well, I read the statement.
 19 Q Okay. So you got a copy of the.....
 20 A Statement.
 21 Qstatement?
 22 A Well, I mean, I knew what you said in the statement.
 23 Q Okay. And then if you read that, then you read where
 24 during that, far before I ever hired you, far before
 25 charges were even filed, that I notified the state their

Page 152

1 evidence locations were wrong?
 2 A Yeah.
 3 Q Okay.
 4 A But I.....
 5 Q Do you think the state had a duty to then correct what
 6 they had been told was wrong way back then?
 7 A They may have had a duty, I don't know.
 8 Q Okay. I like that, may have had a duty. And if they
 9 were told that -- and did you know that, in fact, Tony
 10 Zellers also told the state that the locations were wrong
 11 way back when when he gave a statement? Did you know
 12 that?
 13 A I don't remember. I could -- could have known that as
 14 well. I mean, we -- you and I talked about it there
 15 awhile so.....
 16 Q Okay. And so if the state was told at the very beginning
 17 of their case or very beginning of their prosecution
 18 during a statement that it was -- they had -- were wrong
 19 on where they were and then I believe it was many months,
 20 if not close to a year, before I go to trial, that in
 21 that interim, they should have maybe whipped out their
 22 whiz wheel and got their GPS coordinates out again or
 23 just looked on a map that has the game management unit
 24 boundary and realized that they were wrong and Tony and I
 25 were right. I mean, they had a.....

Page 153

1 A They had an opportunity to do that.
 2 Q Okay. Yeah, and they may have had an obligation because
 3 those false locations -- you admit that on all the
 4 warrants, it said all the evidence they found was in game
 5 management unit 19-C. Did you -- do you look at the
 6 warrants?
 7 A Yeah, I looked at the warrants, I just don't have the
 8 warrant in front me now to know exactly every word that
 9 was on it but there was this issue of 19-C versus 19-D.
 10 I do remember that.
 11 Q Okay. And now I'll go to that. You know, you said that
 12 -- well, you looked at the trial transcript and you say
 13 that Trooper Givens, you know, claimed all these -- well,
 14 wolves were shot in 19-C.
 15 A Then he corrected that and so he.....
 16 Q Okay. And, you know, that was with Scott Leaders
 17 soliciting and so then he comes back to the stand -- or
 18 he stays on the stand and Scott Leaders steps down and
 19 then you're on the stand, right, and.....
 20 A I never took the stand.
 21 Q Well, or your -- it's your turn to cross examine him,
 22 correct?
 23 A After Scott Leaders got done with his direct examination,
 24 yeah.
 25 Q Correct? And did you or did you not confront Trooper

Page 154

1 Givens by saying are you sure where those wolves were
 2 located?
 3 A You know, I can't remember exactly what I said at trial
 4 but I do remember. I wanted to find out from him about
 5 this distinction between 19-C and 19-D and so I asked him
 6 about those things.
 7 Q Okay. And did I -- do you remember when Trooper Givens
 8 was testifying how adamant I was and angry I was that the
 9 state was continuing to falsify the location even after I
 10 told them during my statement -- did I say they know
 11 that's wrong, I want you, Mr. Robinson, as my attorney, I
 12 want you to nail -- I mean, I wa -- do you remember me
 13 being upset about that?
 14 A I remember you being concerned about it.....
 15 Q Okay.
 16 Abut I wouldn't say that you were necessarily all
 17 that upset about it. In other words, you weren't boun --
 18 pounding me in the back and telling me I've got to do
 19 this, got to do that. All I know is that it was an issue
 20 concerning our cross examining Mr. Gravelli (ph).
 21 Q Okay. In other words, I was concerned enough I wanted
 22 you to confront him about it?
 23 A I wanted to confront him about it so I confronted him
 24 about it as well as you wanted to confront him about it.
 25 Q Okay.

1 A It wasn't like I wasn't willing to confront him about it,
 2 you forced me to do it, David.
 3 Q Okay. And I've heard you say that he's allowed to
 4 clarify after he's been confronted. Is that actu -- is
 5 that how it goes?
 6 A That's not what I said. I was asked a question as to
 7 what perjury laws in Alaska mean and, as I understand
 8 perjury laws in Alaska, perjury, first of all, you have
 9 to say something that you know isn't true. You don't --
 10 you believe it's true, you just say it but if in that
 11 proceeding and oh, you change your story or you say
 12 something different, then there's no perjury.
 13 Q Okay. There -- it doesn't say anywhere in the statute
 14 that they can do that up until they're confronted on it?
 15 A Yeah.
 16 Q Didn't Trooper Givens have a duty -- the only way he
 17 could back out and it not be perjury was if he came back
 18 to the stand and said oh, oh, I made a mistake?
 19 A Absolutely.
 20 Q But when you said Trooper Givens, are you sure where
 21 those wolves are, are you sure, right then, he's being
 22 confronted, he realizes that he is wrong and the proof
 23 that he realizes he had just committed perjury before is
 24 he -- if he knew then that he was wrong, he knew before.
 25 A But he -- but he chan -- the law asks.....

1 a particular day. I know that on some days, I did bring
 2 some snacks or something there. I can't remember, David.
 3 It's just been too long ago to know exactly what I had
 4 and when I had it.
 5 Q Okay. And did you feel that the moose issue was like a
 6 trial for something I was never charged with?
 7 A Yes, and I explained that to Judge Murphy before we went
 8 down that path and I argued with her vehemently not to
 9 allow the state to bring that evidence into the
 10 sentencing because it was not relevant, it was like
 11 putting you on trial for something you'd never been
 12 accused of and she overruled me.
 13 Q And was that -- is that allowed by rule to be sentenced
 14 with uncharged informa -- uncharged allegations?
 15 A I didn't think it was but she's didn't seem to matter and
 16 she allowed it in anyway.....
 17 Q Okay. And.....
 18 Aand then said after it was all said and done I'm not
 19 going to consider it.
 20 Q Okay. And you've already said the sentencing, it went
 21 very long and you agree with that.
 22 A And part of the reason that the sentencing went very long
 23 was this side show concerning the moose charges, you
 24 know.
 25 Q Yeah, and lots of witnesses and lots of allegations of

1 Q He knew before.
 2 A He changed his testimony in the same -- in the
 3 proceeding. I saw him coming.....
 4 Q But that's why he's not allowed to change it after he's
 5 confronted is if he would have never been confronted.....
 6 MR. PETERSON: Mr. Haeg, would you allow him to answer his
 7 question; please?
 8 MR. HAEG: Okay. I'm sorry, I'm not good at this so.....
 9 A All I'm saying is that my understanding of Alaska law is
 10 that a person can change their story during the course of
 11 a proceeding and it's not perjury.
 12 Q Even if he's confronted?
 13 A It may be inconsistent but it isn't perjury.
 14 Q Even if he's confronted before he does so?
 15 A Even if he's confronted before he does so.
 16 Q Hmm. That's a new one for me. Let me just.....
 17 (Whispered conversation)
 18 Q Back to sentencing, while -- during my sentencing, did
 19 you go anywhere to eat?
 20 A You know, I don't remember whether I went somewhere to
 21 eat or I ate at the courthouse. I just can't remember
 22 where it happened but I do remember eating something. I
 23 just don't remember where it was.
 24 Q Okay. And did you bring any food with you?
 25 A I can't remember whether I brought any food with me that

1 wrongdoing that.....
 2 A That.....
 3 Qand do you -- I guess do you agree that after eight
 4 hours of that, that none of that would have affected
 5 Judge Murphy's judgment?
 6 A Well, I don't know whether it went on for eight hours. I
 7 can't say how long it -- you know, that it went on for
 8 eight hours. All I know is that -- what I thought and I
 9 can't tell you what Judge Murphy thought.
 10 Q Okay. And you've testified that you told me before I
 11 ever hired you that I had the right to a prompt post-
 12 seizure hearing?
 13 A Back in the spring when you called me on the phone and
 14 told me that they seized your airplane and I was going --
 15 I was on my way out of the country to Costa Rica.
 16 Q Okay. And do you remember specifically what you said
 17 about that or what we could do about it?
 18 A All I told you is that -- I said David, I don't believe
 19 that the state can just take your plane without a
 20 hearing, you should try to find out some way to have a
 21 hearing so you can see if you can get your plane back and
 22 post a bond or something.
 23 Q Okay. And did you ever investigate whether I had a
 24 hearing or not?
 25 A You weren't even a client of mine.

Page 159

1 Q When I was a client of yours.
 2 A Well, yeah, by that time, I knew you didn't have a
 3 hearing and I asked you about that then. I asked you
 4 when you first -- I said when you got Brent, did he try
 5 to get you a hearing or....
 6 Q Okay. And if I didn't have a hearing, could anything
 7 have been done about that? What -- I guess let me
 8 rephrase that. Was I supposed to have a hearing?
 9 A In my opinion, when they seized your plane and that plane
 10 is part of your livelihood like a commercial fisherman's
 11 boat, then due process requires them to give you a
 12 hearing before they keep it.
 13 Q Now, and is that hearing supposed to be given within
 14 days, if not hours?
 15 A Promptly.
 16 Q Okay. And if I didn't get that hearing and nobody ever
 17 told me about it....
 18 A There was (simultaneous speaking) told you about it, it
 19 was....
 20 Q So there's nothing to do about it?
 21 A Or I told you about it.
 22 Q Okay. But what you're saying is even though they were
 23 supposed to give it to me....
 24 A And I don't -- yeah.
 25 Qand I didn't get it, there's nothing you could do

Page 160

1 about it?
 2 A Well, there's nothing I could do about the fact that you
 3 -- you didn't get the hearing. I mean, you didn't -- I
 4 did....
 5 Q Couldn't you file a motion to say give this man his
 6 property back?
 7 A I did eventually file a motion saying....
 8 Q No, give this mo -- man -- could you have filed a motion
 9 stating this, Your Honor, we want the state to give Mr.
 10 Haeg back the property because they did not give him the
 11 required hearing within days, if not hours....
 12 A No, the remedy is a hearing.
 13 Q So you just said that they're supposed to give you a
 14 hearing within days, if not hours, but if they don't ever
 15 give you one or wait 10 years, there's no sanction on the
 16 state, they can just....
 17 A Well, I mean, you might file a lawsuit for loss of your
 18 use of property or something like that but in terms of
 19 what the remedy is for the violation of due process
 20 question is a hearing.
 21 Q You can't ask for them to be punished over -- I guess I'm
 22 getting this like what....
 23 A You can file a lawsuit against the....
 24 Qincentive would the state have....
 25 A Let me -- can I (simultaneous speaking).

Page 161

1 MR. PETERSON: Can you allow him to finish the question
 2 please?
 3 A You can file a lawsuit against the individual personage
 4 of the state that took your property and ask for them to
 5 relea -- compen -- give you some compensation for the
 6 loss of use of it but as far as the due process question
 7 is concerned as to what the remedy is with regard to the
 8 plane, you're entitled to a hearing, not to get the plane
 9 back. You just -- you're entitled to a hearing on that
 10 to determine whether they can keep it or not but as
 11 far....
 12 Q You can't say to punish them for not giving you the
 13 hearing in the required time, you get the airplane back?
 14 A I'm -- I just told you what I think the remedy is.
 15 Q Okay. So....
 16 A But I do want to straighten this out that at the time you
 17 talked to me in the spring of 2004, you weren't a client
 18 of mine.
 19 Q Okay. And then when I was a client of mine, did you ever
 20 require the hearing?
 21 A In July, apparently, I did ask for a hearing concerning
 22 being able to bond so that, as a remedy, they could keep
 23 the money and let you have the plane.
 24 Q I don't remember ever having a hearing. Why is that?
 25 A Because Judge Murphy denied it.

Page 162

1 Q I don't believe she ever even denied it.
 2 A Well, you'd have to ask her about it and all I know is
 3 that I made a motion and I have the evidence that I made
 4 a motion and made the request.
 5 Q Okay. And if I was supposed to get a hearing within
 6 days, if not hours, because it was what I used to make a
 7 livelihood and I didn't get that and then you file a
 8 motion for a hearing later on and she doesn't even rule
 9 on that, don't you think that there's a pretty big issue
 10 that should be addressed that they basically stole an
 11 airplane without any of the due process?
 12 A I don't know whether I would characterize it as that. I
 13 did what I thought was prudent to do which was to bring
 14 up the question of bonding because the seizure issue was
 15 -- was -- you weren't even hunting or guiding anymore so,
 16 I mean, it was -- that was over.
 17 Q Okay. And....
 18 A So the question was should they be able to keep the plane
 19 without bond -- without a bond.
 20 Q Okay. And am I required to be allowed to bond it out?
 21 A I thought you were.
 22 Q Okay. And if I....
 23 A I thought you were but, apparently, the judge didn't
 24 think so.
 25 Q Okay. And if the clear law says I was supposed to be

1 able to bond it out, should there have been any further
 2 action possibly against Judge Murphy for not following
 3 the rules?
 4 A I'm not sure that I -- you would be able to file an
 5 action against Murphy for not following the rule.
 6 Q Okay. And I don't know and.....
 7 MR. PETERSON: Please just ask him a question.
 8 MR. HAEG: Okay. I -- my brain's trying to do too many
 9 things here.
 10 Q Do you remember if the law that pertains to these
 11 situations is Waste versus State, an Alaska Supreme Court
 12 case?
 13 A I don't recall the name of the case now, David.
 14 Q Okay. And if.....
 15 MR. PETERSON: Mr. Haeg, if you want to ask him why he
 16 didn't file a motion, that would be an issue for the
 17 ineffective assistance of counsel. Asking him his belief or
 18 interpretation of the law isn't. That's a legal question for
 19 the court. It's a legal question for the court of appeals or
 20 for Judge Brow -- Bauman. His belief of the law is not really
 21 the issue here, it's his ineffective assistance of counsel
 22 with respect to his representation of you is the question. So
 23 I would just ask -- I mean, let's try to stay on the point
 24 here.
 25 MR. HAEG: Okay.

1 is that by the time the issue was to be discussed again,
 2 you were convicted and they could take your plane.....
 3 Q Okay. And.....
 4 Awithout a hearing.....
 5 Q Okay.
 6 Aever since.
 7 Q And did you ever -- I guess, just to recap, you filed a
 8 motion, you.....
 9 A After discussion with you.
 10 Q Yeah, didn't -- I, you know, did not get a favorable
 11 outcome of it, however that happened, yet you believed it
 12 should have had a favorable outcome for me, correct?
 13 A I believed that -- that if -- you should have been able
 14 to bond in order to get the plane released. That's what
 15 I believed.
 16 Q Okay. And so why didn't you pursue that?
 17 A Because, apparently, it was close to trial when I filed
 18 that motion and by the time we got done getting ready for
 19 trial and doing the trial, then it really was irrelevant
 20 because you were convicted.
 21 Q Okay. And you had stated that you.....
 22 A Let me state something else too, David, that before --
 23 quite awhile before July of 2005, I talked to you about
 24 this issue and you didn't want to post a bond.
 25 Q Can you repeat that answer?

1 MR. PETERSON: If you want to ask him why he didn't file
 2 the motion which I think you have, that seems relevant.
 3 MR. HAEG: Okay.
 4 Q And why did you not follow up on getting my airplane out?
 5 After you filed the first motion and nothing happened,
 6 why did you not follow up on that?
 7 A Well, now, I can't recall when and if -- when was the
 8 trial? I can't recall when the trial was but it seemed
 9 to me his trial might have been like in August of that
 10 year.
 11 Q Let's.....
 12 A Or September, maybe early September and the motions had
 13 been sitting there for quite awhile already, I guess, I
 14 don't know.
 15 MR. PETERSON: July 26th.
 16 A Yeah. So, apparently, the -- the motion was filed pretty
 17 quickly in the -- not too far before the trial started
 18 because after you got convicted, it didn't matter because
 19 there was good forfeiture.
 20 Q Okay. And you said.....
 21 A Now, you needed it for your flightseeing business at the
 22 time, not for your hunting one.
 23 Q Okay. And you had.....
 24 A You did an affidavit. I -- I didn't -- I couldn't even
 25 remember whether she had ruled on it or not. All I know

1 A Mm-hmm. Prior to filing this motion in July, quite a bit
 2 before filing the motion to bond it, we'd discussed the
 3 question of bonding and you didn't want to post a bond at
 4 that time. You told me later that, you know, you decided
 5 well, maybe we could try that so we did.
 6 Q You're stating that I told you I never wanted to post a
 7 bond?
 8 A Right.
 9 Q And when was that?
 10 A Probably about two or three months before I filed that
 11 motion because I didn't know whether you didn't have
 12 enough money or we couldn't figure out what the value of
 13 the plane was or whatever but that issue came up and you
 14 didn't want to do it at that time.
 15 Q To bond plane out at that time but the time was about
 16 three months before?
 17 A Yeah, I'm not sure the exactly time but it was quite a
 18 bit before we -- I filed that motion for you in July.
 19 Q Do you remember that I even had a -- that we had a -- an
 20 appraisal done and all kinds of stuff?
 21 A Mm-hmm. Right.
 22 Q Okay. Did you know that that cost money and et cetera,
 23 et cetera, for that?
 24 A Yeah, I do know that. I mean, I understood.....
 25 Q Okay.

Page 167

1 Athat is was an economic issue for you.....
 2 Q Okay.
 3 Afrom what you were telling me.
 4 Q You had testified that you had discussed a new plea
 5 agreement with Mr. Leaders to keep the plane while you
 6 were representing me?
 7 A I did and I have your letter to back that up.
 8 Q Okay. And was Mr. Leaders amenable to giving me credit
 9 for the guide year given up in that plea agreement?
 10 A I don't think he was.
 11 Q Well, and would it be fair to say that I was upset about
 12 that?
 13 A Well, I -- I would say you were not pleased with it.
 14 Q Okay. Yeah.
 15 A That.....
 16 Q Did I say something like how can the state offer me a
 17 deal and I give up a year of my only livelihood and then
 18 they back out and then when we just want what they
 19 promised, they just -- they don't have to give it? I
 20 mean, is that, in essence, what I was -- my biggest
 21 concern about what was going on?
 22 A You -- you were not pleased with the fact that Scott
 23 Leaders did not want to recognize your year of non-
 24 guiding.
 25 Q Okay. And you have stated earlier that the only way to

Page 168

1 really force the issue one way or the other would be to
 2 have a judge resolve it, correct?
 3 A No, not that issue. Whether there was an agreement, yes.
 4 Whether or not Scott would agree to it, the judge had
 5 nothing to do with that. In other words, whether Scott
 6 would agree to give you a year's credit, so to speak,
 7 because you had vol -- because you, where for other good
 8 reasons, voluntary or forced, to not guide for a year,
 9 that is something that Judge Murphy could not or any
 10 other judge could not force him to do. The question was
 11 whether he had agreed to it, not whether or not he could
 12 be forced to agree to it as a provision of the plea
 13 agreement.
 14 Q Okay. But what you're -- did you -- do you agree that I
 15 had a big concern that I had been taken for a ride for a
 16 whole year of my income by Brent Cole.....
 17 A You were concerned.....
 18 Qand Prosecutor Leaders?
 19 A You were very concerned that you thought that you had
 20 given, you know.....
 21 Q And.....
 22 Asome valuable consideration for this agreement.
 23 Q Okay. And you testified that the only one that could
 24 force me to be given consideration would be the judge?
 25 A No, what I -- yeah, well, I'm -- in essence, I'm saying

Page 169

1 the only one that could decide whether there was an
 2 agreement or not would be the judge if there was an
 3 agreement.
 4 Q Okay. Or the only one and let me just say this is if a
 5 judge had determined that whether or not there was an
 6 agreement that I had been led to believe I would get
 7 credit for.....
 8 MR. PETERSON: Break real quick?
 9 UNKNOWN MALE: Yes.
 10 MR. PETERSON: Okay.
 11 (Tape changed)
 12 A Are you ready?
 13 (Whispered conversation)
 14 MR. PETERSON: All right. We are back on tape after a
 15 brief break and turning the tapes, 3KN-10 -- let's look at the
 16 number here -- 3KN-10-1294 CI, continuing with Mr. Robinson's
 17 deposition.
 18 Q Okay. Chuck, you said that you cross examined Trooper
 19 Givens on the location of where the wolves were killed
 20 and that that was all that was needed to fix that issue
 21 or to address that issue?
 22 A Well, there's a difference between inconsistency and
 23 perjury and though he may have made a prior inconsistent
 24 statement, he changed it at trial.
 25 Q Okay. But only upon confrontation?

Page 170

1 A So it's left up to the jury -- yeah, but it -- that's all
 2 I can do and it's left up a jury whether to evaluate what
 3 he says and determine whether or not he (indiscernible -
 4 whispering).
 5 Q Okay. But you would have expected that after that, you
 6 know, further on down through the trial, it would have
 7 been clear that the wolves were not shot in 19-C, that
 8 they were somewhere else? It should have been obvious to
 9 everyone?
 10 A Well, I don't know how obvious it should have been,
 11 David. All I'm saying is that he changed his statement.
 12 Q Okay. And are mistrials asked for to cure the taint --
 13 sometimes asked for to cure the taint of something that
 14 might affect the trial that.....
 15 A I don't know, in my experience, where any mistrial has
 16 been asked for because there's an inconsistent statement.
 17 Q Okay. Would it be fair if that state -- the false --
 18 Givens' false testimony was affirmatively used to harm me
 19 late after that? Would that have been something fair or
 20 unfair?
 21 A I'm not sure what you mean late after that.
 22 Q If someone continued to say the reason we're going to
 23 harm Mr. Haeg is because -- in this trial was because the
 24 wolves, most if not all of them, were killed in 19-C
 25 where David guides, would that be -- would that show

1 the.....
 2 A You mean after -- after trial?
 3 Q Well.....
 4 UNKNOWN MALE: Yeah.
 5 Q Yes, after trial before sentencing -- or at sentencing.
 6 A And in -- in -- under oath, that was said somewhere in
 7 the trial?
 8 Q No.
 9 A Oh, well, then I don't know. I mean.....
 10 Q Okay. Let me just get -- cut to the chase. Would Judge
 11 Murphy specifically saying the reason for my sentence was
 12 because most, if not all, the wolves were killed in game
 13 management unit 91-C where I guide, would that prove that
 14 the mistake or falsehood by Trooper Givens harmed me?
 15 A I'm not sure, David. All I know is that Judge Murphy had
 16 both statements. Which one she chose to believe is up to
 17 her.
 18 Q Okay. But if Givens admitted that was false, how could
 19 she still use it?
 20 A You'd have to ask Judge Murphy that question.
 21 Q But would you agree that then it's proven the state's
 22 falsehood was being relied upon to my detriment?
 23 A You could argue that. You could argue that she.....
 24 Q Okay. So if.....
 25 A ...refused to adhere to.....

1 A Oh.
 2 MR. PETERSON: And, Tom, I know you want to get involved
 3 but.....
 4 MR. STEPENOSKY: Sorry.
 5 A Are we back on record?
 6 MR. PETERSON: Yeah.
 7 A All right. If Judge Murphy used a wrong premise, that
 8 would be unjust, yes.
 9 Q Okay. And would it be -- could it add to my feelings of
 10 injustice that it was something I had told the state
 11 about years before, never got corrected and then they
 12 brought it up at trial, continued to persist in the
 13 falsehood and then it was, quote, corrected but really
 14 wasn't? I mean, I guess what I'm saying is if the
 15 falsehood had been going along for years after I was
 16 protesting it and it's still coming back to haunt me,
 17 could you understand why I feel such an injustice?
 18 A Well, I could understand how you feel about it but, you
 19 know, whether or not your rendition of it is what
 20 happened, I don't know. All I'm saying is that it was
 21 not left up to me or you to determine the credibility of
 22 Trooper Givens. That was left up to a jury. I brought
 23 out the fact that it wasn't 19-C, that you -- that, you
 24 know, he admitted that it was 19-D and so then it was
 25 left up to the jury to determine the credibility and the

1 Q So if -- yeah.
 2 A If you -- if -- depending on what she thinks -- or
 3 whatever the truth is. All I know is that at the trial,
 4 Givens corrected his false statement if that's what you
 5 want to call it but admitting that it was in 19-D and not
 6 in 19-C.
 7 Q Okay. And I guess, you know, I can move on here but it
 8 would have been wrong -- was Judge Murphy there when he
 9 admitted his mistake?
 10 A I think so. He -- he was testifying at the time.
 11 Q Okay. And so it would be hard to believe she could still
 12 say that most, if not all, the wolves were killed in 19-
 13 C? Is that -- would that be hard to believe?
 14 A At sentencing?
 15 Q At -- just any -- whatever.
 16 A You mean when she sentenced you?
 17 Q Yeah, would that be hard to believe?
 18 A I'm not sure what hard to believe means but if what
 19 you're asking me was.....
 20 Q Would it be in -- would it be an injustice for her to use
 21 the false statement to justify my sentencing?
 22 A It just -- it would be unjust for her to use a false
 23 statement, in my opinion. In other words, it would
 24 be.....
 25 MR. PETERSON: Give me just a second to.....

1 materiality of his testimony in terms of whether they
 2 should convict you or not.
 3 Q Okay. But if Judge Murphy specifically used the
 4 falsehood.....
 5 A That's an issue you have to take up with Judge Murphy.
 6 Qit proves that it was material if she specifically
 7 cited it?
 8 A Well, I mean, if she said that, you know, what she got
 9 out of the testimony at trial was that most, if not all,
 10 the wolves were taken in 19-C and the trooper at trial
 11 clearly said that it was 19-D, there might be a problem
 12 for her.
 13 Q Okay. And if Judge Murphy used it in that way, is it
 14 possible the jury used it in that way?
 15 A I don't know. It's -- anything's possible, David. I
 16 really don't know.
 17 Q Okay. I'll move on here. You stated that prosecutor
 18 Leaders never used my statement at trial, is that
 19 correct?
 20 A Not in the case in chief, he did not.
 21 Q Okay. So he -- someone gets to decide what's case in
 22 chief and what isn't?
 23 A No, a case.....
 24 Q There's rules about that?
 25 A There -- there is a rule about case in chief. Case in

Page 175

1 chief is.....

2 Q Can you cite it what the rule is, where I'd find it?

3 A You'd find it in the rules concerning the procedures of

4 trial.

5 Q Procedures. And is that in this book here?

6 A It should be in that book.

7 Q Okay. And what -- do you know where?

8 A I don't know the number, all I'm saying is that.....

9 Q Procedures, this -- procedures in trial. Let me get this

10 down. Okay. Case in chief are in procedures in trial.

11 Okay.

12 A During his presentation of his case to the jury, as to

13 what they wanted to prove in terms of you committing

14 these crimes, you did not refer to the statement that

15 you'd given back before you went to trial.

16 Q Okay. Do you remember him presenting a map that you

17 specifically said was.....

18 A I didn't present -- I didn't -- he didn't present the

19 map, Zeller did. He questioned Zeller about the map in

20 his case in chief.

21 Q You don't remember Trooper Givens admitting -- I think

22 it's evidence number 25, here's a map that was given. It

23 says and this map was used during a statement David gave?

24 You never.....

25 A I don't remember that one.....

Page 176

1 Q Okay. And if.....

2 Abut I do remember the Zeller part.....

3 Q Okay. And if that map.....

4 Aand Zeller had testified.

5 Q And if that map had been used at my statement, you know,

6 my statement way before trial and the state had me draw

7 on it with a pen labeling where I shot all the wolves and

8 stuff and then they presented that to my jury, is that

9 using my statement or not?

10 A Using Zeller's statement?

11 Q I'm the one that created the map.

12 A Well, but Zeller was the one that pointed out the

13 positions on the map at trial.

14 Q Now, it was -- Trooper Givens pointed out the positions

15 but does it matter who pointed out the positions when the

16 positions -- I had marked the positions on my -- at my

17 statement. It'd be like right here and now I went up to

18 this map and went one, two, three, four, five and then

19 that same map was used at trial to convict me, is that

20 map a part of my statement or not?

21 A Yes, it -- it's part of your statement, correct, but the

22 identification and locations were.....

23 Q That's what I wanted to hear.

24 Aalso identified by Tony Zeller.

25 Q Well, during the statements, the state had Givens --

Page 177

1 specifically had me mark on it and, yes, they presented

2 the same map to Tony Zellers afterward and said can you

3 confirm that this is -- so -- and he's like well, who did

4 this and they said Dave Haeg did it and so.....

5 A Well, I don't remember him saying Dave Haeg did it.

6 Q Okay. Well, anyway, if that occurred, is that my

7 statement being used outside of, you know, or in case in

8 chief?

9 A Not if it's a statement of Tony Zeller as to where the

10 rules.....

11 Q If I made the map, how could it be Tony Zeller's

12 statement?

13 A Because Tony Zeller pointed out the same spots you did.

14 Q So you can -- he can have my map up there with my writing

15 on it and somebody just says oh, I think some wolves were

16 shot here? Doesn't it mean anything that all my markings

17 are where.....

18 A But if Tony Zeller says.....

19 Q It's interesting.

20 Athese markings are where the wolves were taken,

21 that's Tony Zeller's statement.

22 Q Okay. Did you ever investigate if Tony Zellers giving a

23 statement and agree to cooperate with the state was a

24 product of my statement?

25 A I never talked to Tony Zellers because I couldn't. He

Page 178

1 was there with a lawyer. So.....

2 Q Did you ever try to talk to his lawyer?

3 A I did talk to Fitz about -- oh, Fitzgerald, more

4 appropriately, about the case and the facts that, you

5 know, the state had against you and Tony.

6 Q And what did you learn from Mr. Fitzgerald about whether

7 -- you know, if Tony Zellers was.....

8 A Same thing I learned from you.

9 Q And what's that?

10 A That all nine wolves were taken out of the area.

11 Q So it didn't matter to you if his cooperation with the

12 state was a product of my statement irregardless of what

13 he had as proof or not?

14 A It would have mattered had you denied that you'd ever

15 been involved in it at all and that there was some

16 underlying motive on the part of Tony Zeller to say that

17 you were but that wasn't the circumstance.

18 Q Okay. And you have stated that you never heard I had

19 immunity?

20 A No, not immunity as I understand immunity.

21 Q Okay. And what's your understanding of immunity?

22 A My understanding of immunity is that the state or some

23 other governmental prosecutor or prosecutorial agency

24 gives you immunity. That means that they're not going to

25 prosecute you.

1 Q Okay. And.....
 2 UNKNOWN MALE: Very good.
 3 Qif Brent Cole and Kevin Fitzgerald have testified
 4 that I had immunity, would that be significant in my
 5 situation here?
 6 A That may be but you -- I never learned from them or you
 7 that you had a grant of immunity.
 8 Q Okay. Did you ask them if I had immunity?
 9 A No, I had no reason to ask them if you had immunity or
 10 not.
 11 Q Well, why not?
 12 A It didn't occur to me that you had immunity when, on the
 13 one hand, you're saying you had a plea agreement to plead
 14 guilty to something. Then where was the immunity?
 15 Q Now, I understand your confusion. I have it myself. Did
 16 you ever wonder why I gave a statement?
 17 A I don't know whether I exactly said this to you in these
 18 terms but I do know that in every criminal case that I
 19 have represented defendants in, I often ask them why when
 20 you know you have a right to remain silent did you give
 21 them a statement.
 22 Q Okay. And since I was represented, did you ever go to my
 23 representation and say hey, why did you have your client
 24 go give a statement?
 25 A No, I don't -- I don't go and ask lawyers why they have

1 prosecute you no matter what you tell them.....
 2 Q Okay. And.....
 3 Athen you should have never been prosecuted.....
 4 Q Okay. And.....
 5 Aas for your grant of immunity.
 6 Q Okay. And in this state, you understand when you're
 7 given immunity, you can't be prosecuted. They -- it
 8 isn't just that they can prosecute you and not use your
 9 statement. In this state, it means you can't be
 10 prosecuted. Is that what you just said?
 11 A That's what I understand under grant of immunity. You
 12 would be immune.....
 13 Q Okay. In this state? Okay.
 14 Afrom prosecution.
 15 Q Okay. In this state, in all states or the federal
 16 government also or not is your understanding?
 17 A Well, the federal government has a couple of stages of
 18 immunity.
 19 Q Okay.
 20 A One is immunity they won't use a statement, the other is
 21 immunity that they won't prosecute.....
 22 Q Okay.
 23 Aand in the end, it means that you will not be
 24 subject to criminal penalties.
 25 Q Okay. And so you would agree that if Cole and Kevin

1 their clients do something or the other.
 2 Q That it.....
 3 A I'm not -- my concern was that you had given a statement
 4 to the police that was potentially damaging to your
 5 innocence and, generally, if I have an opportunity to
 6 talk to people before they talk to the police, as an
 7 attorney, I always tell them don't say anything.
 8 Q And if I had made a statement, why didn't you try to have
 9 it suppressed?
 10 A There was no reason to have it suppressed other than the
 11 fact they couldn't use it as part of a -- because it was
 12 part of a plea negotiation but as far as.....
 13 Q Okay. Would.....
 14 Athe statement itself was concerned, what was -- you
 15 know.....
 16 Q Okay. If.....
 17 Aif you knew -- I'm -- I'm -- did any -- I don't know
 18 whether somebody told you before you gave a statement
 19 that you don't have to, you have a right to remain silent
 20 and all that kind of stuff. I don't know.
 21 Q Okay. If Brent Cole is willing to testify under oath
 22 that I had immunity, would that have something to do
 23 about their ability to use my statement?
 24 A Yeah. I mean, if they -- if the state granted you
 25 immunity which means to me they are not going to

1 Fitzgerald were willing to state under oath that I had
 2 immunity, that could be a major prob -- or a major issue
 3 in my case?
 4 A Could be. I mean, I don't.....
 5 Q Okay.
 6 A I don't really know because the issue of immunity was
 7 never one that was between you and I because you never
 8 mentioned immun -- that you had immunity.
 9 Q Okay. And you -- but you never talked to Cole about
 10 this?
 11 A Well, like I said, I had no reason to talk to Cole or
 12 Fitzgerald about immunity because you were, according to
 13 you, getting ready to go in and plead guilty to a crime.
 14 Q Okay. But would you also agree the reason why I hire
 15 attorneys is I might not know what all this stuff means,
 16 I might not know legal terms? Would you agree that
 17 that's why I hire an attorney?
 18 A I don't know why you hired an attorney, all I know is
 19 that if you thought at the time that you had immunity
 20 against prosecution, it seems to me that you would have
 21 brought that up.
 22 Q Okay. Is it also possible I would have -- I might not
 23 have known I could bring it up like.....
 24 MR. PETERSON: I'm going to object to speculations.
 25 A Yeah, I don't really know.

Page 183

1 Q Okay. (Pause) I'm not very good at this. Was there a
 2 point when I informed you Zellers was going to cop a plea
 3 or agree to plead guilty?
 4 A Yeah, at some point in time, I became aware of that, I --
 5 and you might have told me or Fitz might have told me but
 6 the point I knew that he was going to testify and plead
 7 guilty.
 8 Q Okay. And did I -- do you remember me asking if we
 9 should go talk to him before he did so?
 10 A I don't remember that.
 11 Q Okay.
 12 (Tape changed)
 13 Q You've testified that it would have been bad to have Cole
 14 testify at sentencing because he could have -- he would
 15 have waived attorney/client privilege and gotten me in
 16 trouble?
 17 A Could have, yeah.
 18 Q Okay. Don't you agree that Prosecutor Scott Leaders
 19 questioning me myself at trial while I was under oath
 20 would have given them everything and more that Cole could
 21 have ever -- I mean, what more damage could Cole have
 22 done than what had already occurred?
 23 A I don't know because I didn't know all the previous
 24 discussions you had with him.
 25 Q Okay. But as far as this case, was I pretty -- in other

Page 184

1 words, you don't -- you -- what you're saying is you had
 2 me go to trial without you knowing everything that
 3 occurred?
 4 A I don't need to go to trial and know that -- everything
 5 that you and Brent Cole talked about.
 6 Q Wouldn't it have been prudent to know what occurred?
 7 A Well, I talked to you and sent out an investigator to
 8 talk to Brent and.....
 9 Q Okay.
 10 Abut that doesn't necessarily mean that I'm going to
 11 get every single conversation that you and your attorney
 12 ever had.
 13 Q Okay. But do you remember that I was willing to have
 14 Cole put on the stand and asked questions irregardless of
 15 he'd be cross examined?
 16 A You wanted him to be there.
 17 Q Okay. If the -- if Leaders solicited testimony from
 18 Givens that the state had no idea why I gave up the year
 19 of guiding and had I been able to put Cole on the stand
 20 and had Cole testified under oath that Scott Leaders and
 21 Trooper Givens or just Scott Leaders even knew that I'd
 22 given up the year for a plea agreement, is that -- could
 23 that have been significant in showing that the state was
 24 intentionally misleading the judge?
 25 A I don't know whether or not having Brent Cole say to the

Page 185

1 court what you said to the court would have made a
 2 difference.
 3 Q Even though he was the one directly dealing with the
 4 state and I was not?
 5 A Well, you were in -- in legal parlance, you were dir --
 6 directly dealing with Scott Leaders. It was your case,
 7 not Brent Cole's, so.....
 8 Q Well, I guess if I felt Mr. Cole was not being honest
 9 with me, is it possible that something would have come
 10 out that there was something very much lost in the
 11 translation about what occurred because I was not dealing
 12 directly -- even though, legal terms, I was dealing
 13 directly with the state, in actuality, I was not.
 14 A You would -- your representative was.
 15 Q Yes.
 16 A I mean, anything's possible, David. I just don't
 17 know.....
 18 Q Okay.
 19 Abut the bottom line is I don't know whether it would
 20 have made a difference to Judge Murphy.
 21 Q Okay. But would you agree that I did everything I could
 22 to get the judge to inquire into what happened at plea
 23 negotiations -- or I mean I -- I wanted Brent Cole -- I
 24 had subpoenaed him, I wanted Fitzgerald subpoenaed. It
 25 was all about what occurred and so I was -- as a non-def

Page 186

1 -- or as a non-attorney, I was doing everything I could
 2 to make this happen?
 3 MR. PETERSON: But do you -- yeah, ask him a question.
 4 Q Okay.
 5 MR. PETERSON: You -- you're making a tape.
 6 Q Was I doing everything I could do to investigate the plea
 7 agreement in front of the court?
 8 A Whether you did everything you could do in that, I don't
 9 know, but you were interested in having Brent Cole come
 10 and testify about this prior -- prior -- this prior
 11 alleged plea agreement.
 12 Q And you said that that didn't occur because you have the
 13 ability to override my decisions on that and just to just
 14 move that aside. That's what you've said.
 15 A Well, it was a strategy determination on my part because
 16 I didn't think that now it would make a difference as to
 17 what your prior alleged agreement was because now you'd
 18 been convicted of this crime after a trial
 19 (indiscernible).
 20 Q Okay. And even though I was adamant to do this and I
 21 believe it was legal for me to actually subpoena Cole.
 22 Was it illegal for me to subpoena Cole?
 23 A No.
 24 Q Was it illegal for me to put him on the stand and have
 25 him questioned?

1 A No, none of that's illegal but, well, the question is
 2 relevance and materiality.
 3 Q Okay. It just is a -- it's just if you're representing
 4 me, you can say no, I can't do that? That's correct?
 5 A I can just say that, as a strategy, I don't -- I don't
 6 think I need to do that.
 7 Q And overrule my strategy?
 8 A Yeah.
 9 Q In other words, you are the captain of the ship and I am
 10 not?
 11 A Well, I don't know if you -- if that's the right analogy
 12 but I'm the one with the experience and the knowledge of
 13 how things usually work and.....
 14 Q Okay.
 15 Awhat seems to be relevant and what seems to be
 16 material.
 17 Q And your decision not to call Cole was after I'd paid for
 18 a subpoena, had him subpoenaed and bought him a plane
 19 ticket?
 20 A Right. By the way, there was another witness that we
 21 subpoenaed and didn't call as well but an -- an -- a
 22 assistant attorney general.
 23 Q Okay. Did I give you quest -- written questions to ask
 24 of Tom Stepnosky, Tony Zellers, Drew Hildebrand and I
 25 think there was one other person but -- oh, maybe Wendell

1 Q If you want to get to the bottom of the truth, if you
 2 want to get the truth, is it generally desirable to put a
 3 person on the stand, have them raise their right hand so
 4 that you can know what the truth is?
 5 A Our legal system is based on people going to court,
 6 taking an oath and testifying at hearings, whether it's
 7 trial or other hearings. I'd presume that if somebody
 8 takes the oath, they would tell the truth. Whether that
 9 happens all the time or not, I can't say.
 10 Q Okay. But it's probable or more likely than not that
 11 you'll get the truth if they're swearing under oath
 12 rather than just questioning them in private?
 13 A Not necessarily the case either. You might get more
 14 truths one way or the other.
 15 Q Okay.
 16 A I'd -- I -- I don't have any statistics to say that
 17 you're going to get more truth out of people after they
 18 give an oath than if they don't.
 19 Q But there would be more penalty if they didn't tell the
 20 truth when they're under oath than if they were not under
 21 oath?
 22 A That's true.
 23 Q So for that reason, it's good to put witnesses that you
 24 want to get to the bottom of the truth under oath? And
 25 what I'm getting at is you had said that you talked to

1 Jones; I think, did I give you written questions to ask
 2 them at sentencing?
 3 A You gave me some written questions -- you gave me some
 4 written questions to ask witnesses. Whether they were
 5 strictly for sentencing or for other purposes, I can't
 6 remember right now, David, but you did give me some
 7 questions to ask them.
 8 Q Okay. And did you ask all those questions that were on
 9 the.....
 10 A Oh, I can't recall whether I asked them all or not.
 11 Q Okay. Would you agree that you asked all the questions
 12 that related to the moose but you failed to ask every one
 13 of them that had to do about the plea agreement and all I
 14 had done for it?
 15 A I don't remember.
 16 Q Okay. If we went through the court record and showed you
 17 what the questions were asked and then I actually have
 18 copies of the lists of questions.....
 19 MR. PETERSON: He said he didn't remember.
 20 MR. HAEG: Okay.
 21 Q Do all witnesses admit the truth without having to be
 22 cross examined?
 23 MR. PETERSON: That calls for speculation.
 24 MR. HAEG: Okay.
 25 A I -- I -- I don't really know that.

1 Ted Spraker and he was a little fuzzy about what he had
 2 told me about the wolf control program and you said.....
 3 A He wasn't fuzzy about -- he didn't -- he denied that he
 4 told you.....
 5 Q Okay.
 6 Athat if you took wolves in the wrong area, you'd say
 7 that you took them in -- inside the area. He said
 8 those.....
 9 Q Okay. But there's no penalty to him if in a private
 10 conversation, he just lies to you as opposed to if he was
 11 under oath?
 12 A Well, I don't know about the penalty issue, all I know is
 13 that a strategy is that if he got on the stand and told
 14 me -- told a jury what he told me, then your theory about
 15 being told by the State of Alaska that you did this wrong
 16 thing even if you say you did it the right way, even if
 17 you did it the wrong way, would be in jeopardy if you
 18 denied it.
 19 Q But it -- would you agree that it was in jeopardy anyway,
 20 that I got convicted? Would you agree that I did get
 21 convicted of what the state was charging?
 22 A No, you got found not guilty on two counts.
 23 Q Okay. But the main iss -- the main ones that hurt, my
 24 live -- my livelihood, that was the one.....
 25 A The one about -- you got convicted for the wolves, taking

Page 191

1 in the -- in the closed area and you got convicted for
 2 lying on a statement about where the wolves were taken.
 3 Q I can't resist. Would you agree that if the state had
 4 told me that the whole program depended on wolves being
 5 killed no matter where they were killed and if I had to
 6 shoot them outside the area and claim they were on the
 7 inside, that if there was any truth to that or a jury
 8 thought there was any truth to that, could that have had
 9 an effect over me being charged with that.....
 10 MR. PETERSON: Speculation, Mr. Haeg.
 11 MR. HAEG: Okay.
 12 A I don't really know of any. Let's move on.
 13 Q Okay. Did you ever investigate who owned the airplane
 14 that was seized?
 15 A You told me you owned it.
 16 Q Okay. Did you know that the state cannot get ownership
 17 of the airplane without an amended judgement against me?
 18 A What do you mean an amended judgment?
 19 Q Did you know that the state tried to get title to the
 20 airplane and the FAA refused to do so because it's owned
 21 by a corporation and not me?
 22 A No, but, of course, you made out an affidavit that said
 23 it was yours, didn't you?
 24 Q Well.....
 25 A I am the owner of one Piper P-812 airplane with FAA

Page 192

1 registration number N4011N. So I didn't know it was
 2 owned by a corporation. You swore under oath that it was
 3 owned by you.
 4 Q Okay. Who wrote that document?
 5 A You signed it.
 6 Q Okay. But are you my attorney or were you my attorney at
 7 the time?
 8 A No, you -- yeah, but the point is -- David, is that if
 9 you knew that that wasn't true, why'd you sign it
 10 and.....
 11 Q Well, I signed, basically, everything you handed me.
 12 A Oh, okay. Well, I can't do (indiscernible) to you, all I
 13 know is that my understanding from what you told me was
 14 that you owned the airplane. I had no idea that it was
 15 owned by a corporation and that a judgment would have to
 16 be amended and (indiscernible).
 17 Q Okay. You had said that my case drew lots of protests by
 18 environmentalists. Did you -- is that true?
 19 A I saw some newspaper articles about the wolf control
 20 program. I'm not sure I saw an article about your case
 21 specifically but at the time, the atmosphere was there
 22 were threats of people not coming up here to go on -- to
 23 be tourists, you know, or if the wolves continued to get
 24 killed and all that kind of stuff and so there was an
 25 atmosphere of protests against the WCP.

Page 193

1 Q Okay. And was -- could it have harmed me or.....
 2 MR. PETERSON: Speculation, Mr. Haeg.
 3 Q Was it wrong for the state to place the substance of my
 4 statement in the charging document which the Anchorage
 5 Daily News published in a -- in the paper?
 6 A Well, that might have been a violation, I'm not sure. It
 7 had told -- well, actually, they didn't double press it,
 8 the press just went to the courthouse, apparently, and
 9 got your charging documents and read them.
 10 Q But do you agree that the Anchorage Daily News is a
 11 pretty widely-published paper?
 12 A Yeah, it is pretty widely published.
 13 Q Okay. Do you think that it's possible my jurors read the
 14 Anchorage Daily News?
 15 A I don't know, all I know is that when we went through the
 16 questioning of the jurors, we eliminated those we thought
 17 that might be biased against you and didn't eliminate
 18 those that we thought that weren't.
 19 Q Okay. Was Judge Murphy supposed to inform me that I
 20 could appeal my sentence in addition to my conviction?
 21 MR. PETERSON: And it's -- I don't know, it's stopped.
 22 A Yeah, I'm -- she's supposed to inform me of whatever your
 23 appeal rights are.
 24 Q Okay. And is it true that after sentencing -- would you
 25 admit it's possible she never told me of my right to

Page 194

1 appeal the sentence?
 2 A I don't remember.
 3 Q Okay. But it would be in the transcript?
 4 A Right, if -- if she told you, it would be in the
 5 sentencing transcript.
 6 Q Okay. And do you remember telling me after sentencing
 7 that because it was a legal sentence, I could not appeal
 8 the sentence?
 9 A I don't remember telling you that because it was a legal
 10 sentence, you couldn't appeal the sentence. I may have
 11 told you that it might be difficult to get that sentence
 12 overturned because it was in the range of what you could
 13 do.
 14 Q Okay. So you don't remember specifically telling me
 15 because the sentence was legal, I could not appeal the
 16 sentence?
 17 A No, I don't remember that.
 18 Q Okay. Do you want to look at the rule where it says that
 19 if a person's convicted of a crime.....
 20 MR. PETERSON: Why don't you just ask him a question,
 21 please?
 22 MR. HAEG: Okay.
 23 Q Do you agree that the judge is supposed to tell me I can
 24 appeal the sentence?
 25 A I agree that the judge is supposed to tell you whatever

1 appeal rights you have.
 2 Q Okay. And if, indeed, you told me that I could not,
 3 there would have been absolutely no information for me to
 4 know I could appeal the sentence?
 5 A That I don't know.....
 6 Q Okay.
 7 Awhere your information could have come from.
 8 Q Well, do I hire an attorney to tell me what my rights
 9 are?
 10 MR. PETERSON: That was asked and answered and
 11 speculation.
 12 MR. HAEG: Okay.
 13 Q You had said you're not sure if you said that they take
 14 care of their own when you were in conversations with me?
 15 A Yeah, I'm -- I'm -- I know that we talked about the fact
 16 that, you know, prosecutors don't go after troopers for
 17 perjury too often but whether I used the term they
 18 protect their own or look after their own, I don't
 19 remember saying that.
 20 Q Okay. And did we get into discussions of corruption in
 21 Alaska's judicial system or my concerns of it?
 22 A Well, we got into your concerns about corruption in the
 23 judicial system. You -- you told me you thought the
 24 system was corrupt.....
 25 Q Okay.

1 A Like I said, it's been awhile back, David. I remember
 2 while we were in McGrath doing some proceeding, trial,
 3 sentencing, in between, seeing Murphy in a car driving
 4 away with Trooper Givens. I just -- I just can't
 5 pinpoint exactly what time it was.
 6 Q Okay. Had you ever seen Judge Murphy -- I guess did
 7 Judge Murphy had her own -- have her own car there?
 8 A I don't know if she had her own car or not. I don't
 9 know.
 10 Q Did you ever see Judge Murphy driving?
 11 A No.
 12 Q Did you ever see her walking to the court?
 13 A I don't have a specific memory of ever seeing much of her
 14 moving at all except going to get Coca-Cola's and -- and
 15 that one time that I seen her ride with Trooper Givens.
 16 Q Okay. And.....
 17 A How she got back and forth to court most of the time, I
 18 just don't know.
 19 Q And I don't know if I'm allowed to ask this but did Judge
 20 Murphy look likely she walked a lot or looked like, you
 21 know.....
 22 A Well, you know, she's an overweight woman or she was at
 23 the time and whether her over-weightness was due to lack
 24 of exercise or lack of walking, I don't know.
 25 Q Okay. And was Trooper Givens the main witness against or

1 Aall the way through.
 2 Q And have you ever agreed that the system has corruption
 3 in it?
 4 A I may have agreed that it does have corruption in it but
 5 I don't recall talking about any specific corruption.
 6 Q Okay. And you stated you never talked to Mark Osterman
 7 until I fired Osterman?
 8 A Right, I never had any discussions with Mark about your
 9 case, as I remember, until after you had -- after you had
 10 let me go.
 11 Q Okay. And if he was investigating potential ineffective
 12 assistance of counsel claims against you and/or Cole,
 13 would he have had a duty to contact you to get your side
 14 of the story?
 15 A Well, I would think he would want to contact me but he
 16 never did to find out my side of the story.
 17 Q Okay. And if he didn't do that in writing of a whole
 18 brief, that wouldn't be.....
 19 A Well, I don't -- depends on what his points were on
 20 appeal and I don't know whether he was alleging
 21 ineffectiveness assistance of counsel on the appeal or
 22 not.
 23 Q Okay. And do you remember talking to me about you
 24 remembering Trooper Givens chauffeuring Judge Murphy
 25 during my trial?

1 main investigating trooper and a witness against me?
 2 A He was the main investigating witness against you along
 3 with another biologist. I can't remember his name.
 4 Q A Toby Boudreau?
 5 A Yeah, that might have been it.
 6 Q Okay. And if Toby Boudreau was testifying and actually
 7 said that Dave Haeg and a Tony Lee came in and got a wolf
 8 control program, would that be suspicious to you in --
 9 for some reason?
 10 A Well, I mean, he may not have remembered, you know, Tony
 11 Zellers' last name at the time or didn't know it or
 12 whatever and it didn't seem.....
 13 Q But what I'm getting at is how would he mistake Tony
 14 Zellers -- or Tony Lee for Tony Zellers when I told the
 15 state about my -- Tony Lee in my statement?
 16 A I have no idea, David.
 17 Q Okay. But you.....
 18 A I don't have any idea how Tony Boudreau got Tony Lee and
 19 Tony Zeller mixed up.
 20 Q But would that give you -- if I talked about Tony Lee
 21 during my statement, would that give you po.....
 22 A I came up with Tony Lee or.....
 23 Q Would that possibly lead to the suspicion that even their
 24 -- the state's witnesses were being exposed to my
 25 statement?

Page 199

1 A I don't know how Tony Boudreau found out about anything
 2 in your statement. I have no -- have no idea.
 3 Q Okay. Yeah, I guess I can just move on. I gue -- I'll
 4 just try one more question is if I had talked about Tony
 5 Lee at my statement and Toby Boudreau while testifying at
 6 my trial repeatedly mistook Tony Zellers with Tony Lee,
 7 it would -- wouldn't it lead a rational person to believe
 8 that somehow my.....
 9 A I have -- I have no idea. It could be that he knows a
 10 Tony Lee if Tony Lee's a guide or a hunter or whatever in
 11 that area.....
 12 Q Okay.
 13 Aand he just mistakenly mixed the two up. I just
 14 don't know.
 15 Q Do you remember talking -- yeah, you've already testified
 16 that you remember me trying to get in contact with you
 17 and you'd call me back and all that about the
 18 chauffeuring.
 19 A Yeah.
 20 Q And -- okay. And.....
 21 A And that -- that was earlier this year.
 22 Q And I believe I told you that the court record proved
 23 that the chauffeuring was taking place before.....
 24 MR. PETERSON: Would you ask him just a question, please?
 25 MR. HAEG: Okay.

Page 200

1 Q I kind of -- I don't know how to get what I want across
 2 but if Judge Murphy and Trooper Givens lied about the
 3 chauffeuring, would that be significant?
 4 A Well, of court.
 5 Q Okay. And what would be significant about that?
 6 A Well, it depends on how they lied, if they lied under
 7 oath, if they lied to an investigation. I don't know how
 8 it came about but.....
 9 Q Would it -- could it raise questions as to the
 10 impartiality of.....
 11 A It could.
 12 Q Okay.
 13 A It could raise suspicions about that.
 14 Q And that's because Trooper Givens was the main witness
 15 against me and here they're proven.....
 16 A Well.....
 17 MR. PETERSON: Can you ask him why?
 18 A Why it would raise some.....
 19 Q Okay. Why?
 20 A Well, if they're trying to hide something that, in fact,
 21 or place that would look like impropriety -- because a
 22 judge can't even look like they're involved in any kind
 23 of impropriety -- then it could raise a suspicion that
 24 Judge Murphy was not impartial when she was dealing with
 25 you.

Page 201

1 Q Okay. It would -- and the lying would go beyond the
 2 appearance of impropriety, it would go to actual
 3 impropriety, she's now lying about what occurred?
 4 A Well, I don't know whether the lie is the impropriety but
 5 if she believes that her being commandeered by the
 6 trooper to go riding in his car.....
 7 Q Well.....
 8 Amight raise an issue of impropriety and then she
 9 tried to hide that, that would be the problem.
 10 Q Okay. And is it true that it wasn't Trooper Givens
 11 commandeered Judge Murphy, it was Judge Murphy who
 12 commandeered Trooper Givens?
 13 A Yeah, well, whoever was the commander of that.
 14 Q Okay. I just wanted to clear that up. It wasn't very
 15 clear but have you ever got a -- through the mail a
 16 written request from me for an affidavit from you
 17 concerning PCR or questions?
 18 A I can't remember, David, whether it -- I got something in
 19 the mail or you came by the office. I don't remember
 20 exactly the -- the way it was communicated but at some
 21 point in time, I believe, you wanted some information
 22 from me in connection with a CPR [sic].
 23 Q Okay. And if I came up with the list and I think, you
 24 know, a returned document or whatever that showed it had
 25 been mailed and came back, that would be -- you would

Page 202

1 admit that that's possible or probable?
 2 A Yeah, it's possible.
 3 Q Okay.
 4 MR. HAEG: Well, we're through that one. I don't know,
 5 should we take just a minute or you want to just keep blazing
 6 along?
 7 MR. PETERSON: If you need a minute, take a minute. I
 8 mean, we're over.....
 9 A We're getting close of six hours or pretty much over the
 10 time.
 11 MR. PETERSON: Yeah, we're getting fairly close and I need
 12 about 10 minutes.
 13 MR. HAEG: Oh, well, let me just look here real quick and
 14 see if there's anything major that I've.....
 15 MR. PETERSON: And, to be fair, we've had him a lot more
 16 than six hours here all day.
 17 Q Is it true that you stated Judge Murphy lied during my
 18 case?
 19 A Lied about what?
 20 Q I think about whether she ruled on the state's motion for
 21 a protection order. It was out in McGrath and she -- we
 22 had a hearing and she said she wanted to go in and
 23 consider it, you know, that night and the next day, we
 24 came out and I had a conversation where you on your own
 25 brought up well, even she lied about what occurred and it

1 was....
 2 A About what occurred?
 3 Q About the state had asked for a protection order that I
 4 not be allowed to argue the....
 5 (Tape changed)
 6 MR. PETERSON: We're back on tape. This is tape number
 7 four, State v. Haeg, 3KN-10-1295, cross examination of Mr.
 8 Robinson in his deposition.
 9 Q Was -- in a -- in an instance when the state had asked
 10 for a protection order, she said she wasn't going to rule
 11 on it that day and then the next day, she was proceeding
 12 like it had already been ruled on and you said well, it's
 13 never been ruled on. She says yeah, I ruled on it the
 14 day before so, I mean, it probably wasn't anything real
 15 significant but it was something you brought up, that she
 16 had said she'd ruled on an -- on the state's protection
 17 order and it....
 18 A Well, I don't know whether -- you know, I -- I can't
 19 remember all that.
 20 Q Okay.
 21 A All I know is that she eventually ruled that we couldn't
 22 argue our theory.
 23 Q Okay. Yeah. Did you ever tell me that Brent Cole lying
 24 to me, in and of itself, may not be ineffective
 25 assistance of counsel?

1 Q Okay. I know, it's been seven -- or seven years so yeah.
 2 A Yeah, I just can't remember.
 3 Q Okay. Do you remember though there was an issue that the
 4 state came in with a protection order then and then she
 5 says well, I'm going to rule for the state because this
 6 is now a legal issue for me to decide?
 7 A Right, I re -- I remember that, yes, I....
 8 Q And we discussed that she -- it was like contradicting
 9 orders....
 10 A Right, she decided that....
 11 Qthat on one hand she's deciding it's a factual issue
 12 for the jury....
 13 A Right.
 14 Qand then two days later or three days later, she's
 15 ruling it's a legal issue. So she ruled it was a factual
 16 issue so she didn't have to rule on your motion but then
 17 she says it's a legal issue so she could grant the
 18 state's....
 19 MR. PETERSON: Is there a question for....
 20 Q I mean, is that -- do you remember that?
 21 A I remember her at first saying that she was going to
 22 leave it up to a jury and then changing her mind. That's
 23 the way I read that.
 24 Q Okay. If she ruled whether I should have been charged
 25 under the wolf control program was a factual issue for

1 A No, I don't think I told you that.
 2 Q Okay. Would my attorney lying to me actually be
 3 ineffective assistance of counsel?
 4 A It depends on what the lie is about.
 5 Q Okay. If it's about my case....
 6 A My theory is....
 7 Q I mean, if it's maybe about whether a flower is blue or
 8 green, that....
 9 A Yeah, all I'm saying is that I do believe I told you
 10 that, you know, an attorney could be ineffective because
 11 he's not being truthful with you about your case....
 12 Q Okay.
 13 Athat....
 14 Q Is it true that you'd stated Judge Murphy is a law
 15 enforcement type judge and not the independent judiciary
 16 type you're supposed to have?
 17 A That was my opinion of her.
 18 Q So it's likely you said that?
 19 A It's likely.
 20 Q Okay. Was there -- did I identify an issue about Judge
 21 Murphy had denied your motion that I should be charged
 22 under the wolf control program, did she rule that she
 23 would not rule on that because it was a, quote, factual
 24 issue for the jury to decide?
 25 A David, just....

1 the jury, should that have been a jury question?
 2 A Well, it could have been either a jury question or a
 3 legal question. In other words....
 4 Q But if she ruled that it was a factual question and
 5 refused to rule on your motion....
 6 A Then it should have been left up to the jury.
 7 Q And then it should have been a jury question?
 8 A Right.
 9 Q Okay.
 10 A If -- if it was....
 11 Q Do you know if it was a jury question....
 12 A Well....
 13 Qor was it submitted to the jury?
 14 Awe -- we -- we definitely tried to argue that.
 15 Q Okay. But was that issue ever put in the actual jury
 16 whatever they call it, the....
 17 MR. PETERSON: Mr. Haeg, I think you have a copy of the
 18 transcript so you know the answer to this question.
 19 MR. HAEG: Okay.
 20 Q I'm just asking whether from that ruling it should have
 21 been in there.
 22 A From what ruling? From the ruling that she said
 23 that....
 24 Q From her ruling saying it was a factual issue for the
 25 jury to decide. Then shouldn't -- there should have been

Page 207

1 a jury question saying the issue whether Mr. Haeg should
2 have been charged under the wolf control program is a
3 factual issue for you to decide. That should have been
4 in the jury questions?
5 A If that was her final decision but it wasn't. She wasn't
6 going to allow us to do that, remember? I mean, she al
7 -- she decided to go along with Leaders to prevent us
8 from -- she gave him the protective order.
9 Q Okay. And are judges allowed to just overturn their
10 prior rulings just one day to the next?
11 UNKNOWN MALE: Yup.
12 A Absolutely.
13 UNKNOWN MALE: Mm-hmm. Yeah.
14 Q And is that something that you should bring up or point
15 out to someone that one day she rules that this issue is
16 a legal -- or a factual issue for the jury to deny your
17 motion and then three days later, grant -- grants the
18 state's motion that you can't do that because it's now a
19 legal issue? I mean, would that be evidence of bias?
20 A I'm not sure whether it'd be evidence of bias, just an
21 evidence of the judge's decision and it could be a -- it
22 could be evidence of wishy-washiness, I don't know.
23 Q Okay.
24 UNKNOWN MALE: (Indiscernible - whispering).
25 Q Is it true you said that you're not supposed to defend me

Page 208

1 in an ineffective assistance of counsel claim against
2 Brent Cole?
3 A Yeah, because I wasn't hired to do a civil action against
4 Brent Cole for ineffective assistance of counsel.
5 Q Okay. And so you can't bring ineffective assistance of
6 counsel up at all, you know, in an appeal or anything
7 else?
8 A Well, first of all, it wasn't a CPR procedure and that's
9 what you need in order to bring up an ineffective
10 assistance of counsel. You have to file a separate
11 proceeding for that.
12 Q Okay. And you think that I'm supposed to know that
13 without being told?
14 A I don't know how you're supposed to know it, all I know
15 is that you hired me to represent you in a criminal
16 matter.
17 Q Okay. And on appeal for awhile, correct?
18 A And on appeal, on the criminal one.
19 Q Okay. And if you've seen evidence of ineffective
20 assistance of counsel, do you have a duty to say hey,
21 this may be something we could use but we may have to
22 file a PCR rather than an appeal? You don't have a duty
23 to say this is a potential defense and to say what my
24 options are?
25 A If you had gone to trial and got convicted and you had

Page 209

1 claimed Brent Cole was ineffective during your trial for
2 whatever and you wanted me to try to overturn your
3 conviction on the basis of what he did wrong according to
4 you, that's what we'd have pursued. That wasn't what we
5 pursued, David. What we were pursuing was my trial with
6 you. You had -- we....
7 Q Okay. So what you're saying is Brent Cole, no matter
8 what he did before, did not affect my trial?
9 A No, what I'm saying is that over this plea agreement
10 issue which was the only thing that we'd talk about in
11 terms of Brent Cole, I wasn't sure there was an
12 agreement. There was a dispute as to whether there was
13 an agreement and I don't know what else there was about
14 Brent Cole that was ineffective.
15 Q It couldn't have been that he had me give a statement
16 that was used against me?
17 A Well, that all depends on, you know, you never told me
18 that you were not advised of your rights about giving a
19 statement.
20 Q Have you ever stated that no one wants to look at the
21 totality of the circumstances in my case or do you -- and
22 I....
23 A Oh, I think I'm -- I think we had discussions about the
24 case and how it seems like the state was going a little
25 overboard for nine dead wolves and so we did talk about

Page 210

1 that.
2 Q Okay. And so what you were....
3 A We talked about what the salvage value was of the wolves
4 and things like that. I think we did talk a little bit
5 about that I thought that the state was, you know,
6 getting a little carried away over nine dead wolves.
7 Q Okay. And you didn't ever kind of look at it....
8 A I told that to Scott Leaders too.
9 Q Okay. And you -- but you didn't ever look at it in the
10 light of that, you know, I had claimed the state told me
11 and induced me to take action, that they then charged me
12 with it, they then moved the evidence from one game
13 management unit to another, that I was....
14 MR. PETERSON: Can you ask him a question, please? That's
15 way too many parts.
16 MR. HAEG: Okay.
17 MR. PETERSON: I don't know what he's responding to.
18 Q Okay. Did you ever think that there was a lot of
19 questions or concerns that may have led to an injustice
20 in my case, legal -- even legal questions, not just
21 wolves versus what happened but, you know, unfairness in
22 how I was prosecuted?
23 A I didn't think at the time that they were deliberately
24 trying to make a story up against you primarily because
25 of discussions we had about what really happened but I

1 did think that Scott wanted too much for what happened.
 2 In other words, I thought that taking your license and
 3 your plane and all that was a bit much for wolves that
 4 didn't even have a salvage value of what they were trying
 5 to take from you.
 6 Q Yeah.
 7 A But as far as some intentional misgiving or excessive use
 8 of their authority to undermine you and lie about you, I
 9 didn't get that sense, just that they were maybe coming
 10 into some political pressure like a lot of prosecutions
 11 do....
 12 Q Okay.
 13 Abecause of the atmosphere.
 14 Q Now, do -- I guess this is speculation but, you know,
 15 have you seen cases where political pressure has....
 16 UNKNOWN MALE: Yes.
 17 MR. HAEG: Oh, okay.
 18 (Whispered conversation)
 19 Q Well, I think we went through that one.
 20 MR. PETERSON: And I don't -- I mean, you've used well
 21 more than three hours now.
 22 MR. HAEG: I've just got....
 23 MR. PETERSON: I'd like to have some time left in the end.
 24 MR. HAEG: Okay. Well, all's I got is three -- you know,
 25 and I think we've been over most of this.

1 or....
 2 Q Yeah, just....
 3 A Right.
 4 Qyou had said that you thought Scott was asking for a
 5 lot.
 6 A Oh, I don't....
 7 Q I mean, was I a habitual guide....
 8 A I didn't -- well, we -- you had no criminal record so
 9 that was a matter of fact. It wasn't because of that, I
 10 just, as I told you, thought that they wanted, you know,
 11 more flesh than should be gotten for nine dead wolves. I
 12 mean, when you -- and I said I think we put it in terms
 13 or at least I put it in terms for you that if you were to
 14 take the salvage value of each one of those wolves and
 15 added them altogether, the state's loss of those wolves
 16 does not compare to what they wanted to do to you.
 17 Q Okay. Well, I think that's -- I got through, I think,
 18 most everything I wanted so you can....
 19 MR. PETERSON: Okay. I will be quick here. I think I
 20 only have a few minutes.

EXAMINATION

BY MR. PETERSON:

21
 22 Q You mentioned it when you were talking about your
 23 physical file you had given these copies, it sounds like,
 24 to Mr. Haeg?
 25

1 MR. PETERSON: Okay.
 2 MR. HAEG: Just hang on for a second here.
 3 (Pause)
 4 Q Well, did you remember Prosecutor Leber -- Leaders and
 5 Trooper Givens asking me to be sentenced above and beyond
 6 what is allowed by law even at sentencing?
 7 A Above and beyond allowed by law. I can't remember, Dave.
 8 There may have been....
 9 Q Did they want to like prevent me from even using an FAA
 10 charter license to have anything to do....
 11 A There was something -- I can't remember exactly what the
 12 issue was but there was something that they were arguing
 13 about that I thought was beyond what you could do within
 14 her authority....
 15 Q Yeah.
 16 Abut I can't at the moment put my....
 17 Q Okay.
 18 Amind right on it.
 19 Q And I guess just is part of the reason why you think
 20 maybe it was over and above was because I had no criminal
 21 history at all of what....
 22 A No. Are you asking me....
 23 MR. PETERSON: He doesn't know what the issue is. He
 24 doesn't know what they were arguing for.
 25 A No, he's talking about the case in general you mean

1 A Yeah, I -- I think we eventually gave the file to David
 2 or he came by and looked at it and copied what he wanted.
 3 I can't remember the -- the -- the protocol for it
 4 but....
 5 Q That would have been when you discontinued representing
 6 him....
 7 A Right.
 8 Qand he hired somebody else, you would have -- what
 9 would your normal routine be, to copy your entire file?
 10 A I didn't personally get involved in that. I think
 11 Bonnie, my legal assistant at the time probably assisted
 12 Mr. Haeg with getting the -- getting the file.
 13 Q Okay. And, just so I'm clear, your investigator's name,
 14 it's Joe and the last name?
 15 A Malatesta.
 16 Q M-a-l-a-t-e-s-t-a?
 17 A You got it.
 18 Q Got it. Okay. With respect to the -- Mr. Malatesta's
 19 investigation, you had him speak with Mr. Cole and do
 20 some other investigations for you?
 21 A Correct.
 22 Q Is that a common practice for you to have an investigator
 23 do work like that?
 24 A Oh, sure.
 25 Q And would it also be a common practice for you to review

Page 215

1 all of his work?
 2 A Yes.
 3 Q So you would have taken a look at recordings or exhibits
 4 or documents that Mr. Malatesta would have come to now
 5 and it -- and reached a conclusion on your own, is that
 6 right?
 7 A Correct.
 8 Q Would it have been Mr. Malatesta's job to decide if
 9 motions should have been filed?
 10 A No.
 11 Q Who makes that decision?
 12 A I would have.
 13 Q Now, we've gone back and forth about the plea negotiation
 14 -- or the alleged plea agreement being raised at
 15 sentencing. Would it be fair to say that if you raised
 16 that issue at sentencing, you'd have to litigate that
 17 issue?
 18 A I don't know whether we would have had to litigate that
 19 issue. It would have taken some substantial time at
 20 sentencing to deal with it.
 21 Q Just to determine whether -- because at the time, a
 22 sentencing.....
 23 A Yeah, I mean it.....
 24 Qwasn't even determined if there was a plea
 25 agreement.

Page 216

1 A Right, it still hadn't been clear to me that there was an
 2 agreement yet.
 3 Q Okay. And with respect to a petition to the court of
 4 appeals, you were asked about that, you.....
 5 A Here's what happened.
 6 Q Okay. Go ahead.
 7 A I filed a motion to dismiss on the basis of lack of
 8 probable cause. Scott Leader replied, I replied but we
 9 didn't get a ruling from Judge Murphy until we got to
 10 McGrath. By this time, I'm away from my office, away
 11 from my ability to get quick access to the court of
 12 appeals, et cetera, and so we just went ahead with trial
 13 and I knew that it -- it didn't make any difference
 14 whether I did a petition for review then or filed it as a
 15 matter of appeal later.
 16 Q Because you've already preserved your appeal rights?
 17 A Because I've already preserved it with the motion.
 18 Q And is it your understanding that a petition for review,
 19 the standard, it's a discretionary review?
 20 A Yeah, it's not mandatory.
 21 Q And the issue of your claim that the court had no subject
 22 matter jurisdiction, it wasn't waived by not going to the
 23 court of appeals as you've indicated?
 24 A No, absolutely not.
 25 Q Now, we were -- you were asked a question by Mr. Haeg

Page 217

1 with respect to the defects in the probable cause
 2 statement.....
 3 A Right.
 4 Qand the merits of the case and you -- your focus was
 5 following trial, you were going to appeal the defects.
 6 A Correct.
 7 Q That does -- does that indicate that you didn't attempt
 8 or put your best foot forward in trying to get him an
 9 acquittal at trial?
 10 A Oh, no, I mean, I tried through what I had to work with.
 11 Q And was there -- were there certain things that you felt
 12 like you could have done or should have done but you
 13 didn't do because you were just banking out solely on the
 14 appeal?
 15 A No. Hmm-mm. In fact, I mean, we -- you know, I called
 16 witnesses, we put them on and testified and.....
 17 Q In fact, you were successful at getting two.....
 18 A And, in fact, as far as a couple of those counts were
 19 concerned, the jury found him not guilty on a wolf trap.
 20 So I did put what I thought was the best effort I could
 21 put forward given the circumstances of his case.
 22 Q Okay. And with respect to getting rulings on motions, I
 23 mean, you didn't get rulings on some of the motions prior
 24 to trial but you did at trial.....
 25 A Right.

Page 218

1 Qwhich then preserves those issues for appeal as
 2 well?
 3 A Correct.
 4 Q Now, you also talked about the -- well, let me back up
 5 here. With respect to the statement made by Mr. Haeg and
 6 Mr. Zellers to Scott Leaders, is it fair to categorize if
 7 Mr. Zellers is testifying about the map, he -- he's
 8 adopting that as his testimony?
 9 A That's the way I saw it.
 10 Q And was there any indication by Mr. Zellers or Trooper
 11 Givens that this is what Haeg had said during his.....
 12 A No, it was.....
 13 Q So there was no reference to statements made by Haeg, it
 14 was this -- it was all coming from Mr. Zellers himself?
 15 A Correct.
 16 Q Anything that's inaccurate about that statement?
 17 A No.
 18 Q Okay. You indicated that the only place that Mr.
 19 Leaders, apparently, utilized Mr. Haeg's statement was in
 20 the information and you raised that issue prior to trial?
 21 A Correct.
 22 Q Was that portion of the information read -- the probable
 23 cause statement and the information was not read to the
 24 jury, was it?
 25 A No, just the charges, the.....

1 Q Just the charge.
 2 A Just the charge.
 3 Q So the fact that he misused or may have allegedly misused
 4 the -- Mr. Haeg's statement for PC was not utilized -- or
 5 was not presented to the jury?
 6 A Well, you know, in the beginning of the trial, the court
 7 tells the jury what the case is about and they get the
 8 complaint and....
 9 Q But that's general terms.
 10 A But that's general terms but there was nothing -- there
 11 was nothing that the jury was told prior to trial -- or
 12 prior to testimony about what David Haeg or Tony Zeller
 13 had said to the police in the statement.
 14 Q Okay. Let's talk about the wolf -- well, the location of
 15 the wolf kills. We've gone back and forth on this so I
 16 just want to try and clarify the issue. 19-D east was a
 17 predator control area. Is the issue here for trial
 18 whether or not the wolves were killed inside or outside
 19 of that area or inside or outside of Mr. Haeg's guide use
 20 area?
 21 A The question was whether the wolves were taken inside or
 22 outside the area that was authorized for wolves to be
 23 taken.
 24 Q So whether or not they were killed inside of his guide
 25 use area or outside of his area but in a closed area is

1 Q And there was no question that all those wolves following
 2 trial had been killed outside of the predator control
 3 zone?
 4 A Correct.
 5 Q And when the nine kill sites were identified in the
 6 probable cause statement as being outside of the predator
 7 control area.....
 8 A Right.
 9 Qwhether or not they were classified erroneously as
 10 19-D or 19-D is irrelevant for purposes of probable cause
 11 when you're determining whether they were inside or
 12 outside of the area, is that correct?
 13 A Correct, it -- there was probable cause to believe that
 14 they were taken outside the WCP zone. It really wouldn't
 15 be relevant that they misidentified one zone and the
 16 other.
 17 Q And where that became a relevant issue is your argument
 18 that it shouldn't be a hunting, it should be a trapping
 19 violation?
 20 A Right.
 21 Q You raised that issue, you argued it?
 22 A I certainly did.
 23 Q And the court overruled you?
 24 A Correct.
 25 Q Okay. And that issue, the overruling of that issue,

1 irrelevant, it's were they in the predator control area
 2 or not.
 3 A That was the issue.
 4 Q Okay. So since the only issue was that, Mr. Haeg has
 5 repeatedly talked about the troopers moving the evidence.
 6 Did you have any belief that they physically picked up
 7 and moved the evidence?
 8 A I had no evidence that the troopers moved the wolves at
 9 all.
 10 Q So what they did is where the wolves were killed.....
 11 A Or that -- or that they moved any of the evidence of the
 12 wolf kills at all.
 13 Q Okay.
 14 A In other words, they -- there was nothing that I knew or
 15 had any indication to believe that the tracks were taken
 16 from where they were taken and put someplace else, that
 17 the remnants of dead animals were taken someplace and put
 18 there -- there was none of that.
 19 Q So the real issue is the location of the kills were
 20 accurate, it was in saying this location here, location
 21 number one, for example, is in -- it was at this GPS
 22 location which is in game management unit -- if it's at
 23 19-C, the classification of the area was wrong but the
 24 location was actually right?
 25 A Right.

1 would have been preserved for a -- an appeal of the
 2 conviction?
 3 A I did preserve it for appeal. I took it -- I did make it
 4 a point on appeal as well.
 5 Q With respect to there was a lot of discussion about State
 6 v. Waste and the right of somebody to have a hearing
 7 within days, if not hours, of the seizure. Your
 8 understanding is who's supposed to file for a hearing?
 9 A The person who loses -- who has his property seized.
 10 Q You previously said that you had a -- you had subpoenaed
 11 another assistant DA that you didn't call to trial?
 12 A Yeah.
 13 Q Who was that?
 14 A Oh, I can't remember his name now but -- what was his
 15 last name? Was it Hunt or.....
 16 Q Where did he work out of?
 17 A He worked out of Anchorage, I believe. Gol, I just can't
 18 remember his name now. In fact, I thought I saw it
 19 somewhere maybe. Maybe they.....
 20 Q All right. And what was the purp.....
 21 A Wait a minute, the purpose was to -- I was going to call
 22 him to -- to explain to the jury the difference between
 23 hunting and trapping.
 24 Q But he didn't have any direct knowledge of the case?
 25 A No, he wasn't involved in the prosecution of the case.

Page 223

1 Q Or involved in the events as they took place anyway?
 2 A No. No. Irrelevant.
 3 Q Okay.
 4 A He was like the attorney for the board of game, as I
 5 recall. He.....
 6 Q Kevin Saxby?
 7 A That's it. Yeah, he would go to the game meetings and
 8 advise their game board. He wasn't involved in the
 9 prosecution of the case though.
 10 Q At any point in time during the trial, did you raise the
 11 issue with Judge Murphy that you thought she was being
 12 impartial?
 13 A You -- you know, I may have. I mean, I can't remember
 14 specifically what the issue was about but.....
 15 Q But if you disagreed with one of her rulings.....
 16 A Yeah, I may have.
 17 Qthat would have been preserved for appeal, correct?
 18 A Yeah, I don't think I made impartiality a point on the --
 19 on appeal.
 20 Q Correct. Okay.
 21 A But -- but, you know, it's kind of hard to go back now
 22 and try to remember everything I've said to judges in a
 23 trial.
 24 Q I don't have any additional questions. I appreciate your
 25 time today.

Page 224

1 A Okay.
 2 Q Thank you and I will get you the form that we have for
 3 your.....
 4 A Yeah, including parking, hopefully.
 5 MR. PETERSON: Your mileage and your parking and we'll
 6 what I'll do is I'll send that -- I'll see if I can grab it
 7 right now if I can. I'll send it to you. All you have to do
 8 is fill it out, send it back to me and they process it if.....
 9 A All right.
 10 MR. PETERSON: It takes, unfortunately, a little more.....
 11 A I know how the state works. They're -- they're slow.
 12 MR. PETERSON: Yeah, they're not very -- yeah.
 13 A I know you guys are slow these days.
 14 MR. PETERSON: All right.
 15 A All right.
 16 MR. PETERSON: And so, real quick, let's just before we go
 17 off record make sure there's not -- I think there might be
 18 something here.
 19 A These are all mine. You can have the book (indiscernible
 20 - whispering).
 21 MR. PETERSON: Okay. So at the conclusion, all we got to
 22 do is state that the deposition is concluded at this point in
 23 time.....
 24 A Right.
 25 MR. PETERSON:and it is 4:25 Friday, September 9th,

Page 225

1 2011. That's it. Mr. Robinson, pleasure meeting you
 2 MR. ROBINSON: All right. (Indiscernible)?
 3 MR. PETERSON: Yup.
 4 MR. ROBINSON: Good seeing you, David.
 5 MR. HAEG: Yeah, same here.
 6 MR. ROBINSON: Take care, Dave.
 7 (Off record conversation)
 8 (Off record)
 9 * * * * END OF PROCEEDINGS * * * *

Page 226

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S I G N A T U R E

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, ARTHUR S. ROBINSON, have read the foregoing deposition and have made corrections thereto. Any and all changes, explanations, deletions and/or additions to my testimony may be found on the correction sheet(s) enclosed with this transcript.

ARTHUR S. ROBINSON

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2011, before me appeared ARTHUR S. ROBINSON, to me known and known to be the person named in and who executed the foregoing instrument and acknowledged, voluntarily signing and sealing the same.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____



A				
AA 35:21	112:18 142:11 153:3	agreeing 128:3	Alaska's 35:24 36:2	21:3 31:7,21 77:4
abandon 30:21	188:21 193:25 202:1	agreement 7:24 8:5,11	45:4 72:9 195:21	80:20 87:5 89:16
abandoned 48:17 54:3	admitted 36:20 45:5,11	8:13,19,22,23,24,25	Albright 126:7,11	148:4
ability 124:3 127:11	55:10 65:5,22 66:8	9:2,4,10,12,13,15,18	127:20	anymore 58:9 162:15
180:23 186:13	143:17 144:8 171:18	9:20 21:9,12,15,21,25	allegation 19:18 43:25	anything's 106:3
216:11	172:9 173:24	22:7,19 23:20,24	55:18 65:24	112:15 174:15
able 8:19,23 61:24	admitting 19:3 31:2	24:3,5,8,13,21 28:20	allegations 15:25 21:13	185:16
65:18 69:21,22 83:5	172:5 175:21	28:23 29:3,4,23 31:1	73:7 77:9,10 83:1	anyway 61:11 65:1
86:9 90:25 93:17	adopting 218:8	31:5,8,9,18,22 32:12	157:14,25	68:5 80:15 84:13
96:11 99:24 113:14	advantage 44:9	53:19 54:4,15 56:8	alleged 39:13 94:14	93:3 119:1 132:9
120:19 135:25	advertisement 36:15	56:14,17,21,22,23,23	186:11,17 215:14	157:16 177:6 190:19
139:17,19 141:5	143:22	57:1,17 58:8 60:16	allegedly 219:3	223:1
146:9 161:22 162:18	advertisements 143:24	62:17 74:10 83:11,12	alleges 70:24	apologize 11:25 87:18
163:1,4 165:13	advertising 64:21,22	93:22 94:4,6,14,14,21	allegiance 55:25 56:1	apparent 102:14,17
184:19	advice 73:20	94:22,25 95:7,9,12,17	alleging 196:20	105:15
absent 51:14	advise 26:2 46:4,6,11	96:6,7,7,8,10,19,22	allocation 117:11	apparently 23:16 39:7
absolutely 46:18	223:8	97:6,14,17,24 98:7,24	allow 38:20 78:23	40:13 161:21 162:23
155:19 195:3 207:12	advised 25:21 26:11	99:2,7,11,14,17,22	156:6 157:9 161:1	164:16 165:17 193:8
216:24	47:2 209:18	100:3,6,9,15,22 101:4	207:6	218:19
ac 128:17	advising 47:17	101:12,25 102:6,8,15	allowed 10:22 35:2	appeal 10:15 11:5,8
access 216:11	affect 124:3 146:20	102:18,20,23 103:5,8	38:17 69:19 75:24	30:14,17,17,23 48:17
accomplish 83:25	170:14 209:8	103:16,18,22,23	115:8 119:21 123:9	49:6 71:1,18,20,22
109:1	affidavit 30:12 35:15	105:12,13 106:7	129:21 136:21	72:19 125:18 138:16
accurate 15:14 220:20	39:14 40:11 49:23,24	110:16 112:14	143:15 149:22 151:8	138:18 193:20,23
accused 72:4 157:12	49:25 50:4 81:1,4,6,7	114:15,18,20 115:2,6	155:3 156:4 157:13	194:1,7,10,15,24
accusing 130:10	81:10,12,15,24 82:6	118:8 119:15 120:18	157:16 162:20	195:1,4 196:20,21
acknowledged 27:4	84:9 127:10 128:18	121:1,3 122:18 123:1	197:19 203:4 207:9	208:6,17,18,22
45:8 83:20	129:18,25 145:19	135:9 167:5,9 168:3	212:6,7	216:15,16 217:5,14
acknowledging 101:21	164:24 191:22	168:13,22 169:2,3,6	all's 66:17 91:25	218:1 222:1,3,4
acquittal 217:9	201:16	179:13 184:22 186:7	als 211:24	223:17,19
act 67:11	affidavits 141:8,17	186:11,17 188:13	alterca 143:2	appeals 132:23 133:1,6
action 108:22 163:2,5	affirmatively 170:18	209:9,12,13 215:14	altogether 213:15	133:10,23,24 134:6
208:3 210:11	afterward 105:17	215:25 216:2	amenable 167:8	137:17,20 138:2,4
actions 148:21	177:2	agreements 104:24	amend 10:22 35:3	163:19 216:4,12,23
actively 27:20 34:4	agency 52:22,24 178:23	ahead 11:3 64:18 111:1	amended 10:24 34:23	appear 15:12 90:19
151:17	ago 9:6,8 20:15 26:24	216:6,12	191:17,18 192:16	91:15 141:9
actu 155:4	26:24 47:4,25 60:3	ahold 91:1,4	amendment 143:2	appearance 59:17
actual 104:10 108:21	79:12,15 87:22 88:19	aided 47:14	amount 90:4 125:8,10	201:2
201:2 206:15	91:5 123:23 157:3	ain't 101:13	analogized 38:13	appeared 50:19 127:14
actuality 185:13	agree 19:19 27:3 54:22	airplane 15:12 17:5,7	analogy 38:20 187:11	appearing 58:18
adamant 119:2 154:8	54:25 55:13 56:24	17:12,13 22:11,12,13	Anchorage 4:25 193:4	appears 30:24 49:13
186:20	59:14,16 75:14 91:1	22:14 23:3,15 40:15	193:10,14 222:17	68:8 77:15 78:12
add 59:13 173:9	100:18 105:19	62:20 136:1,4 141:19	Andrew 3:17 4:23	83:7
added 213:15	109:20 110:17 111:9	141:21 158:14	and/or 196:12	applicant 81:1
addition 193:20	116:7 118:5,15	161:13 162:11 164:4	angry 154:8	application 3:16 5:24
additional 83:10,11,12	130:22 131:3 143:21	191:13,17,20,25	animals 220:17	11:11 16:5 32:8
85:16 223:24	157:21 158:3 168:4,6	192:14	answer 65:15 93:5	89:13 108:14,17
address 83:1 91:4,11	168:12,14 171:21	al 207:6	113:2 121:10 124:12	appraisal 166:20
138:8,11 169:21	177:23 181:25	Alaska 4:25 11:22 12:3	125:24 133:19,22	appreciate 4:6 105:7
addressed 73:10 75:8	182:14,16 183:3,18	18:2 20:23 21:22	143:7 147:16,17	223:24
137:19,22 138:13	185:21 188:11	23:19 24:19 25:10	156:6 165:25 206:18	appropriately 178:4
162:10	190:19,20 191:3	28:4,21 29:8,14 43:7	answered 119:9 195:10	approved 76:21
adhere 171:25	193:10 194:23,25	44:5,24 50:14,16	answering 31:14 82:25	apt 99:13 143:5
administer 5:5	agreed 13:22 23:2,20	51:20,21,23,24 60:12	122:2	area 11:24 12:1,4,8,11
administered 5:7	33:3 60:15 96:18	60:19 63:10 84:15	answers 58:11 88:20	12:19 18:3,9 19:9
admit 64:19 81:9 102:9	113:24 143:20 144:5	107:7 128:25 132:1	anticipated 21:14	20:24 27:5,14 37:1
109:15 111:19	144:19 145:6 168:11	155:7,8 156:9 163:11	anybody 20:10,20 21:1	38:17,19,25 39:8
	196:2,4	190:15		44:13,13 45:12,13

<p>50:22,24 55:5 65:14 68:14,19,21 84:1 108:21,23,23,25 143:17 144:12,24 146:12 147:3,6,6,11 147:14 149:9,12,14 149:16,19,21,24 150:5,6,6,14,15,22,23 151:1,3 178:10 190:6 190:7 191:1,6 199:11 219:17,19,20,22,25 219:25,25 220:1,23 221:7,12 argue 67:12,17 171:23 171:23 203:4,22 206:14 argued 24:22 38:1 57:5 57:8 67:16 157:8 221:21 arguing 37:12 212:12 212:24 argument 30:19 35:24 36:1 56:22 62:3 109:3 110:19 118:7 148:7 221:17 arguments 57:3 70:8 arose 23:25 arrest 127:13,16,19,21 128:22 130:16 arrested 87:20,21 arresting 127:25 Arthur 5:9,15 article 192:20 articles 192:19 aside 186:14 asked 4:22 7:22 12:4 18:4,21 21:9 33:8 36:14 42:23,24 53:8 54:25 55:9 59:4 61:3 63:2 65:1,4 69:10 72:6 74:9 77:3 79:1 79:12 80:18,20 81:5 81:7,8,11,14,24 82:9 82:21 83:1 89:22,25 118:24 119:9 123:12 144:17,19 154:5 155:6 159:3,3 170:12 170:13,16 184:14 188:10,11,17 195:10 203:3,9 216:4,25 asking 4:10,14 19:21 43:24 81:3 82:5 88:21 105:7 125:2 135:5 163:17 172:19 183:8 206:20 212:5 212:22 213:4 asks 155:25 aspect 58:25 138:3</p>	<p>asset 15:19 assistance 72:4 73:16 73:22,25 74:4 163:17 163:21 196:12,21 203:25 204:3 208:1,4 208:5,10,20 assistant 82:15 187:22 214:11 222:11 assisted 214:11 assisting 75:23 82:7 assume 4:17 47:21 88:13 110:20,20 assumption 29:14 ate 124:4,5,5,18 144:12 156:21 atmosphere 69:1 192:21,25 211:13 attached 108:16 attempt 18:11 26:14 65:14 83:9 217:7 attempted 18:12 26:14 attempting 83:8 attention 62:7 113:21 attorney 7:12 52:11 54:12 60:9 73:21 75:22 84:21 109:10 109:22 113:5 115:7 118:5,7,12 120:2,3,4 120:18 121:4,8 129:17 154:11 180:7 182:17,18 184:11 187:22 192:6,6 195:8 204:2,10 223:4 attorneys 80:13 141:11 182:15 attorney's 80:14 attorney/client 54:21 55:11 56:1 84:7 183:15 audible 143:7 audio 43:17 August 164:9 authority 108:18 211:8 212:14 authorization 54:3 authorized 45:25 150:5 219:22 automatically 16:21 146:13 availability 134:10 available 93:7 98:23 avoid 107:23 aware 16:25 28:3,7 39:12,13,17 62:11 70:6 79:8 183:4 awhile 23:23 70:19 85:18 152:15 164:13 165:23 197:1 208:17</p>	<p>A-r-t-h-u-r 5:15 a.m 123:17,20</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B 31:13 76:16 98:21 back 6:13 11:4 12:13 14:17 15:15 17:13 21:3 30:24 31:12 40:15 43:22 45:3 67:2,20 75:9 76:14 76:15 81:21 84:14 86:12,16,25 87:11 91:2 92:18 94:24 96:8 98:19 103:11 121:8 122:14,16 124:22 126:11 132:17 133:17 152:6 152:11 153:17 154:18 155:17,17 156:18 158:13,21 160:6,10 161:9,13 167:7,18 169:14 173:5,16 175:15 197:1,17 199:17 201:25 203:6 215:13 218:4 219:15 223:21 224:8 backed 104:15 111:20 112:18 113:9 background 52:3 backing 54:14 103:21 109:5 110:23 111:8 bacon 86:9 bad 140:19 142:15 183:13 balance 24:10 banking 217:13 bar 76:18,25 barely 69:6 123:18 barring 62:12 based 45:4,16,17 72:10 81:12 82:21 83:19 96:16 134:20 189:5 basically 43:7 58:7 134:15 138:18 140:4 145:25 162:10 192:11 basis 10:9 27:7 34:16 53:22 72:6 75:25 136:17 209:3 216:7 Bauman 163:20 BB 35:21 42:15 beginning 38:8 61:3 67:4 132:14 133:18 152:16,17 219:6 behalf 5:4 bel 120:5 belief 49:13 83:22 95:6</p>	<p>163:17,20 220:6 believe 5:4 8:15 9:23 14:6 21:4,23 26:23 26:24 30:19 31:4 33:19,21 35:10 40:23 43:9 58:24 59:2,8 61:1 67:18 69:10,10 75:18,20 81:20,25 82:3,4,18 84:20 85:17 95:16,18 96:16 97:19 98:5,10,11 103:18 108:13 113:11 115:5 117:4,6 117:6,9,9,11 118:7 119:12,14,17,24 120:6,24 123:16,17 126:7,11,11 132:1 143:5 149:6 152:19 155:10 158:18 162:1 169:6 171:16 172:11 172:13,17,18 186:21 199:7,22 201:21 204:9 220:15 221:13 222:17 believed 42:22 121:5 127:10 165:11,13,15 believes 201:5 bell 61:10 belonged 136:1 belongs 26:20 beneficial 49:16 58:25 82:23,24 83:3 benefit 19:16 35:24 36:11 46:8 55:19 65:14,17 119:18 120:20 143:6 best 25:6 30:5,6 51:9 80:3 107:2 122:5 134:17 217:8,20 better 109:3 110:20,21 115:7 Bewitching 124:17 beyond 146:18 201:1 212:5,7,13 bias 207:19,20 biased 193:17 big 108:18 147:10 162:9 168:15 biggest 167:20 binder 82:11 biologist 198:3 bit 3:9 52:14 70:23 96:21 166:1,18 210:4 211:3 bite 86:5 87:3 blah 104:9,9,9 blazing 202:5 blue 204:7</p>	<p>board 223:4,8 boat 14:10,11 16:2 159:11 boats 15:20,21 body 148:9,10 boiled 129:2 boils 129:3 bond 14:8 15:4,6 16:6 17:1,2,4,7,24 67:8,22 158:22 161:22 162:19,19,20 163:1 165:14,24 166:2,3,7 166:15 bonding 15:11 162:14 166:3 Bonnie 214:11 book 175:5,6 224:19 boring 41:10 bottom 17:20 118:13 150:4 185:19 189:1 189:24 Boudreau 198:4,6,18 199:1,5 bought 187:18 Boulevard 88:4 boun 154:17 boundary 152:24 bowed 103:25 104:1 Box 87:7 107:7 boxes 104:7 boys 74:18 brain's 163:8 break 6:15 43:23 57:19 78:11 85:19 87:12 121:20 122:1,15 169:8,15 Brent 9:14 14:19 22:20 23:9,11,11,14 33:8,9 34:4 53:12 54:5,9,11 54:13,14,19 55:8,9,11 55:21,22 57:20 59:12 73:19,23 74:4 75:9 94:8,13,13,23 95:3,4 95:5 96:8,9 97:25 98:10 99:10,18 100:7 102:19 103:20 104:9 104:11,12,14,17,20 106:6 109:16,18,19 109:22,23 110:2,5,8 110:11 111:16,19,22 112:11,17,17 114:1,4 114:5,7,12 116:11 118:5,10,19 119:2,4 159:4 168:16 179:3 180:21 184:5,8,25 185:7,23 186:9 203:23 208:2,4 209:1 209:7,11,14</p>
--	--	---	---	---

Brent's 100:11	12:6 16:25 22:23	cetera 13:24 24:1	46:25 135:2	clients 47:17 65:18
brief 6:15 14:21 43:23	24:11,23 25:1,7,8	166:22,23 216:12	choices 9:20 135:3	144:3 180:1
71:23 76:20 136:22	29:17 30:9 33:2,7,7	challenge 36:12 67:19	choose 139:21	close 87:2 97:15 152:20
137:18 138:20	36:7,16,16 38:21	chan 155:25	chose 24:4,6,24 29:18	165:17 202:9,11
169:15 196:18	43:22 45:4,17,21	chance 6:24 94:2	29:22 30:21 59:17	closed 27:21 38:15,19
bring 45:2 59:21 62:6	47:21 48:8 50:19	change 5:20 22:22 33:3	135:3 171:16	38:22,25 147:7 191:1
82:10 86:6 90:8	51:15 61:18,24 64:21	43:17 46:20 111:3	Chuck 3:18 105:9	219:25
113:15,20 127:13	65:8,8,10,12 72:5,10	120:22 155:11 156:4	115:4 169:18	closely 135:22 145:19
136:21 137:3,4 138:7	72:14 74:2 75:23	156:10	CI 3:15 31:13 43:23	Coca-Cola's 197:14
138:10 140:24	78:6 84:8 85:1,3,7	changed 31:11 43:21	67:3 87:12 98:20	Coke 78:12,13,24 79:7
156:24 157:1,9	114:5,9 123:10	67:1 73:6 76:12	122:15 133:17	Cole 7:7,12,13,25 8:8
162:13 182:23	124:14 126:6,18,19	98:17 122:13 124:16	169:16	14:3,19 29:8,9,24
207:14 208:5,9	127:20 129:8 133:17	133:16 147:21 156:2	circumstance 178:17	34:5 53:8,12,23,25
bringing 137:14 138:3	135:15 142:10,11	169:11,24 170:11	circumstances 9:24	54:5,9,11 55:14,19,21
141:15	143:1,12 147:1	183:12 203:5	73:6 139:20 209:21	55:22 57:17 58:14,18
brings 94:9	152:17 163:12,13	changes 43:15	217:21	58:24 59:2,10,18
brought 25:3 32:2 61:4	174:20,21,23,25,25	changing 5:21 133:14	cite 175:2	60:14 73:19 74:4
82:11 90:10 94:3	175:10,12,20 177:7	205:22	cited 131:15 174:7	75:9 94:8,13 95:3,4,5
97:7 106:16,20,22,24	178:4 179:18 182:3	Char 128:2	civil 4:9,10,18 52:4,7	98:1,10 102:19 104:9
106:24 113:24	183:25 185:6 189:13	characterize 162:12	74:10 208:3	104:11 109:16,22
117:20 132:23	192:17,20 196:9	charge 22:14,24 108:18	claim 14:7 30:7 32:3,19	110:8 111:16 112:11
136:25-137:8,18,21	202:18 204:5,11	132:13 139:17	37:3 66:2 73:1 75:16	114:1,4,8,12 116:11
156:25 173:12,22	209:21,24 210:20	149:17 219:1,2	130:4 191:6 208:1	118:5,10,19 119:2
182:21 202:25	212:25 217:4,21	charged 11:15,17 37:9	216:21	168:16 179:3 180:21
203:15	219:7 222:24,25	37:16,21 38:22 39:1	claimed 18:3 20:24	181:25 182:9,11
Brow 163:20	223:9	39:2 50:8,10 131:14	27:13 37:1 39:15	183:13,20,21 184:5
Brummel 3:23	cases 15:20 88:13 125:1	146:13,21 147:13,18	42:20 72:25 75:21	184:14,19,20,25
build 98:24	125:8,13,15,15 126:9	147:24 148:8,21,23	115:8 130:4 141:22	185:8,23 186:9,21,22
burden 100:6	126:15 128:19	149:2,3 150:10	141:24,25 148:8	187:17 196:12
business 8:7 33:19 36:9	130:25 211:15	151:11 157:6 191:9	150:9 153:13 209:1	203:23 208:2,4 209:1
36:10,12,16,18,21	categorize 218:6	204:21 205:24 207:2	210:10	209:7,11,14 214:19
45:3 64:15,23 65:17	categorized 51:15	210:11	claiming 37:21 142:21	Cole's 55:8 75:11 185:7
68:2 143:6 164:21	category 14:23	charges 23:20 27:7,8	claims 15:25 35:9	college 87:21
buy 17:13	cau 47:7	27:10,17,19,24 34:2	196:12	combined 124:7
bye 81:22	cause 10:9 26:4 47:8	37:14 60:22 61:5	Clam 107:7	come 11:4 12:13 17:16
	48:10 49:25 51:5,6	69:1 70:17 121:6	clarified 40:5,21 44:4	54:11,19 59:3 69:19
	60:25 71:24 76:22	126:4 128:1,2,22	clarify 22:7 46:4 155:4	78:1 83:17 84:18
	99:25 126:4 127:7,21	132:17 151:25	219:16	86:12,16 91:2 93:8
	127:23,25,25 128:13	157:23 218:25	clarifying 44:2	93:24 94:24 114:21
	128:20,21 129:1,10	charging 66:23 67:6	class 16:3	116:8 119:4 120:1
	129:19,25 130:5,12	108:19 131:17 137:1	classification 44:16	125:1 137:14 138:13
	130:16 131:1,10	138:24,24 139:15	220:23	138:16 140:21 185:9
	132:1,7,13,20 139:10	190:21 193:4,9	classified 221:9	186:9 195:7 215:4
	139:12 146:15 216:8	charter 212:10	classify 72:2	comes 30:24 90:23
	217:1 218:23 221:6	charters 27:22	clean 108:16	153:17
	221:10,13	chase 171:10	clear 9:1,9 19:8 33:10	coming 58:14 77:16
	caused 7:4 11:20 31:25	Chastain 3:3,3,7,9,23	33:11 49:21 50:23	81:10 121:10 156:3
	70:12	Chastain's 77:15	51:19 58:8 77:14,25	173:16 192:22 211:9
	cave 144:1	chauffeur 196:24	104:3,4 105:11	218:14
	CC 44:22	199:18,23 200:3	106:14 107:24	commandeer 201:13
	cell 84:14	checked 71:3,5,8 88:4	112:21 162:25 170:7	commandeered 78:9,15
	certain 34:1,6 130:24	cheese 86:10	201:14,15 214:13	79:5 201:5,11,12
	130:25 131:22 146:3	chief 24:24 25:2,7,8	216:1	comment 63:5
	150:7 217:11	29:18 30:10 33:7	clearly 42:7,10 108:25	comments 55:1
	certainly 6:5 30:8	36:16 45:21 64:21	174:11	commercial 14:11,23
	221:22	174:20,22,25 175:1	client 30:15 122:25	15:20 16:3 38:14,21
	certificates 27:13	175:10,20 177:8	158:25 159:1 161:17	113:6 159:10
	certified 76:20	choice 26:9,11 30:22	161:19 179:23	committed 132:2 139:6
C				
C 3:1,3 172:13				
call 59:16 81:21 85:20				
88:17 89:2 132:23,25				
172:5 187:17,21				
199:17 206:16				
222:11,21				
called 5:10 14:20 20:12				
28:24 62:17 84:13,14				
84:19 92:19 106:6				
158:13 217:15				
calling 55:19 70:20				
calls 188:23				
captain 187:9				
caption 5:2				
car 79:7,16 84:17 197:3				
197:7,8 201:6				
carcasses 143:25				
care 75:7 195:14 225:6				
career 56:3				
carried 210:6				
case 5:3 7:22 10:5,7				

<p>148:8 155:23 committing 175:13 common 47:17 214:22 214:25 communicated 201:20 compare 213:16 compel 53:15 compelled 32:5 compelling 118:6 132:22 compen 161:5 compensation 161:5 competent 141:12 complaint 7:19 10:2 76:18,25 88:22 219:8 complaints 11:15,15 50:9 completely 53:3 68:2 completing 10:23 concern 70:12 80:6 167:21 168:15 180:3 concerned 9:2 12:8,10 71:10 78:16 90:25 107:10 139:10 154:14,21 161:7 168:17,19 180:14 217:19 concerning 11:23 15:20 26:4 36:15 89:13 154:20 157:23 161:21 175:3 201:17 concerns 195:21,22 210:19 concessions 120:21 concluded 224:22 conclusion 215:5 224:21 conditions 108:20 condo 90:20 conduct 55:2,4 conducted 109:15 confirm 18:16 177:3 confirmed 102:19 conflict 72:6 75:25 conflicting 44:10,12 65:9 confront 153:25 154:22 154:23,24 155:1 confrontation 169:25 confronted 154:23 155:4,14,22 156:5,5 156:12,14,15 confused 96:20 confusion 179:15 connection 201:22 consequences 29:5 consider 61:8 111:12 123:13 157:19</p>	<p>202:23 consideration 62:9 168:22,24 considered 75:22 92:22 123:14 consistent 28:11 41:2 61:17 constitutional 35:18 67:18 constitutionally 66:22 constitutionally-adeq... 66:23 67:6 consumed 123:9 contact 18:11 77:4 84:25 85:2 125:7 196:13,15 199:16 contacted 14:4 80:17 80:20 84:22 94:13 104:9 contacting 133:5 contacts 84:25 containment 149:15 contention 39:17 126:25 contentions 136:21 context 97:19 107:21 continue 85:18 100:3 continued 170:22 173:12 192:23 continuing 87:12 103:7 154:9 169:16 contradicting 205:8 contradiction 95:12 contrast 103:14 control 27:5 37:23 45:9 50:22 68:14 69:3 83:21,24 146:22 148:24 149:7,15 190:2 192:19 198:8 204:22 205:25 207:2 219:17 220:1 221:2,7 conversation 6:23 62:23 84:6,9,11 90:2 95:19 102:12 104:11 111:21 122:12 156:17 169:13 184:11 190:10 202:24 211:18 225:7 conversations 59:10 94:19 95:5 98:11 106:2 195:14 convey 59:18 99:16 103:20 conveyed 13:17 59:20 convict 33:17 141:5 174:2 176:19 convicted 10:13,15 29:5 37:13 48:21</p>	<p>51:3 54:7 87:23 121:7 134:12,22 143:11,13 164:18 165:2,20 186:18 190:20,21,25 191:1 194:19 208:25 conviction 48:18 49:11 53:21 56:17 58:10 71:3,3,15 89:13 93:23,24 94:3,5 115:1 134:19,23 193:20 209:3 222:2 convince 38:24 69:22 convincingly 13:22 cooks 86:10 cool 69:12 cooperate 177:23 cooperation 178:11 coordinates 142:2 152:22 cop 183:2 copied 76:20 214:2 copies 117:25 118:3 188:18 213:24 cops 88:4 copy 5:23 6:1,2 15:11 15:14 39:25 40:3 78:5 82:11 108:2,4,5 108:9,13,15,16 117:19 151:19 206:17 214:9 corner 87:6 corporation 191:21 192:2,15 correct 7:8 8:12 16:18 17:14 25:13 26:20 27:7,17 28:21,22 29:1,20,21 34:9,24 37:24 38:1 42:5 43:10,12 44:16 45:10 47:15,23 48:22 53:13 53:14 55:17 59:1 60:10 61:1 62:15 64:8 66:9 70:10 73:10 90:21 92:2 93:19,20 102:4 120:5 127:4 128:23 135:16 141:6 152:5 153:22 153:25 165:12 168:2 174:19 176:21 187:4 208:17,214:21 215:7 217:6 218:3,15,21 221:4,12,13,24 223:17,20 corrected 44:1 153:15 172:4 173:11,13 correctly 8:9 correspondence 82:10</p>	<p>corroborate 18:5,16 corroborating 19:18 corroboration 18:20 37:2,4 45:1 corrupt 195:24 corruption 195:20,22 196:2,4,5 cost 166:22 Costa 14:5 90:20,22 158:15 counsel 72:3,5 73:16,16 73:22 74:4 81:1,3 82:3 163:17,21 196:12,21 203:25 204:3 208:1,4,6,10,20 counted 62:21 counter 62:2 country 14:5 91:20 158:15 counts 190:22 217:18 couple 20:11 52:7 70:8 85:10 86:20 181:17 217:18 course 61:10 73:21 95:20 100:16 108:3 134:20 149:16 156:10 191:22 court 4:14 8:24 10:8,14 10:19 31:3 35:16 57:3,10 59:4 62:12 67:24 68:2 72:19 78:19 88:13 96:12 101:23 113:15 115:15 116:19 119:19,21,25 120:5 122:20,22 123:2,9,12 127:3,13,14,15 129:11,15,20 130:11 131:6,14,23 132:2,19 132:23,24 133:1,6,10 133:22,24 134:6 137:15,17,20 138:2,8 138:9,11,12,13 141:16 163:11,19,19 185:1,1 186:7 188:16 189:5 197:12,17 199:22 200:4 216:3 216:11,21,23 219:6 221:23 courthouse 78:22 79:17 156:21 193:8 courtroom 129:13 courts 130:24 131:22 131:22 court's 66:20 cover 3:14 53:3 co-defendant 114:9 CPR 201:22 208:8</p>	<p>create 19:6 created 176:11 credibility 140:9,11 173:21,25 credibility's 25:14 credit 60:17 113:25 116:10,11,12,21 119:23 167:8 168:6 169:7 crime 128:11,13 130:11 131:9 139:6,18 148:21 151:12,12 182:13 186:18 194:19 crimes 128:25 131:7,17 131:23 143:11 146:14 175:14 criminal 10:2 50:8 52:8 52:15 74:2 131:5 179:18 181:24 208:15,18 212:20 213:8 critical 100:13,14,19 100:20 142:20 cross 4:11 25:10 39:20 39:23 44:3 60:18 61:18,21 65:20,22 118:12 144:4,17 145:1 153:21 154:20 169:18 184:15 188:22 203:7 crossed 42:15 cure 170:12,13 Curing 11:1 curiosity 61:5 cut 171:10</p> <hr/> <p style="text-align: center;">D</p> <p>D 3:1 40:22 41:11 DA 109:5 110:23 222:11 Daily 193:5,10,14 damage 183:21 damages 104:23 damaging 180:4 date 4:25 15:10 16:19 83:9,13 107:8 dates 16:14 Dave 3:22 29:5 36:19 55:12 57:19 64:22 74:13 78:25 115:21 115:24 133:14 177:4 177:5 198:7 212:7 225:6 Dave's 15:25 54:3 David 8:4,17,21 10:6 12:20 14:3,5,6 19:6 24:2,20 26:21 29:2,2</p>
--	---	---	--	--

29:10 30:3,16 32:7 33:19 34:20 36:13,17 38:14 40:13,18 46:15 47:6 48:3 56:9 65:1 65:21,22,22 68:25 71:25 73:19 76:4,6 79:12 81:7 83:18,19 84:11,12 85:2 86:16 92:12 93:25 101:8 102:13 108:18,21 112:8 121:16 123:22 134:16 135:2 142:5 142:23 143:12 145:4 146:2,23 147:15,22 155:2 157:2 158:18 163:13 165:22 170:11,25 171:15 174:15 175:23 185:16 188:6 192:8 197:1 198:16 201:18 204:25 209:5 214:1 219:12 225:4 David's 11:11 30:9 45:19 48:14 62:16 72:12 day 70:12,13 116:24 130:14 157:1 202:16 202:23 203:11,11,14 207:10,15 days 157:1 159:14 160:11,14 162:6 205:14,14 207:17 222:7 224:13 DC 84:12 DD 45:18 48:11 de 106:24 dead 209:25 210:6 213:11 220:17 deal 16:22 24:1 33:3 74:10 104:15,21 109:4 110:20,21,21 111:20,23 112:19,21 112:22,23 113:8,12 113:14 123:9 144:1,5 167:17 215:20 dealing 118:6 185:3,6 185:11,12 200:24 deals 22:8 dealt 127:20 death 84:12 debriefing 28:10 56:13 December 15:2 16:11 16:12 20:19 decide 90:18 97:9,12 122:21,22 169:1 174:21 204:24 205:6 206:25 207:3 215:8 decided 8:6 47:13	49:15 97:8 135:8 166:4 205:10 207:7 decides 122:18 deciding 205:11 decimated 46:9 decision 8:4,16 18:24 19:13 27:2 60:5,7 93:19 96:15 100:14 102:3 106:17 111:1 119:10 138:12 187:17 207:5,21 215:11 decisions 186:13 decline 73:24 defamation 11:17 50:10 defect 9:23 11:1 135:12 135:14 defective 134:22,24 136:13 138:19,20,25 defectiveness 141:10 defects 217:1,5 defend 24:11 207:25 defendant 26:20 116:7 118:10 defendants 179:19 defender 52:20,22,23 defense 18:1 49:9 51:11 51:15,17,25 52:7,9,11 65:7 73:16,25 124:24 124:25 125:7 130:3 132:12,22 134:17 147:20 148:13 208:23 definitely 30:22 206:14 degree 36:20 delayed 70:22 delegated 96:25 deliberate 70:10 deliberately 210:23 delirious 70:3 demand 42:18 demonstrated 72:15 denial 11:14,16 14:9 denied 10:20 35:2 39:4 67:24 161:25 162:1 178:14 190:3,18 204:21 deny 18:22,23,25 136:20 207:16 Department 108:20 depend 139:16 depended 191:4 depending 15:19 139:19 172:2 depends 93:5 112:8 124:4,4 196:19 200:6 204:4 209:17	deponent 3:18 deposed 5:3 88:11 deposing 89:1 deposition 3:6 4:9 5:1 86:16 87:13 88:16,18 89:17,20,21 169:17 203:8 224:22 depositions 89:14 deprived 127:3 des 150:2 desirable 189:2 desire 56:2 destroyed 82:13 details 144:14 determination 64:8 186:15 determine 136:1 150:2 161:10 170:3 173:21 173:25 215:21 determined 46:18 169:5 215:24 determining 221:11 detriment 171:22 diabetic 86:7 123:25 124:7,9,11 diet 78:12,13 difference 29:1 39:11 39:23 68:6 149:8,10 149:11,18,20,21,23 149:25 150:1,10,19 150:24 169:22 185:2 185:20 186:16 216:13 222:22 different 17:16 22:14 22:23 23:10 26:5 32:18 33:16 41:15 44:14 73:12 86:8 94:16 97:20 120:16 126:5 148:20,21 155:12 difficult 84:1 136:4 194:11 digging 125:1 dir 185:5 direct 64:20 153:23 222:24 directly 36:11 185:3,6 185:12,13 disagreed 223:15 disagreement 56:9,10 disappointed 60:1,4,6 discontinued 214:5 discovery 4:15 48:24 discretionary 216:19 discuss 16:12 discussed 16:14 45:22 135:18 165:1 166:2 167:4 205:8	discussing 94:16 discussion 12:20 41:4 68:25 71:13 83:18,19 110:7,8 165:9 222:5 discussions 17:19 31:19 127:9 183:24 195:20 196:8 209:23 210:25 dismiss 10:8 132:19 216:7 dismissed 126:4 132:17 dispute 9:14,17 19:1 23:25 95:11 96:6 101:7,16,17,19,22 102:22 122:18,21 146:4 209:12 disputed 23:10 96:1 98:6,9 102:18,22 dissuade 26:15,16 distinction 154:5 district 80:14 129:17 131:6,14 dive 40:11 document 7:20 107:3,5 192:4 193:4 201:24 documents 82:10,12 85:15 107:25 193:9 215:4 Doerr 63:11,12 dog-ear 7:4 11:20 31:25 dog-eared 6:19 31:23 76:9 doing 20:16 46:8 70:5 93:16 122:5 124:13 143:5,20 150:13 165:19 186:1,6 197:2 donut 147:7,12 150:21 150:23 Dooley 3:21,21,22 double 193:7 double-edged 19:5,11 doubt 30:14,17,23,23 50:25 51:1 70:15 104:18 116:5 146:9 146:18 downfall 53:25 downtown 88:8 dragged 70:14 drank 78:13 draw 95:1 176:6 drew 187:24 192:17 driving 79:17 88:3 120:21 197:3,10 dual 22:17 due 14:9 49:8 159:11 160:19 161:6 162:11 197:23 dug 97:4	dunk 51:16 95:22 duty 112:12 152:5,7,8 155:16 196:13 208:20,22 dynamics 114:12 D-o-e-r-r 63:13 <hr/> E <hr/> E 3:1,1 earlier 29:16 47:2 70:9 83:6 84:11 93:18 167:25 199:21 early 85:10 164:12 east 45:9 68:12 219:16 eat 86:5,7,7,9 87:3 124:2,5,18 144:25 156:19,21 eating 156:22 economic 35:24 167:1 EE 48:13 53:3 effect 81:4,6 150:13 191:9 effective 81:25 82:3 effectively 69:21,24 70:2 effects 68:24 effort 217:20 efforts 96:22 egg 86:10 eight 21:8 23:17 26:24 31:24,24 39:6 158:3 158:6,8 either 8:5 9:20,25 16:19 22:5 24:2 31:4 34:13 51:6 56:11 75:7 98:11 133:4 189:13 206:2 electrical 90:3 electronic 82:15 89:25 90:4 eliciting 116:13 eliminate 64:14,24 65:13,16 193:17 eliminated 193:16 Elnore 63:7 employed 98:25 ended 67:3 70:8 84:8 140:1 enforce 8:24 53:19 58:14 59:17 95:17 97:5 100:3 102:15 103:7 104:21 105:16 106:12 119:15 120:19,25 enforceable 95:7 97:17 98:7 99:6 100:5,16 101:5 102:5,7 103:15 103:18 104:20
---	---	---	--	--

<p>105:12 120:17 enforced 57:18 96:23 99:3 enforcement 24:3 25:16 31:20 54:4 97:13,14 99:13,21 102:1 103:12 135:10 204:15 enforcing 24:13 31:9 101:13 104:23 enter 149:5 entire 45:4,16 72:9,14 214:9 entitled 4:11 6:5 15:17 67:22 77:11 161:8,9 entity 150:1 enumerable 34:10,21 environmentalists 69:3 192:18 equal 11:9,14,16 49:8 50:7 71:25 eradicate 108:20 eradication 109:1 erroneously 221:9 especially 43:12 105:20 essence 167:20 168:25 essentially 22:8 establish 135:12 established 130:8 estimation 38:18 146:24 et 13:24 24:1 166:22,23 216:12 evading 104:12 evaluate 170:2 evening 88:3 events 28:14,17 89:9 95:21 223:1 eventually 147:9 150:2 160:7 203:21 214:1 everybody 46:9 96:7,18 110:9 113:25 115:22 evidence 11:22 12:3,6 12:10,18 26:7 32:16 33:11 36:2 45:2,5,7 45:17,23 48:8 50:19 50:20 68:17 72:10 73:8 101:11 103:1,15 103:17 120:13,14,17 123:13 128:11,13 129:11,18 132:11 134:18 135:1,7,11,23 139:2 140:2,7 141:4 141:18,22 142:6,24 145:19 146:1,8,15,15 149:24 152:1 153:4 157:9 162:3 175:22 207:19,20,21,22</p>	<p>208:19 210:12 220:5 220:7,8,11 evidenced 33:24 evident 83:19 evidentiary 32:14,15 103:4 ex 15:9 31:19 exact 83:9 131:4 exactly 9:7,16 13:21 15:8 17:15 24:1 26:21 27:23 42:11 48:4,5 49:15 50:16 75:6 100:8 115:24 143:21 150:4 153:8 154:3 157:3 166:17 179:17 197:5 201:20 212:11 examination 4:12 5:11 25:11 44:3 54:22 87:14 145:2 153:23 203:7 213:21 examine 60:18 61:21 153:21 examined 61:18 65:20 65:22 118:12 144:4 144:17 169:18 184:15 188:22 examining 39:20,23 154:20 example 130:14 131:21 148:15 220:21 excessive 71:12 211:7 exchange 21:19 exclusive 52:15,16 exclusively 57:16 Excuse 124:15 exercise 148:7 197:24 exhibits 107:25 215:3 exist 130:1 existed 127:24 expandable 108:22 expected 170:5 experience 170:15 187:12 explain 9:3 102:1 128:10 137:25 222:22 explained 46:23 68:6 97:10,10 99:24 117:13 134:19 157:7 explaining 4:21 127:23 explains 58:11 exposed 198:24 extending 108:22 extensive 31:19 extensively 65:21 144:4 144:17 extent 66:6,7</p>	<p>e-mail 49:2,18 85:12 125:8 e-mails 48:19</p> <hr/> <p style="text-align: center;">F</p> <p>FAA 191:20,25 212:9 face 29:5 fact 9:2 10:11 12:15 16:7 19:3 24:22,22 26:6,19 28:20 29:16 33:24 35:8 38:5 42:21 50:21 52:6 57:8 59:6 60:25 70:8 73:19 75:11,16 79:1 83:4,20,23 85:6 94:1 97:23 102:20 104:22 113:21 121:7 129:8 134:21 142:1,11 145:18 152:9 160:2 167:22 173:23 180:11 195:15 200:20 213:9 217:15 217:17,18 219:3 222:18 facts 96:13,14 115:20 178:4 factual 204:23 205:11 205:15,25 206:4,24 207:3,16 faded 83:4 failed 25:10 188:12 fair 29:25 47:20 50:13 56:12 60:4 65:24 105:23 112:25 125:8 167:11 170:17,19 202:15 215:15 218:6 fairly 202:11 faith 49:14 fall 64:7 falls 60:9 false 45:4,7,17 60:19 64:19 66:2 68:2 72:10,14 73:1,20 153:3 170:17,18 171:18 172:4,21,22 falsehood 171:14,22 173:13,15 174:4 falsely 121:1 falsification 12:9 27:10 27:17 145:24 falsified 12:18 36:2 39:14 73:7 142:8 falsify 154:9 falsifying 12:3,10 familiar 43:5 family's 118:14 far 9:1 12:8 33:16 41:3 62:12 71:9 82:13</p>	<p>118:6 124:22 126:20 139:10 151:24,24 161:6,11 164:17 180:12 183:25 211:7 217:18 favorable 165:10,12 fear 19:16 February 85:4 federal 181:15,17 feel 57:2 58:6 124:8 130:15 157:5 173:17 173:18 feelings 123:24 173:9 feels 124:11 fees 89:1 fell 101:22 felony 131:23 132:2 felt 56:24 58:7 78:25 113:17 118:18 120:19,25 185:8 217:11 FEMALE 85:24 86:1,3 133:14 FF 53:5 57:13,21 58:11 figure 40:16 166:12 file 10:21 13:6 15:4,6,9 15:9 16:17 53:15 82:13,15,17,20,22 89:22,23 105:15 130:2 136:6,14 141:3 141:11 145:15 160:5 160:7,17,23 161:3 162:7 163:4,16 164:1 208:10,22 213:24 214:1,9,12 222:8 filed 6:16 11:3,5 16:5 67:20 71:1 72:18 75:24 97:5 125:19 135:19 136:24 141:14 148:12 151:25 160:8 164:5 164:16 165:7,17 166:10,18 215:9 216:7,14 files 105:25 filing 12:20 13:3 41:5 71:20 76:18 88:22 95:16 106:12,15 126:3 141:12 166:1,2 fill 224:8 filtered 120:4 final 207:5 finally 104:14 find 19:23 49:2 88:18 92:19 99:25 106:25 115:17 126:9 131:2 154:4 158:20 175:2,3 196:16</p>	<p>finish 161:1 fired 76:6,7 105:25 196:7 firm 95:12 106:6 first 4:5 6:22 7:17 10:12 11:21 41:9 58:7 63:3 72:13 73:2 107:11,14 131:9 132:16,18 137:8 138:1 148:1 155:8 159:4 164:5 205:21 208:8 fisherman 14:23 16:1,4 38:14 fisherman's 14:10,11 159:10 fishermen 15:21 fishing 38:14,21,22,24 113:6 fit 14:22 Fitz 178:3 183:5 Fitzgerald 29:22 53:9 53:10 56:5,7 114:2,4 114:8,9,10,14,17 118:20,21 178:3,6 179:3 182:1,12 185:24 Fitzgerald's 56:12 five 17:23 42:7,10 50:25 51:1-108:20 109:2 121:22 142:14 176:18 fix 169:20 flesh 213:11 flightseeing 164:21 flower 204:7 flying 120:21 focus 217:4 fold 74:17 follow 164:4,6 following 15:3 33:25 48:18 49:11 87:12 131:6 163:2,5 217:5 221:1 follows 5:10 food 156:24,25 foot 217:8 force 8:10 56:17 168:1 168:10,24 forced 59:3 120:25 155:2 168:8,12 forcing 24:7 forfeit 17:2 22:11 forfeited 66:11,12,14 66:16 67:5,23 forfeiting 17:6,12 62:20 forfeiture 22:10 23:6</p>
--	--	---	---	---

66:15,20 67:9,10,12
 67:19 164:19
forget 90:17 109:4
 110:23 111:7
Forgot 4:1
fork 23:22 97:12
form 10:2 224:2
forth 8:14 197:17
 215:13 219:15
forthcoming 112:13
Forty 87:1
forward 93:23 133:12
 217:8,21
found 10:11 28:1 33:3
 60:25 73:15 82:16
 87:17 88:5 90:6
 94:22,22 96:9 97:17
 97:21 101:4 103:10
 104:8 106:16 126:6
 126:11 128:4 132:18
 141:23 142:24 147:9
 148:9,11 153:4
 190:22 199:1 217:19
four 42:10 108:24
 140:15 176:18 203:7
free 127:15
Friday 5:2 224:25
frivolous 130:3,4
 141:16
front 102:11 153:8
 186:7
fruit 36:2
function 124:3
further 13:15 40:9,10
 40:25 141:8 163:1
 170:6
futile 148:6
fuzzy 113:12 190:1,3

G

G 3:1
gained 106:1
game 65:14 108:18
 142:1,4,22,25,25
 149:25 150:12,14,15
 152:23 153:4 171:12
 210:12 220:22 223:4
 223:7,8
general 112:9 187:22
 212:25 219:9,10
generally 180:5 189:2
Gerston 126:8
getting 48:19 87:10
 96:2,21 98:22 105:8
 124:6 135:23,23
 144:2 160:22 164:4
 165:18 182:13
 189:25 198:13 202:9

202:11 210:6 214:12
 214:12 217:17,22
GG 57:15,24
give 29:9 31:10 56:21
 63:5 77:7 90:11 99:8
 113:7,25 116:9,14
 130:11 131:21
 159:11,23 160:5,8,9
 160:10,13,15 161:5
 167:17,19 168:6
 172:25 179:20,24
 187:23 188:1,6
 189:18 198:20,21
 209:15
given 21:16,18 25:15
 29:8 34:17 35:15
 43:10 61:13 62:7
 63:6 89:11 108:5
 113:16,22 115:5
 116:15 118:9 119:18
 143:25 159:13 167:9
 168:20,24 175:15,22
 180:3 181:7 183:20
 184:22 213:24
 217:21
Givens 29:15 34:1
 36:17 39:7,14,20
 42:19 43:14,24 60:21
 63:17,19,23 64:2,19
 65:19 68:6,9 73:17
 78:3 79:17 84:16
 115:23 116:14
 130:15 131:16
 143:23 144:16,20
 145:7 150:3 153:13
 154:1,7 155:16,20
 169:19 170:18
 171:14,18 172:4
 173:22 175:21
 176:14,25 184:18,21
 196:24 197:4,15,25
 200:2,14 201:10,12
 212:5 218:11
gives 108:25 131:8,21
 131:22 178:24
giving 21:19 78:14
 117:13 161:12 167:8
 177:22 209:18
GME 39:11,24,24
go 4:4 6:20 8:6,6,22
 10:6,12 22:12 23:12
 24:3,4,6 40:10,15,17
 40:25 57:1 59:5
 64:18 70:13 74:24
 77:17,20 78:11,24
 79:7,11 84:2,2,4
 85:21 86:4,11 93:19
 93:23 95:20 96:11

97:13,13,14 100:15
 100:23 103:3 111:1
 116:17,18 121:6
 132:11 133:8,12
 134:4 135:3,9 139:23
 151:5,8 152:20
 153:11 156:19
 179:22,24,25 182:13
 183:9 184:2,4 192:22
 195:16 196:10 201:1
 201:2,6 202:22 207:7
 216:6 223:7,21
 224:16
goal 83:25 109:1
goes 51:2 74:19 75:8,16
 98:6 151:6,10 155:5
going 4:5 8:4,5,6,16,17
 11:3 13:16,17 18:22
 18:23,25 19:22 22:14
 22:22 23:15 24:12
 29:4 30:3 34:1 38:2
 43:16 47:12 49:16
 51:2,2 53:20 54:6,17
 58:25 59:21 61:6,8
 69:13 70:6 74:3
 77:20 80:23 83:24
 85:23 86:17,19 87:4
 88:23 90:17 92:20
 94:6 95:10,21,25
 98:15 103:8 108:2
 111:3 113:10 118:21
 119:11 120:16
 133:11 134:25 135:6
 135:8 140:19 145:18
 147:17 148:4,16
 151:9 157:19 158:14
 167:21 170:22
 173:15 178:24
 180:25 182:24 183:2
 183:6 184:10 189:5
 189:17 197:14
 203:10 205:5,21
 207:6 209:24 216:22
 217:5 222:21
Gol 222:17
good 19:17 74:17 91:17
 92:10 109:2,3 110:19
 111:25 112:1,3,16
 130:20 131:20
 140:20,21,24 146:1
 150:20 156:8 164:19
 168:7 179:2 183:1
 189:23 225:4
gotten 62:21 183:15
 213:11
government 181:16,17
governmental 178:23
GPS 142:2 150:1

152:22 220:21
grab 86:9 224:6
grand 131:25
grant 10:14 32:6,12,24
 33:5,20,21 179:7
 181:5,11 205:17
 207:17
granted 32:7,9,10,17
 32:20,23,25 37:11
 180:24
grants 207:17
Gravelli 154:20
great 35:24 121:24
 123:9 132:22
green 204:8
grounds 35:11
group 74:18
guaranteed 30:15,16
gue 199:3
guess 21:7 81:12,22
 86:19 87:16,18 89:19
 90:24 93:4 94:9
 95:24 96:2,21 98:5,5
 98:22 100:17 106:25
 109:20 111:25
 119:20 120:17
 122:20 124:6 131:12
 132:9 143:8 145:13
 148:15 158:3 159:7
 160:21 164:13 165:7
 172:7 173:14 185:8
 197:6 199:3 211:14
 212:19
guide 11:23 12:1,4
 62:17 65:13 141:25
 142:21,22,23 143:4
 144:12 146:13,22
 147:13,18,25 151:8
 167:9 168:8 171:13
 199:10 213:7 219:19
 219:24
guides 35:25 36:4
 170:25
guiding 12:11,18 21:14
 21:17,20 36:15 37:10
 37:17 57:11 61:14
 62:13 63:6 64:15,23
 65:17 113:23 115:21
 115:25 117:14 118:9
 119:18 143:11
 144:24 148:4 149:6
 149:12,14,19,24
 150:6,6,23 162:15
 167:24 184:19
guilt 75:12
guilty 28:1 33:4 179:14
 182:13 183:3,7
 190:22 217:19

Gulch 107:7
guy 121:3
guys 78:10 100:6
 224:13

H

habitual 213:7
Haeg 3:5,8,10,12,15,19
 3:22 4:1 6:2,3,9,14
 6:16 7:12,12,15,17
 8:3 9:19 11:5 12:2,4
 13:11,13,18 14:1
 16:12 17:9,12,19
 19:19 21:13 22:6,11
 23:5,12,20 24:6,24,24
 25:21,21 28:11,17
 29:13,18,18 30:25
 31:12 32:7 35:24
 36:4,8,22 37:9,12,16
 38:21 39:12,13 41:5
 42:18 43:15,18 46:14
 46:16 48:20 49:3
 55:1,9,23 56:2,5,19
 56:25 57:10,17 59:20
 60:13,16 63:23 64:3
 67:3 68:9 70:2,24
 75:16 77:10 80:9,12
 81:5 82:12 83:16
 84:8 85:1,17,19,22
 86:4,11,14,18,21,24
 87:2,10,12,15 105:3,8
 105:14 107:6 108:7
 108:11,13 115:21,24
 117:22 118:2,23,25
 121:14,19,24 122:5,7
 122:11,15,17 131:17
 133:21 142:23
 144:11 148:17,19
 156:6,8 160:10 163:8
 163:15,25 164:3
 170:23 177:4,5
 188:20,24 191:10,11
 193:2 194:22 195:12
 198:7 199:25 202:4
 202:13 203:7 206:17
 206:19 207:1 210:16
 211:17,22,24 212:2
 213:25 214:12
 216:25 218:5,11,13
 219:12 220:4 225:5
Haeg's 4:11 5:24 11:23
 12:4,11 15:12 28:17
 32:3,5 34:11 44:24
 59:23 61:17 66:10
 67:5 68:3 72:15,20
 218:19 219:4,19
hand 5:6 179:13 189:3
 205:11

<p>handed 63:22 192:11 handing 78:5 hands 94:7 hang 78:20 212:2 happen 66:17 83:3 84:23 95:10 112:10 115:8 119:6,8 186:2 happened 7:23 9:16 14:12,21 15:8 48:5 49:17 61:1 72:13 76:3 80:18 104:22 114:22 119:22 147:11 156:22 164:5 165:11 173:20 185:22 210:21,25 211:1 216:5 happening 5:20 happens 112:9 189:9 hard 61:11 135:4 172:11,13,17,18 223:21 harm 108:21 170:18,23 harmed 171:14 193:1 härsher 121:6 haunt 173:16 hawed 65:3 112:17 hawing 106:9,14 111:22 headquarters 3:4 health 124:13 hear 61:6 114:4 133:24 140:25 176:23 heard 32:6 96:3,5 115:24 120:8 155:3 178:18 hearing 14:2,8,11,14 14:24 15:17 70:17 103:4 120:7 158:12 158:20,21,24 159:3,5 159:6,8,12,13,16 160:3,11,12,14,20 161:8,9,13,20,21,24 162:5,8 165:4 202:22 222:6,8</p>	<p>hides 64:25 highlight 40:3 highlighted 40:1 78:7 80:24 Hightower 77:16 78:1 Hildebrand 187:24 hire 182:14,17 195:8 hired 7:12,12 13:1 14:3 14:3,13,16,18,19 74:1 74:6,7 151:24 158:11 182:18 208:3,15 214:8 hiring 7:7 history 52:2 212:21 hit 80:23 Hmm 117:3 156:16 Hmm-mm 217:15 hold 31:6,10 76:11 121:2 133:13 hole 150:22,23 holes 147:7,12 home 91:7 honest 185:8 honor 23:19 24:7 160:9 hopefully 224:4 hour 124:7 hours 61:6 70:9 86:20 124:17 158:4,6,8 159:14 160:11,14 162:6 202:9,16 211:21 222:7 house 148:9,11,14 hundred 103:21 hunt 60:23 222:15 hunter 199:10 hunting 11:23 12:4,8 12:11,18 37:10,13,18 37:19,22 62:8,13 65:18 68:5 113:22 117:14 148:2 162:15 164:22 221:18 222:23 hunts 83:24 hurt 56:3 190:23</p>	<p>illegal 60:23 67:11 150:15,18 186:22,24 187:1 illegally 55:10 Illinois 120:22 immediate 15:17 immun 182:8 immune 75:3,4 181:12 immuni 34:11 immunity 32:6,7,9,11 32:18,20,23,24,25 33:4,19,20,22 34:8 72:14 74:14 178:19 178:20,20,21,22,24 179:4,7,8,9,12,14 180:22,25 181:5,7,11 181:18,20,21 182:2,6 182:8,12,19 immunized 34:11 72:11 72:11,21,25 73:2 impact 56:2 impacted 56:2 impaneled 132:15 impartial 200:24 223:12 impartiality 200:10 223:18 impeach 29:19 45:25 implicate 47:10 implied 64:22 important 100:24 103:10,14 112:23 113:11,15 115:9,10 115:14,18,19 116:19 118:15,18 120:4 impression 99:9 106:5 108:25 109:21 116:14 improper 25:3,9 impropriety 200:21,23 201:2,3,4,8 improve 64:14 inaccurate 218:16 incentive 160:24</p>	<p>incurred 89:1 independent 204:15 index 63:7 indicate 5:19,20,21 21:16 23:12 83:16 217:7 indicated 8:10 9:19 21:18 29:16 79:4,6 84:6,8 216:23 218:18 indicates 16:25 indicating 117:24 indication 58:8 218:10 220:15 indictment 131:25 indirectly 36:11 indiscernible 3:3,8 16:3 29:11 34:14 35:25 36:25 48:17 50:12 60:16 70:18 77:7,12 94:11 116:2 143:24 170:3 186:19 192:12 192:16 207:24 224:19 225:2 individual 92:2 121:21 122:1 161:3 individuals 47:15 induced 20:23 36:25 210:11 ineffective 72:4 73:15 73:22,25 74:4 75:21 75:23 81:5,8,9,16,20 82:7 137:23 163:17 163:21 196:11 203:24 204:3,10 208:1,4,5,9,19 209:1 209:14 ineffectiveness 196:21 influence 78:23 inform 193:19,22 informa 157:14 information 3:14 7:19 9:24 10:3,10,22,24 12:7 25:2 26:5 30:11 34:16,16,18,23 35:5 47:8 50:4 66:24 67:7 76:24 98:23 99:12 100:1,8,13,22,24 105:19 106:1,17,18 127:1,11,17,24 128:16 130:1 134:18 134:22,24 136:11,12 136:18-137:2 138:19 138:21,24,25 139:11 139:12,15 140:14 195:3,7 201:21 218:20,22,23 informed 22:16 80:12 183:2</p>	<p>initial 28:7 initially 11:3,5 71:17 injustice 172:20 173:10 173:17 210:19 innocence 180:5 inquire 18:19 185:22 inside 18:3 20:24 27:14 37:1 107:19 147:7,10 148:11,14 149:19 190:7 191:7 219:18 219:19,21,24 221:11 instance 203:9 insufficient 128:20 intend 71:17 intent 151:5,6,9,11,12 intentional 41:20,22,23 42:1 145:22,23,24 146:10 211:7 intentionally 150:8,12 184:24 interaction 79:9 interest 15:22 75:25 interested 186:9 interesting 177:19 interfere 78:25 interim 152:21 interjecting 4:15 intern 52:23,23 Internet 87:17 interpretation 163:18 intervene 133:10 interviewed 20:5 interviewing 20:16 invalidate 127:17 invalidated 127:18 investigate 94:20 98:25 101:3 151:14 158:23 177:22 186:6 191:13 investigated 37:3 102:4 102:14 investigating 94:12 196:11 198:1,2 investigation 10:5 12:23 19:24 20:2,5,8 94:23 99:5 100:5,19 100:21 105:10,11 106:6 107:6 109:16 200:7 214:19 investigations 214:20 investigator 20:9,13 94:10 96:25 97:4 98:25 99:5 103:10 112:2,3 184:7 214:22 investigator's 214:13 involved 10:4 17:12 27:19 37:22 42:6 56:10 68:24 133:6 173:2 178:15 200:22</p>
<p>hearings 90:18 189:6,7 heartburn 104:6 help 43:20 96:25 98:23 98:25 122:9 124:23 124:25 helpful 121:20 hemmed 65:2 112:17 hemming 106:9,14 111:22 hey 103:12 144:23 179:23 208:20 HH 58:15 hide 112:7 200:20 201:9</p>	<p>hypothetical 113:7 h-a-s-t-a-i-n 3:4 I idea 23:23 54:15 62:22 82:19 85:20 115:25 144:2 184:18 192:14 198:16,18 199:2,9 identification 142:3 176:22 identified 4:8 176:24 221:5 identify 107:5 204:20 II 60:11 63:1,9 64:10</p>	<p>incidents 69:20 include 11:7 49:6 included 43:1 including 97:3 119:22 138:20 224:4 income 115:11 168:16 incompetent 141:13 inconsis 64:16 inconsistency 169:22 inconsistent 28:6,16 65:7 156:13 169:23 170:16 increase 36:10,18,21 64:23 65:16 143:10</p>	<p>incurred 89:1 independent 204:15 index 63:7 indicate 5:19,20,21 21:16 23:12 83:16 217:7 indicated 8:10 9:19 21:18 29:16 79:4,6 84:6,8 216:23 218:18 indicates 16:25 indicating 117:24 indication 58:8 218:10 220:15 indictment 131:25 indirectly 36:11 indiscernible 3:3,8 16:3 29:11 34:14 35:25 36:25 48:17 50:12 60:16 70:18 77:7,12 94:11 116:2 143:24 170:3 186:19 192:12 192:16 207:24 224:19 225:2 individual 92:2 121:21 122:1 161:3 individuals 47:15 induced 20:23 36:25 210:11 ineffective 72:4 73:15 73:22,25 74:4 75:21 75:23 81:5,8,9,16,20 82:7 137:23 163:17 163:21 196:11 203:24 204:3,10 208:1,4,5,9,19 209:1 209:14 ineffectiveness 196:21 influence 78:23 inform 193:19,22 informa 157:14 information 3:14 7:19 9:24 10:3,10,22,24 12:7 25:2 26:5 30:11 34:16,16,18,23 35:5 47:8 50:4 66:24 67:7 76:24 98:23 99:12 100:1,8,13,22,24 105:19 106:1,17,18 127:1,11,17,24 128:16 130:1 134:18 134:22,24 136:11,12 136:18-137:2 138:19 138:21,24,25 139:11 139:12,15 140:14 195:3,7 201:21 218:20,22,23 informed 22:16 80:12 183:2</p>	<p>initial 28:7 initially 11:3,5 71:17 injustice 172:20 173:10 173:17 210:19 innocence 180:5 inquire 18:19 185:22 inside 18:3 20:24 27:14 37:1 107:19 147:7,10 148:11,14 149:19 190:7 191:7 219:18 219:19,21,24 221:11 instance 203:9 insufficient 128:20 intend 71:17 intent 151:5,6,9,11,12 intentional 41:20,22,23 42:1 145:22,23,24 146:10 211:7 intentionally 150:8,12 184:24 interaction 79:9 interest 15:22 75:25 interested 186:9 interesting 177:19 interfere 78:25 interim 152:21 interjecting 4:15 intern 52:23,23 Internet 87:17 interpretation 163:18 intervene 133:10 interviewed 20:5 interviewing 20:16 invalidate 127:17 invalidated 127:18 investigate 94:20 98:25 101:3 151:14 158:23 177:22 186:6 191:13 investigated 37:3 102:4 102:14 investigating 94:12 196:11 198:1,2 investigation 10:5 12:23 19:24 20:2,5,8 94:23 99:5 100:5,19 100:21 105:10,11 106:6 107:6 109:16 200:7 214:19 investigations 214:20 investigator 20:9,13 94:10 96:25 97:4 98:25 99:5 103:10 112:2,3 184:7 214:22 investigator's 214:13 involved 10:4 17:12 27:19 37:22 42:6 56:10 68:24 133:6 173:2 178:15 200:22</p>

214:10 222:25 223:1
223:8
involvement 56:13
irrefutable 35:17
irregardless 144:23
178:12 184:14
irrelevant 60:22 61:4
69:17 70:18 165:19
220:1 221:10 223:2
iss 35:4 190:23
issue 7:24 10:17,19
11:7,10,13 12:13
14:12 22:12,13 24:7
25:15,20 32:18 38:2
38:5 39:3,21,22 40:7
40:9 41:5,13 44:4
46:13 47:11,12 48:7
49:16 22 50:6,7
51:14 54:13 55:7
56:14,14 61:3 63:15
65:19 74:10 78:2,9
80:4,9,11,21 84:16
94:2 95:23 96:16
101:1 106:22,25
110:14 127:12,16
132:18 135:24 137:1
137:8,21 138:4,7,12
139:10 140:17
141:20 143:19,22
144:9 153:9 154:19
157:5 162:9,14
163:16,21 165:1,24
166:13 167:1 168:1,3
169:20,21 174:5
182:2,6 190:12 201:8
204:20,24 205:3,6,11
205:15,16,17,25
206:15,24 207:1,3,15
207:16,19 209:10
212:12,23 215:16,17
215:19 216:21
218:20 219:16,17
220:3,4,19 221:17,21
221:25,25 223:11,14
issued 127:19
issues 53:7 54:21 55:2
123:9 218:1
item 17:1
it'd 14:9 176:17 207:20
i-n-s-o-n 5:16

J

Jackie 132:21
jail 71:9 115:11,12,13
Jampy 107:6
jeopardy 190:17,19
JJ 64:12
job 104:12 215:8

Joe 94:20,21 95:14,14
95:14,15 96:3,3,8,17
97:8,9,10,16,21 98:13
98:14 99:12,18 100:4
100:7,9 101:1,2,3,3
102:4,5,13,19 103:11
103:14,20 104:8,11
104:14,16,17 105:9
105:14,20,21,22
106:2,11,15,18,19
107:3,3 109:15 110:1
110:4 111:11,14,25
112:1,1,16 214:14
Joe's 100:4,18 106:6
109:11
Jones 188:1
jotted 77:22
judge 26:12,25 34:15
35:2 36:1,24 37:8,9
38:1,3,24 39:4 44:24
46:23 47:13 60:25
62:6 69:4,11,22 70:9
70:13 71:13 78:2
79:16 84:16 96:12,15
111:8 112:24 113:20
115:19 116:9,14,22
117:1,13 120:7,23
121:2 129:13 137:16
138:14 149:5 157:7
158:5,9 161:25
162:23 163:2,20
168:2,4,9,10,24 169:2
169:5 171:10,15,20
172:8 173:7 174:3,5
174:13 184:24
185:20,22 193:19
194:23,25 196:24
197:6,7,10,19 200:2
200:22,24 201:11,11
202:17 204:14,15,20
216:9 223:11
judgement 191:17
judges 207:9 223:22
judge's 207:21
judgment 158:5 191:18
192:15
judicial 26:25 195:21
195:23
judiciary 204:15
July 15:15 16:13,17
67:21 161:21 164:15
165:23 166:1,18
jump 11:3
jur 129:11,16
juris 131:13
jurisdiction 10:10
30:20 31:3 34:24
49:9 72:20 100:17

125:7 127:3 128:5,5
128:8,9,12,14 129:4,7
129:12,16,20 130:7,7
130:11,23 131:5,6,8
131:11,13,22,23
132:3,4,7 134:14
136:25 216:22
jurisdictional 48:15
49:14,16,21 51:14
jurisdictions 129:10
130:24
jurors 193:13,16
jury 10:7 19:3,7 36:1
36:24 44:24 131:25
132:15 140:25 149:6
170:1,2 173:22,25
174:14 175:12 176:8
190:14 191:7 204:24
205:12,22 206:1,1,2,6
206:7,11,13,15,25
207:1,4,16 217:19
218:24 219:5,7,11
222:22
justification 65:10
66:20 68:3 70:16
justified 83:23
justify 172:21

K

K 4:24
keep 14:24 16:21 17:9
17:18,21 85:23 117:5
118:23 159:12
161:10,22 162:18
167:5 202:5
Kenai 3:16
Kevin 114:2,4,14,17
118:19,20 179:3
181:25 223:6
kid 46:15
kids 116:8
kill 68:25 221:5
killed 36:3 41:17 44:13
129:14,19 144:11,24
148:13 149:4,9,12
151:7 169:19 170:24
171:12 172:12 191:5
191:5 192:24 219:18
219:24 220:10 221:2
killing 36:8 147:11
kills 12:1 219:15
220:12,19
kind 3:5,13 8:10 12:24
14:20 22:17 29:4
30:24 40:10 42:15,25
47:9 52:18 54:14
61:10 64:7 65:2
74:19 76:17 77:17,20

87:2,17 115:24 123:5
139:25 144:5 180:20
192:24 200:1,22
210:7 223:21
kinds 130:25 146:10
166:20
KK 66:10 67:5
knew 46:14 56:8,11
60:17 97:3 104:20
110:14 114:8,14,15
114:18,19 119:19
120:23 143:16
151:22 155:24,24
156:1 159:2 180:17
183:6 184:21 192:9
216:13 220:14
know 4:2,17 8:23,24
9:7,8,15,16,16 13:8
14:9,12,19,20,22
15:19 20:7 21:11
23:10,25 24:9 26:6,7
26:23 27:1 28:1 29:9
33:8,15,17 34:20
36:13,20 38:9 39:1
41:25 42:20,24 43:6
43:8,9 46:22,22,24
47:5 48:3 50:7 51:18
54:15,18 56:8,11,23
57:5,16 60:13 61:13
61:14 62:12 63:5,20
63:21 64:3 65:2,3
66:15 68:23 69:6
70:4,4 71:5 72:18
73:16 74:1,8 75:2,21
76:3 78:18,18,19
79:11 80:1 81:7
82:13,19,19 83:2
84:13,14,17 85:22
86:9,15,18 89:4,9,9
89:10 90:1,4,9,20,24
91:2,12 92:4,12,15,18
92:25 93:1,2,2,4,9,15
94:15 95:20 96:9,12
96:15,20,23 98:23
100:1 101:1,5 102:7
102:14,22 103:10
104:9,16,17 105:4,5,9
105:15,17,21,24
106:11,16 109:18,21
109:21 111:19 113:2
114:7 116:15,20
118:17 120:5 121:12
121:18 122:7 123:6
124:10,10 125:3,10
129:14,22 130:14
134:14 135:10 136:3
137:16,17 138:14
139:16 141:13,18

142:16,24 143:4,6
144:14 145:17,18
146:3,23 147:6,8
148:6,22 151:10,14
152:7,9,11 153:8,11
153:13,16 154:3,10
154:19 155:9 156:20
157:1,3,24 158:6,7,8
162:2,12 163:6
164:14,25 165:10
166:4,11,22,24
168:20 170:6,10,15
171:9,15 172:3,7
173:2,19,20,24 174:8
174:15,16 175:7,8
176:5 177:7 178:5,7
179:17,18,20 180:15
180:17,20 182:6,15
182:16,18,18,25
183:23,23 184:4,6,25
185:17,19 186:9
187:11 188:25 189:4
190:12,12 191:12,16
191:19 192:1,13,23
193:15,15,21 195:4,5
195:15,16 196:20
197:8,9,18,19,21,22
197:24 198:10,11
199:1,14 200:1,7
201:4,24 202:4,23
203:18,18,21 204:10
205:1 206:11,18
207:22 208:6,12,14
208:14,14 209:13,17
210:5,10,17,21
211:14,24 212:23,24
213:10 215:18
217:15 219:6 223:13
223:21 224:11,13
knowing 37:8 73:23
151:10,12 184:2
knowledge 22:5 25:6
30:5,6 80:3 98:24
187:12 222:24
known 30:14 46:15
152:13 182:23
knows 199:9

L

labeling 176:7
lack 26:4 47:7 48:10
49:9 76:22 126:4
132:19 197:23,24
216:7
lacks 72:19
Lake 91:6,7
lap 97:7 102:2
late 69:9,13,14 90:15

<p>170:19,21 lately 92:13 lateness 124:7 law 15:16 16:25 25:15 35:18 37:14 39:4 44:5 51:19 53:2 66:17 74:21 83:17 113:8 122:7 126:6 128:4 155:25 156:9 162:25 163:10,18,20 204:14 212:6,7 laws 43:5 75:4 155:7,8 lawsuit 160:17,23 161:3 lawyer 51:25 53:10 56:3 66:13 72:1 178:1,2 lawyers 179:25 lawyer's 56:3 64:8 lead 95:15 98:10 143:4 198:23 199:7 Leader 24:23 35:16 216:8 Leaders 9:1,10,11 10:4 10:22 16:22 17:12 22:6 29:15,17,23,23 32:3 33:25 36:14 40:14 49:22 54:5,16 54:23 55:1 61:16,18 62:1,23 65:4,22 77:1 79:1 83:8 94:7 95:1 95:10 103:24 104:15 111:19 112:18 116:12,13 130:2 131:15 144:7,18 145:6 153:16,18,23 167:5,8,23 168:18 174:18 183:18 184:17,20,21 185:6 207:7 210:8 212:4 218:6,19 Leader's 45:21 learn 93:3 178:6 learned 178:8 179:6 leave 94:3 205:22 leaving 77:15 Leber 212:4 led 118:7 120:24 146:16 169:6 210:19 Lee 198:7,14,15,18,20 198:22 199:5,6,10 Lee's 199:10 left 35:8 40:22 82:14 170:1,2 173:21,22,25 206:6 211:23 legal 26:7 68:18,21 77:9 82:15 132:12 134:16,20 149:25</p>	<p>150:16 163:18,19 182:16 185:5,12 186:21 189:5 194:7,9 194:15 205:6,15,17 206:3 207:16,19 210:20,20 214:11 legally 125:1 148:22 length 123:8 letter 83:8,13 167:7 letting 105:21 let's 7:3 25:20 41:14 52:24 76:11 77:9,17 87:4 88:15 98:15 113:4 163:23 164:11 169:15 191:12 219:14 224:16 liable 104:22 license 22:10,16,25 51:21 71:14 88:5 211:2 212:10 licensed 51:22 lie 74:23 201:4 204:4 211:8 lied 120:18 200:2,6,6,7 202:17,19,25 lies 190:10 Lieutenant 3:3,23 77:15 life 116:17 118:14,14 light 210:10 lighter 57:6,8 likelihood 13:15 143:10 limit 71:10 line 17:20 43:6,8 150:4 185:19 lines 97:16 list 85:6,12 145:14 201:23 listen 89:15 111:14 listening 70:17 lists 188:18 litigate 123:1 215:16,18 litigated 50:14 little 3:9 60:1 87:19 90:15 96:20 103:4 107:11 125:11 147:12 190:1 209:24 210:4,6 224:10 live 23:24 89:15 121:4 190:24 livelihood 14:7 15:21 16:1 113:10,16 115:6 116:18 159:10 162:7 167:17 190:24 living 91:6,7 located 12:23 154:2 locatio 11:25 location 12:3,7,11</p>	<p>44:14,16 49:2 72:10 142:18 146:6,20,24 147:1 150:7 154:9 169:19 219:14 220:19,20,20,22,24 locations 11:23,25 12:6 12:18 36:3 73:8 142:7,15 146:4 149:4 152:1,10 153:3 176:22 long 9:6,8 12:19 16:7 20:15 26:24 30:3 46:16 47:4 51:19 60:3 69:18 79:5,15 83:4 85:20 86:16,18 87:22,22 89:4,24 123:7,21,23 157:3,21 157:22 158:7 longer 70:14 126:16 look 6:5,7 40:2 41:14 56:20 78:7 82:15 89:15 90:3 103:1 107:2 140:8 153:5 169:15 194:18 195:18 197:20 200:21,22 202:13 209:20 210:7,9 215:3 looked 13:7 82:20 85:10 92:12 141:8 145:20 152:23 153:7 153:12 197:20 214:2 looking 13:8 20:21 48:24 135:22,24 141:17 145:19 looks 31:23 lose 29:2,7 loses 222:9 loss 160:17 161:6 213:15 lost 185:10 lot 69:2 75:8 78:13 104:16 106:9,13 111:22 114:15,18,19 125:7,11 197:20 202:15 210:18 211:10 213:5 222:5 lots 89:10 157:25,25 192:17 loud 107:12 LT 3:3,7,9 lunch 85:22 87:12 lying 40:24 74:22 145:23 191:2 201:1,3 203:23 204:2</p>	<p>magistrate 78:20 mail 91:16 201:15,19 mailed 91:9,18,21,21 201:25 mailing 91:25 main 139:8 190:23,23 197:25 198:1,2 200:14 major 88:9 182:2,2 202:14 majority 68:4 making 27:1 110:21 126:14 186:5 Malatesta 20:13 95:15 104:8 112:2 214:15 215:4 Malatesta's 105:10 214:18 215:8 MALE 43:20 76:13 81:21 98:13,18 124:15,17 133:15 169:9 171:4 179:2 207:11,13,24 211:16 man 97:16 102:13 160:5,8 manage 142:25 management 142:1,4 142:22,25 149:25 150:12 152:23 153:5 171:13 210:13 220:22 mandatory 22:15 23:6 216:20 manner 4:21 137:22 138:7 manslaughter 148:14 map 40:13,18 41:2 152:23 175:16,19,19 175:22,23 176:3,5,11 176:13,18,19,20 177:2,11,14 218:7 mark 76:4,6,7,7 177:1 196:6,8 marked 6:17 176:16 markings 177:16,20 match 54:17 material 45:4 90:4 174:6 187:16 materiality 174:1 187:2 materially 45:6,17 Matt 101:2 matter 3:15 10:10 16:12 19:19,20 30:20 31:3 34:24 39:3 72:20 89:12 100:17 101:11 112:23 113:9 113:11 127:7 128:8 128:12,14 129:4,7,12</p>	<p>129:16 130:6,7,11,23 131:8,13 132:5,6 134:13,14 136:25 144:11 146:14 157:15 164:18 176:15 178:11 181:1 191:5 208:16 209:7 213:9 216:15,22 mattered 147:1 151:3 178:14 McGrath 59:25 78:18 197:2 202:21 216:10 mean 4:19 15:19 16:7,8 16:16 20:9 22:19 25:12 30:1 32:10 41:8,13 45:2,5 47:23 52:12 55:9 56:23 60:2 61:2 63:17 64:20 65:5 66:12 67:16 68:17 69:23,24 70:3,15,19,21 72:12 74:8 77:4 78:18,21 83:2,5 90:15,20 91:16 93:7 96:11 100:20 103:3 105:6 105:22 107:22 108:5 109:22 110:24 112:19 117:14 121:2 123:6 124:25 127:6 136:23 139:3,18 146:13 148:21 151:16,22 152:14,25 154:12 155:7 160:3 160:17 162:16 163:23 166:24 167:20 170:21 171:2 171:9 172:16 173:14 174:8 177:16 180:24 182:4 183:21 184:10 185:16,23 191:18 198:10 202:8 203:14 204:7 205:20 207:6 207:19 211:20 212:25 213:7,12 215:23 217:10,15,23 223:13 means 21:10,11 34:22 36:5,5 37:15 69:6 92:9 103:4 145:25 172:18 178:24 180:25 181:9,23 182:15 meant 64:23 128:4 138:24 139:1 meet 88:15,17 meeting 8:2 225:1 meetings 8:3 223:7 memory 11:21 26:23</p>
--	---	---	---	--

M

48:2 83:4 125:23
126:1,3 142:14
197:13
mention 34:15 109:18
110:11
mentioned 3:25 11:10
12:22 63:24 69:11
76:23 119:7 182:8
213:23
mentioning 72:20
merely 4:13 130:10
merit 55:18 56:22
141:14
merits 135:15 217:4
mileage 224:5
miles 108:25
mind 19:7 46:20 51:1
54:8 79:12 111:4
113:13 205:22
212:18
mine 108:5 158:25
161:18,19 224:19
minimum 22:16
minor 121:9
minute 42:13 202:5,7,7
222:21
minutes 87:1 89:5
121:22 202:12
213:20
misconstruing 115:20
misdemeanor 131:7,14
misgiving 211:7
misidentification 39:8
misidentified 221:15
misleading 184:24
misnumbering 12:7
mission 108:22
misstated 41:16
misstatement 41:21
42:9 44:2
mistake 155:18 171:14
172:9 198:13
mistaken 47:1
mistakenly 199:13
mistook 199:6
mistrial 42:18,23,25
170:15
mistrials 170:12
misused 219:3,3
mixed 52:18 198:19
199:13
MM 70:24
Mm-hmm 49:4,7,10
63:9 83:15 104:25
110:22 111:17 166:1
166:21 207:13
mo 160:8
moment 6:5 212:16

money 116:17 161:23
166:12,22
months 152:19 166:10
166:16
moose 36:11,18 46:10
60:23 63:8,15 65:16
65:18 69:15,20,23
144:3,13,25 157:5,23
188:12
morning 70:1 90:13
116:23 117:20
118:11
mother 84:12
motion 10:12,14,17,20
12:21 13:3,6,16 15:4
15:6,9,11 16:18 25:3
32:2 34:14,25 35:2
41:5 53:15 67:20
76:22 95:17 97:5
105:16 106:12,15
109:4 110:23 111:2,3
111:8 125:19 126:3
135:19 136:6,24
137:3,9 138:3,5
141:4,10,14 145:15
148:12 160:5,7,8
162:3,4,8 163:16
164:2,5,16 165:8,18
166:1,2,11,18 202:20
204:21 205:16 206:5
207:17,18 216:7,17
motions 141:11,12,16
164:12 215:9 217:22
217:23
motive 143:20 178:16
motives 145:6
move 76:1 123:4 132:9
145:13 151:13 172:7
174:17 186:14
191:12 199:3
moved 149:24 150:9,22
210:12 220:7,8,11
moving 149:25 150:11
150:14 197:14 220:5
multiple 21:13
murder 148:8,9,10
Murphy 26:12,25
34:15 35:2 37:9 38:1
38:3,24 39:4 46:23
69:4,11 70:9,13
71:13 78:2 79:16
84:16 137:16 138:14
157:7 158:9 161:25
163:2,5 168:9 171:11
171:15,20 172:8
173:7 174:3,5,13
185:20 193:19
196:24 197:3,6,7,10

197:20 200:2,24
201:11,11 202:17
204:14,21 216:9
223:11
Murphy's 37:8 62:6
113:20 158:5
M-a-l-a-t-e-s-t-a
214:16

N

N 3:1
nail 154:12
name 3:20 4:5,23 5:13
5:15 21:7 84:21
126:24 163:13 198:3
198:11 214:13,14
222:14,15,18
names 126:15
name's 3:16
necessarily 75:2 78:23
101:18 111:11
154:16 184:10
189:13
necessity 11:18 83:22
need 5:5 6:24 26:6
57:18 69:14 95:20
107:4 118:20 124:2
127:15 135:10 184:4
187:6 202:7,11 208:9
needed 18:4 35:19
127:23 135:11
164:21 169:20
needing 51:4
needs 118:24
negated 120:8
negotiate 83:10
negotiated 34:4
negotiating 16:22
120:2
negotiation 17:11 30:4
33:18,25 139:5 140:1
180:12 215:13
negotiations 33:13
34:17 185:23
neither 10:3 49:22
never 17:25 20:19,24
20:25 21:4 22:2 23:2
24:4 25:1,4,7 30:13
30:14,15,16,22 32:2,6
32:9,19,19 36:1,24
42:18 44:19,24,25
71:23 74:13,13,24
76:6 85:14 93:11
94:21,25 97:18
101:13 102:22
105:17,17 113:17,24
115:2 117:10 121:8
122:23 132:2,25,25

134:7,10 135:19
136:25 137:15,18
138:13 139:19
141:13 147:17
153:20 156:5 157:6
157:11 166:6 173:11
174:18 175:24
177:25 178:18 179:6
181:3 182:7,7,9
193:25 196:6,8,16
203:13 209:17
new 16:22 51:3,3 93:1
105:3 115:1 136:21
156:16 167:4
News 193:5,10,14
newspaper 192:19
night 202:23
nine 24:16 42:6,13,14
45:8 50:21,24 178:10
209:25 210:6 213:11
221:5
NN 72:7
nobody's 84:18,18
non 167:23
non-attorney 186:1
non-def 185:25
non-meritorious
141:16
non-open 151:1
normal 137:13 214:9
normally 47:20
note 63:22 104:8
109:10,11,12 110:5
notebook 90:10
nother 117:17 142:1
notice 5:19 6:17 11:5,7
66:23 67:6 71:20
76:8 85:8
noticed 11:13,13
notified 133:2 151:25
nuances 56:10
number 7:5 17:23,23
18:1 20:21,22 21:6,7
23:17 24:16,18 29:6
29:6,12 30:11,24
31:15 48:19 77:21
91:5,8 133:18 169:16
175:8,22 192:1 203:6
220:21
N401N 192:1

O

O 3:1 107:6
oath 5:6,7 9:25 10:3
11:16 35:8 60:14
105:9 118:10 122:3
128:17,19 139:9
171:6 180:21 182:1

183:19 184:20 189:6
189:8,11,18,20,21,24
190:11 192:2 200:7
object 25:18 60:18
78:14 79:22 80:3
148:16,17 182:24
objecting 4:22
objection 4:17,19,20
79:2 80:10
objections 4:16,21
objective 109:1
objects 87:5
obligation 153:2
obligations 4:16
observation 74:20,23
obtained 96:3 130:23
obvious 170:8,10
obviously 16:5 33:2
54:16 62:1 69:4 93:8
occasionally 6:4
occur 74:11 179:12
186:12
occurred 104:23
105:23 112:13
118:13 133:3 148:22
148:23 177:6 183:22
184:3,6 185:11,25
201:3 202:25 203:2
occurring 105:20
October 49:3
offense 37:17,18,19,22
offer 23:4,8,9 62:19
109:5 110:24 111:9
167:16
offered 113:4
office 3:17 4:24 80:13
80:14,17,17 91:10,11
92:7,11 128:17,20
201:19 216:10
officer 10:4 51:6
129:17
officers 9:25
oh 9:6 15:8 52:4 54:13
57:21 62:23 64:18
76:10 81:22 86:1
87:10 88:15 90:22
111:3 113:25 135:4
150:20 155:11,18,18
171:9 173:1 177:15
178:3 187:25 188:10
192:12 202:13
209:23 211:17 213:6
214:24 217:10
222:14
okay 3:10,13 4:23 5:17
6:1,15 7:3,6 8:18
9:19 10:23 11:12,19
12:13 13:3,13,17,25

15:16 17:19,22 18:6
 18:14 19:10,12,19,25
 20:4,17 22:1 23:11
 24:14 25:20 26:2,9
 26:17,22 27:3,25
 28:3 29:6 30:2,11,24
 31:12,23 32:12,19,22
 33:1,14,21,24 34:7,9
 35:1,4,9,21 36:23
 39:3,17,20,25 40:5
 41:4,12,21 42:2,9,12
 42:17 43:16,22 44:23
 45:8,18 46:11,14,17
 47:1,9,14,20 48:6
 49:19 50:3,5,11 51:1
 51:11,18 52:2,5,20
 53:1,5,6,12,22 54:8
 54:19 55:6 56:5,19
 57:5,13,23,25 58:2
 59:6 61:9 62:1,5 63:1
 63:22 64:5 65:7
 66:18 67:2,12,18
 68:1,8 69:5,16 71:11
 71:17 72:2,7,17 73:5
 75:8 76:1,5,13,15,17
 76:25 77:6,8,13,20
 78:5,9,10 79:1,8,25
 80:19,23 81:14,22
 82:9,17 83:7 85:5,13
 85:16 86:3,14,20,22
 86:24 87:11,16,25
 88:7,9,13,15 89:2,4,6
 89:14,19 90:5,11,17
 90:23 91:6,14,23
 92:5,8,10,14,17,21,24
 93:1,9,21 94:9,12,15
 94:19 96:2,20,24
 97:8,15,22,25 98:9,18
 98:19 99:5,12,19
 100:4,10,12,25 101:9
 102:9 103:9,23 104:3
 104:5 106:4,8,11,18
 106:21,23 107:15,17
 107:22 108:7,11,12
 109:7,8,11,15 110:4
 110:10,13,15,17
 111:5,13,18 112:4,11
 112:16 113:3 114:11
 114:14,22,24 116:3,3
 116:4,7 117:12,21
 118:1,4,25 119:9,12
 120:16 121:18,24
 122:5,11,17,22,25
 123:4,11,14,16,25
 124:2,6,15,21 125:6
 125:14,17,20 126:6
 126:14,17,19,22
 127:5,9,25 128:3,15

128:21,24 129:2,6,9
 129:21,24 130:2,6,13
 130:22 131:2 132:9
 132:21 133:2,5,21
 134:1,5,8,12,25 135:4
 135:13,17 136:6,10
 136:14,19 137:21
 139:7,14 141:21
 142:10,13,20 144:15
 144:22 145:3,8,11,13
 145:24 146:7,12,17
 147:4,6,10 148:6,17
 148:19 149:1,3,11,23
 150:8,17,20 151:5,13
 151:13,19,23 152:3,8
 152:16 153:2,11,16
 154:7,15,21,25 155:3
 155:13 156:8,24
 157:5,17,20 158:10
 158:16,23 159:6,16
 159:22 161:15,19
 162:5,17,20,22,25
 163:6,8,14,25 164:3
 164:20,23 165:3,5,16
 165:21 166:22,25
 167:2,8,14,25 168:14
 168:23 169:4,10,18
 169:25 170:5,12,17
 171:10,18,24 172:7
 172:11 173:9 174:3
 174:13,17,21 175:7
 175:10,11,16 176:1,3
 177:6,22 178:18,21
 179:1,8,22 180:13,16
 180:21 181:2,4,6,13
 181:13,15,19,22,25
 182:5,9,14,22 183:1,8
 183:11,18,25 184:9
 184:13,17 185:18,21
 186:4,20 187:3,14,23
 188:8,11,16,20,24
 189:10,15 190:5,9,23
 191:11,13,16 192:4,6
 192:12,17 193:1,13
 193:19,24 194:3,6,14
 194:18,22 195:2,6,12
 195:20,25 196:6,11
 196:17,23 197:6,16
 197:25 198:6,17
 199:3,12,20,25 200:5
 200:12,19 201:1,10
 201:14,23 202:3
 203:20,23 204:2,5,12
 204:20 205:1,3,24
 206:9,15,19 207:9,23
 208:5,12,17,19 209:7
 210:2,7,9,16,18
 211:12,17,24 212:1

212:17 213:17,19
 214:13,18 216:3,6
 217:22 218:18
 219:14 220:4,13
 221:25 223:3,20
 224:1,21
Oklahoma 126:18
old 74:17 126:18
once 25:12,14 26:9
 52:25 61:10 67:9
 108:8
ones 190:23
one-year 22:9 23:4
OO 73:14
Oop 31:6
open 22:12,13,14,20
 23:2,13,15 25:16
 50:16 51:3 99:16
 147:6,6,11,13 149:14
 150:22 151:3
opinion 48:14 112:3
 123:8 126:5 127:6
 129:5 130:21 131:11
 132:8 134:16,21
 137:20 138:23 159:9
 172:23 204:17
opportunity 43:10
 153:1 180:5
opposed 24:13 115:2
 136:2 190:10
opposition 32:2 130:2
 137:5
option 8:10,14 9:21
 17:13 22:17
options 208:24
oral 89:12
ordeal 123:5,6
order 37:11 62:12
 131:10 165:14
 202:21 203:3,10,17
 205:4 207:8 208:9
orders 205:9
ordinarily 128:12
original 62:19 108:23
 109:5 110:24 111:9
 135:24
originally 56:20
Osterman 76:1,4 86:1
 196:6,7
ought 6:9
outcome 165:11,12
outside 14:5 18:2,9
 19:4,8 20:23 27:5
 36:25 44:13,13 45:9
 45:11,11,13 50:21,23
 50:24 55:5 68:10,21
 70:20 83:21 143:14
 146:12,20 147:13

148:9,15 149:19
 177:7 191:6 219:18
 219:19,22,25 221:2,6
 221:12,14
outstanding 88:2
overboard 209:25
override 186:13
overrule 187:7
overruled 123:15
 157:12 221:23
overruling 221:25
overturn 207:9 209:2
overturned 134:23
 194:12
overweight 197:22
over-weightness
 197:23
ow 197:7
owned 191:13,15,20
 192:2,3,14,15
owner 191:25
ownership 191:16
o'clock 86:25

P

P 3:1 107:6
packs 108:21,24 109:2
page 7:2,4 11:20 31:23
 31:24,25 35:22 38:11
 39:6 40:1 42:13,14
 76:16,19,19 78:6
pages 6:17,19,21 40:3
 76:8,9 140:15
paid 88:3,5,25 187:17
paper 193:5,11
par 42:13
paragraph 7:5,6,10
 11:19 12:14 17:22
 20:18 23:18 31:15,24
 32:1 34:9 35:14
 42:12,12 48:11,13
 53:3,5 60:11 72:8
 74:15 77:17
paragraphs 31:25
paralegal 20:9 90:3
parameters 102:23
parking 88:2,5 224:4,5
parlance 185:5
part 11:7 16:1 19:2
 20:8 21:14,21 24:21
 33:18 34:15 36:7
 41:24 57:19,21,24
 58:11 62:16 63:8
 64:13 66:16 69:2
 76:16,25 80:25 90:7
 107:11,12,18 111:22
 119:23 139:5 157:22
 159:10 176:2,20,21

178:16 180:11,12
 186:15 212:19
parte 15:9
participatory 133:9
particular 41:11
 110:11 157:1
particularly 141:19
parties 4:8 5:5
parts 41:10 82:14
 210:15
path 100:19 157:8
pattern 136:5
pause 6:8,10 43:16
 77:23 98:15 107:16
 183:1 212:3
pausing 6:10
pay 91:2
payment 88:18
PC 219:4
PCR 6:16 21:13 73:24
 81:1 89:9 108:14
 201:17 208:22
pen 6:24 176:7
penalties 181:24
penalty 139:7 189:19
 190:9,12
people 11:14,17 18:10
 20:11,14,14 48:2
 50:8,9,12 69:19
 70:20 112:4 180:6
 189:5,17 192:22
percent 103:21
perfectly 57:1 137:13
period 16:23 21:20
 62:15 78:10 149:22
perjury 42:19,20,21,23
 43:5,7 44:1,5,7 75:4
 155:7,8,8,12,17,23
 156:11,13 169:23
 195:17
permit 38:15,17,19
 108:16,17,19 143:15
 148:3,3,5
permitted 147:3
persist 173:12
person 91:24 112:8
 115:5 143:5 148:14
 156:10 187:25 189:3
 199:7 222:9
personage 161:3
personal 85:2 86:11
 128:5,7 132:4
personally 51:18 91:15
 91:19,22 214:10
personnel 78:19
person's 194:19
pertains 163:10
Peterson 3:11,13,17,22

<p>4:2,4,8,23 5:12 6:2,4 6:13,15 31:12 43:16 43:19,22 66:25 67:2 76:15 77:14,25 85:20 85:25 86:2,23,25 87:4,7,9,11 88:17 89:22 90:7,11 92:19 98:15,19 105:2,5 107:4,8,24 108:2,5,8 108:15 118:1,4,23 121:14,17,19,25 122:6,9,14 130:14 133:13,17 148:16,18 156:6 161:1 163:7,15 164:1,15 169:8,10,14 172:25 173:2,6 182:24 186:3,5 188:19,23 191:10 193:2,21 194:20 195:10 199:24 200:17 202:7,11,15 203:6 205:19 206:17 210:14,17 211:20,23 212:1,23 213:19,22 224:5,10,12,14,16,21 224:25 225:3 petition 133:23 134:6 216:3,14,18 Pew 126:8 ph 11:18 13:22 15:9 28:14 41:10 126:8 154:20 phone 84:14 89:2 91:5 91:8 158:13 physical 82:13,17,22 83:6 89:23 213:24 physically 220:6 pick 59:5 139:21 picked 220:6 pinpoint 197:5 Piper 191:25 place 17:4,5 87:6 122:20 143:15 193:3 199:23 200:21 218:18 223:1 plaintiff 52:8 plan 85:20 plane 12:24 14:10,22 14:25 15:5,6 16:1,20 17:9,18,21 22:21 23:6 136:5 158:19,21 159:9,9 161:8,8,23 162:18 165:2,14 166:13,15 167:5 187:18 211:3 plea 7:24 8:5,11,18,23 9:20 16:22 17:11 21:9,12,14,24 22:7,19</p>	<p>22:22 23:19,24 24:3 24:5,8,13,21 28:20 29:3,3,23 30:4 31:1,5 31:7,9,18,21 33:3,12 33:18,25 34:1,17 53:19 54:4,15 56:8 56:14,17 57:17 60:16 62:17 83:10 93:22 94:4,14,14,21 95:17 97:5,13,14 98:7,24 99:2,6,11,14,17 100:3 100:5,9,15,22 101:4 101:12,25 102:6,7,15 102:18,20,23 103:5 103:15,18,21,23 104:21 105:12 110:16,21 112:14 114:15,18,20 115:2 118:8 119:15 120:18 120:22 121:1,3 122:18 123:1 135:9 139:5 140:1 167:4,9 168:12 179:13 180:12 183:2 184:22 185:22 186:6,11 188:13 209:9 215:13 215:14,24 plead 22:23 179:13 182:13 183:3,6 pleadings 85:7,8 please 5:13 82:5 119:6 121:17 147:16 156:7 161:2 163:7 194:21 199:24 210:14 pleased 167:13,22 pleasure 225:1 po 198:21 pocket 116:18 point 7:20 8:3 9:17 24:10 33:16,17 40:23 55:25 57:10 65:5 67:21 70:1,13 71:15 73:12 75:22 99:15 100:2 102:1 117:24 122:2 123:16 125:12 126:6 133:20 138:4 138:17,18 139:8,25 140:8 163:23 183:2,4 183:6 192:8 201:21 207:14 222:4 223:10 223:18 224:22 pointed 40:13 44:10 140:14 176:12,14,15 177:13 pointing 128:15 points 72:19 138:16 196:19 police 7:20 9:25 13:7</p>	<p>25:10 129:17 180:4,6 219:13 political 211:10,15 politics 68:24 population 36:10,18 46:10 65:16 populations 65:14 portion 35:4 42:4 76:1 218:22 portions 40:2 78:7 position 16:20 23:4 62:16 131:12 positions 176:13,14,15 176:16,16 poss 121:12 possibility 12:20 62:21 121:2 133:8 possible 56:19 102:12 106:1,3 112:12,14,15 112:16 120:7,9 121:13,16 174:14,15 182:22 185:9,16 193:13,25 202:1,2 possibly 115:17 163:2 198:23 post 14:8 16:6 158:11 158:22 165:24 166:3 166:6 posted 17:1 posting 67:22 post-conviction 3:16 5:24 32:8 77:11 80:25 88:23 potential 44:2 51:11 53:25 55:13 196:11 208:23 potentially 13:3 51:3 56:14 180:4 pounding 154:18 PP 74:15 practice 47:17 52:18 113:8 137:3 138:5 141:13 214:22,25 practiced 51:19 74:21 pre 101:25 predator 27:5 45:9 50:21 68:14 69:3 83:21,24 219:17 220:1 221:2,6 preliminary 3:14 premise 173:7 preparation 89:21 prepared 90:6 preparing 71:21 presence 53:15 75:11 present 51:24 57:3 65:9 112:24 123:2 126:9 175:18,18</p>	<p>presentation 175:12 presented 22:19 115:18 115:21 122:23 176:8 177:1 219:5 presenting 175:16 preserve 222:3 preserved 216:16,17 222:1 223:17 preserves 218:1 press 193:7,8 pressure 211:10,15 presume 189:7 pretrial 41:5 pretty 46:14,17 50:20 50:23 68:17 69:8 78:21 89:23 119:1 134:19 136:4 144:19 145:6 147:25 162:9 164:16 183:25 193:11,12 202:9 prevail 101:23 prevailing 101:25 prevent 207:7 212:9 prevented 37:12,14 previous 60:14 61:14 62:7 183:23 previously 32:20 45:22 47:14 50:13 51:22 56:16 60:15 64:4 73:10 75:18 77:22 80:7 84:8 222:10 primarily 20:15 52:10 52:11 210:24 primary 134:14 prior 5:20 10:17,23 16:18 20:5,6 26:2,10 38:6,8 46:4 47:18 50:14 51:22 59:10,12 59:16 81:1,3 109:22 126:3 166:1 169:23 186:10,10,10,17 207:10 217:23 218:20 219:11,12 private 107:6 189:12 190:9 privilege 54:21 183:15 privileged 55:11 privy 114:6 pro 3:8 prob 182:2 probab 103:13 probable 10:9 26:4 47:7,8 48:10 49:25 51:5,6 60:25 71:24 76:22 99:25 126:4 127:7,21,23,25,25 128:12,20,21 129:1 129:10,19,25 130:5</p>	<p>130:12,16,25 131:10 132:1,7,13,20 139:10 139:12 141:19 145:21 146:15 189:10 202:1 216:8 217:1 218:22 221:6 221:10,13 probably 4:17 6:10 41:19 46:2 51:2 82:1 85:17 109:2,3 110:19 126:7 166:10 203:14 214:11 probed 73:17 problem 40:12 42:3 58:7 107:22 108:11 134:17 174:11 201:9 problems 12:21 41:10 106:24 procedure 14:2,14 123:2 208:8 procedures 175:3,5,9,9 175:10 proceed 50:1 proceeding 93:6 132:24 133:1 155:11 156:3 156:11 197:2 203:11 208:11 proceedings 4:14 43:13 82:18 225:9 process 9:3 14:9 49:8 70:22 80:25 125:3 137:3 159:11 160:19 161:6 162:11 224:8 product 177:24 178:12 program 37:23,25 45:10 68:25 69:3 146:22 148:24 149:7 149:15,15 190:2 191:4 192:20 198:8 204:22 205:25 207:2 progressed 124:23 prolong 70:16 promise 116:16,20 promised 116:12 118:8 134:7,10 167:19 promote 36:9,10,18 prompt 14:2 158:11 Promptly 159:15 pronounce 3:20 pronouncing 126:9 proof 19:18 43:3,4 155:22 178:13 proper 123:1 property 15:22 16:6 17:24 66:10,12 67:5 67:10 90:22 160:6,10 160:18 161:4 222:9 prosecut 57:18</p>
---	---	--	---	---

<p>prosecute 61:24 72:21 73:1 178:25 181:1,8 181:21</p> <p>prosecuted 74:22 113:3 181:3,7,10 210:22</p> <p>prosecution 21:20 25:16 32:10,11,25 33:23 52:4 73:3 76:21 96:13 127:12 127:18 152:17 181:14 182:20 222:25 223:9</p> <p>prosecutions 3:17 4:24 211:10</p> <p>prosecution's 65:8</p> <p>prosecutor 10:1 32:3 35:16 51:7 52:6,7 128:16 131:15 168:18 174:17 178:23 183:18 212:4</p> <p>prosecutorial 178:23</p> <p>prosecutors 74:14,22 195:16</p> <p>protect 35:20 55:19,21 74:18 195:18</p> <p>protection 11:9,14,17 37:11 49:8 50:7 71:25 202:21 203:3 203:10,16 205:4</p> <p>protective 207:8</p> <p>protest 13:23 30:7 32:5 34:10,21 35:9,11,13 67:7</p> <p>protested 30:6 67:7</p> <p>protesting 173:16</p> <p>protests 69:2 192:17,25</p> <p>protocol 214:3</p> <p>prove 142:10 150:8,11 171:13 175:13</p> <p>proved 113:15 142:2 148:12 199:22</p> <p>proven 42:19,19,21,23 145:8 150:1 171:21 200:15</p> <p>proves 174:6</p> <p>provide 4:10,15 127:11</p> <p>provided 48:25 82:12</p> <p>providing 64:25</p> <p>provision 168:12</p> <p>prudent 13:9 145:16 162:13 184:6</p> <p>public 52:20,22,23</p> <p>published 193:5,12</p> <p>pulled 88:4</p> <p>punish 161:12</p> <p>punished 160:21</p> <p>punishment 139:14</p> <p>purp 222:20</p>	<p>purpose 54:9 222:21</p> <p>purposes 25:11 75:17 188:5 221:10</p> <p>pursue 8:5,17,17 24:2 31:20 72:1 95:19,22 100:16 101:20,20 135:9 165:16</p> <p>pursued 94:4 144:10 209:4,5</p> <p>pursuing 23:23 99:21 209:5</p> <p>purview 64:7</p> <p>put 10:6 18:24 19:1 24:2 26:6 55:16 79:15 93:25 94:7 97:7,16,16 101:1,2,3 102:2,13 103:7,11,14 103:19 107:20 111:13 112:1 118:2 119:1 132:11,16 143:8,24 146:24 184:14,19 186:24 189:2,23 206:15 212:16 213:12,13 217:8,16,20,21 220:16,17</p> <p>putting 48:8 135:1,7,11 142:22 157:11</p> <p>P-812 191:25</p> <p>p.m 69:7 123:21</p>	<p>questioned 36:19 39:10 145:5 175:19 186:25</p> <p>questioning 41:1 183:19 189:12 193:16</p> <p>questions 4:11,12,14 7:22 54:25 57:16,20 57:25 58:2,4,6 64:5,6 71:24 77:21 80:24 81:12 82:21,25 85:16 117:5 118:24 121:21 122:1,3 125:24 184:14 187:23 188:1 188:3,4,7,8,11,17,18 200:9 201:17 207:4 210:19,20 223:24</p> <p>quick 169:8 202:13 213:19 216:11 224:16</p> <p>quickly 164:17</p> <p>quite 36:4 52:14 66:19 70:23 79:12 144:4 164:13 165:23 166:1 166:17</p> <p>quote 173:13 204:23</p> <p>quoted 140:14</p>	<p>224:16</p> <p>realization 83:17</p> <p>realize 94:15 115:10</p> <p>realized 152:24</p> <p>realizes 83:16 155:22 155:23</p> <p>really 23:2 51:13 53:24 54:15 56:13 69:13,14 70:16 76:3 83:3 84:2 88:20 94:7 105:1,4 107:10 112:9 122:25 123:10 124:11 139:9 141:18 145:20 163:20 165:19 168:1 173:13 174:16 182:6 182:25 188:25 191:12 210:25 221:14</p> <p>realm 60:9 64:5</p> <p>reason 16:16 21:1,2 35:12 36:8,12 40:10 40:23,25 56:6 69:17 71:7 72:2 95:16 127:21 157:22 170:22 171:11 179:9 180:10 182:11,14 189:23 198:9 212:19</p> <p>reasonable 143:5 146:18</p> <p>reasons 80:6 136:12 141:1 168:8</p> <p>recall 9:5 12:5 15:7,8 15:10 28:19 37:16 38:2,5 39:20 41:13 48:19 64:1,2 77:24 78:2 80:19 81:10 82:5 116:2 123:22 142:9,14 143:23 144:14 145:12 147:19 163:13 164:7 164:8 188:10 196:5 223:5</p> <p>recap 165:7</p> <p>receive 120:20</p> <p>received 35:25 57:6 113:17 118:3</p> <p>receiving 78:3,16</p> <p>reciting 32:4</p> <p>reckless 41:19,22,23 42:1 145:23,25 146:10</p> <p>recklessly 150:9</p> <p>recognize 167:23</p> <p>recollection 82:22</p> <p>recommend 9:21 25:24 135:2</p> <p>recommended 23:12 132:10 134:25 135:6</p>	<p>record 3:2 5:14 6:12 22:4 31:12 43:22 67:2 78:12 82:2 87:5 87:8,11 107:5 113:13 116:3 118:2 122:16 133:17 173:5 188:16 199:22 213:8 224:17 225:7,8</p> <p>recorded 89:8,15 94:16</p> <p>recording 6:13 111:14</p> <p>recordings 215:3</p> <p>records 90:8</p> <p>record's 77:14,25</p> <p>recourse 62:2 66:7</p> <p>rectify 43:11</p> <p>redirect 4:12</p> <p>refer 6:4 175:14</p> <p>reference 218:13</p> <p>referenced 110:6</p> <p>referencing 21:15</p> <p>referring 29:13,14 61:15</p> <p>refrained 57:11</p> <p>refused 171:25 191:20 206:5</p> <p>regard 12:5 22:21 48:8 67:9 161:7</p> <p>regarding 76:22</p> <p>regardless 28:24 116:24</p> <p>registration 192:1</p> <p>reiterate 33:5</p> <p>related 11:10 89:9 188:12</p> <p>relationship 56:1 84:7 114:7,12</p> <p>relea 161:5</p> <p>released 165:14</p> <p>relevance 187:2</p> <p>relevant 40:2 53:22 54:6,9 61:7 75:11,17 82:18 115:1 119:11 123:10 157:10 164:2 187:15 221:15,17</p> <p>reliance 116:16</p> <p>relied 171:22</p> <p>relief 3:16 5:24 32:8 77:11 80:25 88:23 89:13</p> <p>rely 135:13</p> <p>remain 179:20 180:19</p> <p>remains 150:4</p> <p>remedy 160:12,19 161:7,14,22</p> <p>remember 5:17 9:6 13:21 16:19 27:23 29:7 34:15 39:23 47:5 49:15,20 58:19</p>
---	---	---	--	--

R

R 3:1

raise 5:6 10:17 37:4
39:3 40:9 80:4,9
189:3 200:9,13,18,23
201:8 223:10

raised 38:9,10 50:13
99:20 137:12 215:14
215:15 218:20
221:21

raising 38:2,5

ran 145:15

range 194:12

rarely 74:21

rational 199:7

reached 215:5

read 5:2 32:7 89:14,16
90:9 107:12,12,14,18
107:20,23 109:6,9
125:12,15,15,15
126:12 129:6 137:20
151:18,23,23 193:9
193:13 205:23
218:22,23

ready 3:11,12 87:9
89:19 134:4 147:22
147:22 165:18
169:12 182:13

real 43:4 54:8,13
139:11 169:8 202:13
203:14 220:19

Q

QQ 75:8

qualify 44:7

quest 187:23

question 4:19,20 9:12
10:15 11:9 18:22
19:14,21,23 23:15
24:2 38:16,16 39:7
50:16,17 51:3 63:3
64:13 80:11 86:15
93:5 95:13 98:5
99:10,20,23 103:6
105:2 108:17 111:2
113:2,18,19 118:24
135:5 138:15 139:11
142:3 145:1 146:19
147:16,17 148:16
149:8,13 155:6 156:7
160:20 161:1,6
162:14,18 163:7,18
163:19,22 166:3
168:10 171:20 186:3
187:1 194:20 199:4
199:24 205:19 206:1
206:2,3,4,7,11,18
207:1 210:14 216:25
219:21 221:1

<p>58:22,23 59:24,25 60:2 63:4,18,19,20 79:13,16,19 80:2,2 84:21 93:21 100:7,25 101:6,21 109:4 110:23 111:8,21,24 114:20 115:23 117:5 119:25 123:23 124:18 125:11,21 126:7,14,24 127:9,19 127:20 128:3,3,15 129:2 132:21 134:4 135:17 140:12,16,18 140:23,25 141:21 144:6,9,10,20,22 145:2 146:2 147:15 152:13 153:10 154:3 154:4,7,12,14 156:20 156:21,22,23,25 157:2 158:16 161:24 163:10 164:25 166:19 175:16,21,25 176:2 177:5 183:8,10 184:13 188:6,15,19 194:2,6,9,14,17 195:19 196:9,23 197:1 198:3 199:15 199:16 201:18,19 203:19 205:2,3,7,20 205:21 207:6 212:4,7 212:11 214:3 222:14 222:18 223:13,22 remembered 11:22 198:10 remembering 196:24 remembrance 111:18 remind 49:5 remnants 220:17 rendition 72:12 173:19 reneged 104:15 111:20 112:18,22 rep 48:3 71:17 repeat 28:13 31:16 133:19 165:25 repeatedly 199:6 220:5 repeating 77:23 rephrase 159:8 replace 77:16 replied 32:1 137:12 216:8,8 reply 34:13,14 35:15 76:20 136:14,22 137:6,14,14,18 report 89:15 109:12 110:1,2,12 reports 7:21 13:8 represent 69:21 70:2 71:18 73:24 74:2</p>	<p>208:15 representation 88:24 163:22 179:23 representative 92:9 185:14 represented 48:2,3 88:25 89:24 109:23 114:10 179:19,22 representing 7:25 71:22 74:3,3 114:3 167:6 187:3 214:5 request 162:4 201:16 require 22:15,24 43:2 50:9 161:20 required 43:3 50:8 129:25 160:11 161:13 162:20 requires 80:25 128:25 159:11 research 71:24 125:1 132:17 134:21 researched 13:15 129:8 129:23 researching 10:11 126:20 resist 191:3 resolve 168:2 resources 24:11 103:7 113:1 respect 8:18 20:8 23:13 42:9 43:25 48:15 50:19 82:9 163:22 214:18 216:3 217:1 217:22 218:5 222:5 responding 210:17 response 13:20,22 41:2 59:23,24,25 rest 12:8 24:16 35:21 restricted 92:2 restroom 121:22 result 29:4 145:4 retained 15:1,2,3,4 16:11 retired 48:4 126:21 retract 145:9,10 returned 201:24 reveal 20:1 reversed 71:15,16 review 22:4 58:4 85:8 108:17 133:9,23 214:25 216:14,18,19 reviewed 6:16 reviewing 4:18 85:11 revocation 22:10,15,24 23:4 71:14 Rica 14:5 90:21,22 158:15 rid 144:2</p>	<p>ride 78:3,14,16 168:15 197:15 rides 79:9 80:21 riding 84:17 201:6 right 3:11,13,19,20 4:4 4:7 5:6,23 6:13 7:1,9 13:24 14:1,6,14 15:24 17:3,5,8,10,18 17:24,25 20:17 23:7 26:19 27:12,15,18,21 30:1,13 33:1 34:3 35:1,18 36:21 37:5 37:20 39:5 40:6,8 42:14,18 44:15,17 46:1 49:12,21 51:5,8 51:10 52:19 54:10 55:15 56:15,18 57:2 57:4 58:1,13,15 60:8 61:23 62:4 64:9 66:3 67:25 68:11,13,14,15 68:22 70:11 72:7 73:9,11 75:6,10,13 76:10,23 78:22 79:2 79:5,5,18 80:1,8 81:2 82:2 83:7,11,12 84:6 85:24 86:13 87:6 93:13 95:4 97:2 98:2 98:8 99:4 102:11 104:2,13 105:13 107:17,18 108:1 118:3 121:23 122:14 127:2 131:23 135:20 137:7 140:7 141:3 150:20 152:25 153:19 155:21 158:11 166:8,21 169:14 173:7 176:17 179:20 180:19 187:11,20 188:6 189:3 190:16 193:25 194:4 196:8 205:7,10 205:13 206:8 212:18 213:3 214:7 215:6 216:1 217:3,25 220:24,25 221:8,20 222:6,20 224:7,9,14 224:15,24 225:2 rights 193:23 195:1,8 209:18 216:16 risk 25:21 46:12,13 55:13 risks 46:11 47:2 road 23:22 97:12 Robinson 3:18,25 5:3,8 5:9,15,23 6:16,17 7:12 31:14,15 32:1 35:25 43:24 51:19 60:17 67:7 73:17</p>	<p>78:2 87:13 105:9 113:7 118:18 122:16 130:16 133:19 154:11 203:8 225:1,2 225:4,6 Robinson's 76:20 169:16 room 3:19,23 4:9 route 8:16 routes 17:16 routine 214:9 rule 4:18 10:19 32:4 33:11 37:8 91:25 92:12 112:9 139:2 140:2,7 141:15 157:13 162:8 163:5 174:25 175:2 194:18 203:10 204:22,23 205:5,16 206:5 ruled 37:9 61:7 137:15 137:17 164:25 202:20 203:12,13,13 203:16,21 205:15,24 206:4 rules 4:10,15 32:14,15 35:25 36:25 42:24 45:23 46:9 64:14 163:3 174:24 175:3 177:10 207:15 ruling 205:15 206:20 206:22,22,24 216:9 rulings 207:10 217:22 217:23 223:15 run 51:12 133:15 rung 61:10 R-o-b 5:15</p>	<p>105:16 109:24 110:3 110:4,16 112:11 115:14,16 116:6,6 117:16 119:10 121:12 123:22 124:11 125:11 128:21 129:3,18 130:3,6,9,10,12,13 131:7,12 142:16,23 143:3,24 144:11 145:4 147:10 148:10 148:20 149:18,20 150:21 154:1 156:9 159:22 160:7 168:25 170:11 171:11 173:14,20 175:8 177:5 179:13 184:1 195:19 204:9 205:21 206:24 207:1 209:7,9 220:20 says 7:11 12:10,15 13:1 14:1 17:23,24 18:1 21:8 24:18 30:7 32:1 32:4 34:10 35:15,23 35:23 37:7 46:1 60:12 61:12 63:2 66:22 67:5 72:18 73:17 76:19 92:1 96:14 107:6,17 108:16 110:17,24 111:7 116:12,17 128:19 130:14,24 131:4,5 132:1 140:2 140:4 162:25 170:3 175:23 177:15,18 194:18 203:13 205:5 205:17 scan 38:12 school 122:8 Scott 9:11,14 16:22 22:18,18,21 23:2,9,16 24:22 25:1,18 29:17 29:23,23 33:8,10,25 34:19,23 40:14 45:20 54:5,16,23 55:1 56:9 56:24 61:16,18,23 62:23 65:4 76:18 83:8 94:25 103:23 104:14 111:19 112:18 116:12,13 131:15 144:7,18 145:6 153:16,18,23 167:22 168:4,5 183:18 184:20,21 185:6 210:8 211:1 213:4 216:8 218:6 Scott's 23:4,8 screwed 121:5</p>
--	--	--	---	--

<p>sealing 27:13 search 7:20 12:17 39:14 40:11 127:12 searched 39:15 season 27:20,21,22 sec 76:19 second 31:10,10 43:16 66:25 76:11 98:15 133:13 172:25 212:2 secrets 133:15 see 7:17,17,18 22:5 23:16 32:24 49:2 51:11 52:25 53:22,25 54:2 56:7 63:7 66:22 77:9 88:15 90:3 96:22 158:21 197:10 197:12 202:14 224:6 seeing 79:16 80:2 197:3 197:13 225:4 seek 53:15 58:14 81:1 99:13 101:13 103:12 151:17 seeking 72:3 seen 5:23 74:21,24 197:6,15 208:19 211:15 seized 14:21 16:6 66:14 66:15 158:14 159:9 191:14 222:9 seizure 12:17 14:7 67:8 158:12 162:14 222:7 self 148:13 self-incrimination 35:18 send 57:20 224:6,7,8 sends 85:7 sense 211:9 sent 83:8 184:7 sentence 37:7 57:6,8 68:3 71:4,8,9,16,16 94:5 171:11 193:20 194:1,7,8,10,10,11,15 194:16,24 195:4 sentenced 34:6 53:18 54:7 56:16 58:9 67:9 120:23 121:7 157:13 172:16 212:5 sentencing 22:20 23:3 23:13,16 53:9,13,21 56:21 57:5 58:16 59:11,12,22 60:21,24 61:13 62:10 63:19,25 64:6 65:9,10 66:7,16 67:13 69:8,12,18,21 70:2,8,17 75:17 79:9 79:14,14,23,25 82:8 113:21 114:16,17 115:1,9,15 116:3,9</p>	<p>119:4 120:7 123:5,12 123:17,24 124:13,19 156:18,18 157:10,20 157:22 171:5,5 172:14,21 183:14 188:2,5 193:24 194:5 194:6 197:3 212:6 215:15,16,20,22 separate 74:10,10 208:10 September 5:1,2 164:12,12 224:25 series 121:20,25 served 91:19,22 service 91:17 set 8:13 46:17 54:5 83:23 108:9 125:6 setting 117:23 settle 100:1 seven 7:2,4 20:22 21:6 26:24 205:1,1 severe 67:16 68:3 share 60:15 100:6 she'd 203:16 shifting 143:3 ship 187:9 shoot 149:22 191:6 shooting 142:21 147:13 short 122:15 shot 135:23 142:24 146:1 149:19,21 150:21 153:14 170:7 176:7 177:16 show 41:19 53:12 58:15 146:9 157:23 170:25 showed 68:18 92:22 128:19 188:16 201:24 showing 38:11 39:25 184:23 shows 112:24 129:18 shut 99:16 sic 19:22 201:22 side 5:22 31:13 54:2,2 96:16 98:21 108:9 157:23 196:13,16 sides 56:24 65:9 sign 81:3,5,7,15,24 82:6 91:15 92:5,11 117:24 128:18 129:21 192:9 signed 89:7 91:24 92:7 130:19 131:18 192:5 192:11 significant 127:22 143:2,2 179:4 184:23 200:3,5 203:15 signs 128:16</p>	<p>silent 179:20 180:19 simultaneous 25:16 66:11 84:24 104:19 110:18 120:15 122:6 159:18 160:25 single 36:3 184:11 sir 4:3 5:6,17 6:14 44:21 64:18 85:17 sites 221:5 sits 146:3 sitting 41:8 63:2 164:13 situation 12:12 38:13 43:11 72:12 99:17 111:6 179:5 situations 163:11 six 17:23 18:1 47:25 202:9,16 size 108:23 skins 144:1 skipped 4:4 slam 51:16 95:22 slow 224:11,13 small 78:18,19 121:21 snacks 157:2 snow 136:2 SOA's 32:2 social 85:1 solely 26:20,21 217:13 solicited 184:17 soliciting 153:17 solid 50:20 somebody 60:23 61:12 63:3 80:17 92:10 124:10 129:14,19 130:10 148:13 177:15 180:18 189:7 214:8 222:6 someplace 220:16,17 sooner 83:3 sorry 3:20,24 4:2,5 9:24 31:15 44:21 64:18 81:22 117:22 118:23 123:21 133:13,18 156:8 173:4 sort 71:25 79:6 sound 31:17 34:8 73:18 88:9 95:9 sounds 23:5 26:14 58:24 213:24 speak 168:6 214:19 speaking 4:17,21 22:6 25:17 66:11 84:24 104:19 110:18 120:15 122:6 159:18 160:25 special 3:17 4:24 15:22 specific 48:2 68:3 81:13</p>	<p>151:11,11 196:5 197:13 specifically 7:21 12:4 18:4 21:10 23:21 31:8 37:14 82:5 140:23 158:16 171:11 174:3,6 175:17 177:1 192:21 194:14 223:14 specifics 27:23 81:10 speculation 188:23 191:10 193:2 195:11 211:14 speculations 182:24 spell 5:13 spent 61:6 115:13 spoke 23:11 42:4 spoken 27:16 89:8 spots 40:16 177:13 Spra 19:7 Sprague 19:22 20:11 21:3 Spraker 18:13,15,17 19:21 20:3 21:7 190:1 spring 14:4,17 158:13 161:17 square 108:25 stages 181:17 stake 140:9 stand 25:12,14,19,20 25:22,24 26:10 33:15 36:14,19 45:5 54:11 55:16 61:22 63:3 64:20 65:4,20,21 73:4 74:23,24 144:7 144:19 145:5 153:17 153:18,19,20 155:18 184:14,19 186:24 189:3 190:13 standard 216:19 start 4:10 5:22 7:3 77:18 87:9,16,18 125:1 started 3:11 52:6 54:12 54:20 77:19 123:12 132:14 164:17 starting 5:1 starts 10:8 state 3:15 4:10,12 5:4 5:13 7:25 8:22,25 11:22 12:3 16:21,23 17:1,6 18:1 20:22 21:22 23:19,24 24:7 24:19 25:9 28:4,21 29:8,11,13 31:13 35:23 36:2 44:24 45:3 50:14,14 51:20</p>	<p>60:12,18 63:4,9,10,17 63:20 64:2 66:2 67:3 72:9 80:15,16,20 84:15,22 87:12 88:16 91:9,14 93:2,16 98:6 98:20 101:12 102:22 112:22,24 113:1,3,24 115:6,22,23 116:10 116:15,16,20 118:6,8 118:13 119:19 120:3 121:4 122:15 128:5 132:15 136:8,14 137:5,12 139:21,23 140:1,2,19 141:25 142:6,7 144:9,10,23 148:8 150:8 151:15 151:25 152:5,10,16 154:9 157:9 158:19 160:9,16,24 161:4 163:11 165:22 167:16 170:17 173:10 176:6,25 177:23 178:5,12,22 180:24 181:6,9,13,15 182:1 184:18,23 185:4,13 190:15,21 191:3,16,19 193:3 198:15 203:3,7,9 205:4,5 209:24 210:7 210:10 222:5 224:11 224:22 stated 36:17 49:9 80:7 165:21 167:25 174:17 178:18 196:6 202:17 204:14 209:20 statement 21:19 24:19 24:20,23,25 25:1,4,10 25:15 28:4,5,6,7 29:13,15 30:9 32:3,5 33:9,25 34:11 36:6 43:25 44:10,12 45:19 51:6 59:6 61:17 72:9 72:11,19,21,25 73:2,4 75:14 76:24 108:24 111:10,11 136:7,9,15 136:16,17,20 137:1 137:10,11 138:23 139:4,14,22 140:13 140:15,20 151:15,18 151:20,21,22 152:11 152:18 154:10 169:24 170:11,16 172:4,21,23 174:18 175:14,23 176:5,6,9 176:10,17,20,21 177:7,9,12,21,23,24 178:12 179:16,21,24</p>
--	--	--	---	---

180:3,8,14,18,23
181:9,20 191:2 193:4
198:15,21,25 199:2,5
209:15,19 217:2
218:5,16,19,23 219:4
219:13 221:6
statements 29:19 32:13
33:6,12 89:7,8,12,12
89:14,17 122:4
171:16 176:25
218:13
states 181:15
state's 25:7 33:7 36:7
36:16 37:11 62:19
64:13,20,20 65:12
133:18 142:2,10,21
171:21 198:24
202:20 203:16
205:18 207:18
213:15
stating 81:4,24 160:9
166:6
station 78:22
statistics 189:16
statute 67:19 130:8,23
130:24 131:3,4,21
155:13
stay 163:23
stays 153:18
Stepnosky 4:2,3,7 7:18
8:15 129:14,19 173:4
187:24
steps 153:18
stipulations 5:5
stole 162:10
stop 6:9,10 132:24
133:1,3
stopped 85:11 193:21
store 78:17
story 33:16 46:7,8 86:8
100:11 105:6 155:11
156:10 196:14,16
210:24
straight 115:4 117:7
straighten 161:16
straightened 44:6
strange 87:19
strategies 24:12,13
strategy 13:14 16:16
17:4 18:24 19:12,12
19:17 20:1 26:4 47:7
60:7 64:6 186:15
187:5,7 190:13
stray 147:12
Street 4:24
stressed 118:11
strictly 188:5
strong 134:19

student 53:2 87:22
stuff 13:8 20:16 67:8
79:15 89:6,25 93:3
94:17 104:5,7 107:1
107:19 117:4,6,8,20
120:23 131:15 135:5
138:3 166:20 176:8
180:20 182:15
192:24
stupid 69:23
subject 10:10 30:20
31:2 34:24 53:20
54:22 67:10 72:20
100:17 127:7 128:8
128:11,14 129:3,6,12
129:16 130:6,7,11,22
131:8,13 132:5,6,6,7
134:13,13 136:25
181:24 216:21
submit 58:2
submitted 127:14
206:13
subpoena 18:17 53:8
53:11,11 59:5 82:9
90:8,18 91:9,16,19,20
92:18 93:10 114:16
118:19,21 186:21,22
187:18
subpoenae 92:1
subpoenaed 56:5,6
92:15,23 93:7,11
114:1,17,23 119:2
185:24,24 187:18,21
222:10
subpoena's 91:24
subsection 41:16 68:20
subsections 41:15
subsequent 93:6
substance 193:3
substantial 215:19
substantially 57:8
successful 17:6 96:4
99:21 217:17
successfully 17:1 93:17
sufficient 41:17
suggesting 106:12
Suite 4:25
summary 14:21
Sup 138:2
Superior 131:23
support 76:24 125:9
138:22 141:8
supported 125:8
128:25
suppose 87:2
supposed 4:21 5:19
107:1 125:24 159:8
159:13,23 160:13

162:5,25 193:19,22
194:23,25 204:16
207:25 208:12,14
222:8
suppress 12:21 13:4,6
13:16 135:19 136:6
141:4,11 145:15
suppressed 135:24
141:24 146:8 180:9
180:10
suppressing 146:1
suppression 135:25
Supreme 163:11
sure 16:9 20:14 21:10
21:11 27:1,8 30:9
34:12,22 36:4,5 37:7
37:15 38:10 44:11
46:12 51:17 53:9
54:24 57:19 61:11
63:14 64:1 69:23
75:6 80:14 88:25
89:23 90:19 94:5,24
96:10 97:4 109:17
114:19 126:15
133:11 138:1 147:23
154:1 155:20,21
163:4 166:17 170:21
171:15 172:18
192:20 193:6 195:13
207:20 209:11
214:24 224:17
surprise 143:18
surrounded 150:22
surrounding 69:1
suspected 60:23
suspicion 19:6 198:23
200:23
suspicious 200:13
suspicious 198:8
sustain 93:22
swear 10:7 130:18,19
swearing 127:10
189:11
swindled 115:7 119:19
switch 5:18 124:15
sword 19:5,11
swore 49:23 80:16
129:17 192:2
sworn 9:25 10:3 51:4
127:1,17 129:25
139:9
system 74:18 189:5
195:21,23,24 196:2

T

ta 84:18
tab 107:11
tactic 48:15 51:9

taint 170:12,13
take 6:7 14:10 15:4
17:7 18:2,2,9 20:23
25:24 33:3,15 35:4
35:12 36:25 37:1
44:25,25 62:9 70:9
75:7 78:7 87:4 95:21
100:16 121:22,25
148:5 158:19 165:2
174:5 195:13 202:5,7
210:11 211:5 213:14
225:6
taken 18:3 19:8 20:24
27:4,13 39:9,10 42:7
42:8 45:8 50:21,23
54:11 62:19 68:4,10
68:18,21 83:20
142:19 143:14,18
146:6,12,14 147:2
150:4,5,7 151:4
168:15 174:10
177:20 178:10 191:2
215:3,19 219:21,23
220:15,16,17 221:14
takes 129:6 189:8
224:10
talk 25:20 29:22 41:8
48:10 59:12 84:19
88:20 95:3 99:8
106:15 138:19 178:2
178:3 180:6,6 182:11
183:9 184:8 209:10
209:25 210:4 219:14
talked 7:21 12:15 18:15
20:3,6,11,11,13,14
26:5,12 30:25 31:8
33:9,11 34:12 40:14
48:7 76:6 84:15,18
84:22 85:3,14 89:3
94:1,13,25 96:8
98:12 99:10 100:7
109:18 110:2,4,9
138:5,6 147:25
152:14 161:17
165:23 177:25 182:9
184:5,7 189:25
195:15 196:6 198:20
199:4 210:3 218:4
220:5
talking 7:7 30:25 54:12
66:10 69:14 94:7
97:25 99:9 143:16
196:5,23 199:15
212:25 213:23
talks 49:8
tape 31:11,13,14 43:21
60:14 67:1,3,4 76:12
94:15 98:17,19,20,21

104:10 122:13,14
124:15,16 133:14,16
133:18 147:21
169:11,14 183:12
186:5 203:5,6,6
tapes 5:18 67:2 87:4
133:20 169:15
tape's 5:21
technicality 134:17
technically 92:25
Ted 18:13,15 190:1
tell 6:21,21 7:15 16:15
18:9 19:22 20:19,22
20:25 21:1,2,3,5
23:21 26:8 31:1,5,7
31:21,21,24 41:3
46:7,7 47:7 48:4
55:12 58:17 87:25
94:20,24 95:21 105:6
110:1 114:16 119:6
119:21 121:3,15,21
126:20 158:9 180:7
181:1 189:8,19
194:23,25 195:8
203:23
telling 14:21 29:7 58:19
79:7 93:21 100:25
101:1 106:5 132:21
140:12,16,18,23,25
154:18 167:3 194:6,9
194:14
tells 219:7
Teriyaki 87:7
term 195:17
termination 7:7
terms 9:4,7 75:23 115:1
160:18 174:1 175:13
179:18 182:16
185:12 209:11
213:12,13 219:9,10
test 119:14 140:10
testified 5:10 26:25
27:3 28:5,14,18
45:20 46:2 54:20
60:12,14,20,21,24
61:12,12 63:4,8,14,14
63:15,17,18,23,24
64:21 72:24 80:16,16
93:18 123:4,7 132:10
135:17,18 143:23
158:10 167:4 168:23
176:4 179:3 183:13
184:20 199:15
217:16
testify 24:25 25:25 26:1
26:17,17,18 27:2
28:23 29:19,24 46:5
46:18,19,23,25 47:12

53:8 69:19 77:5 90:25 119:2,4 140:9 140:13,16,18,22,24 141:2 180:21 183:6 183:14 186:10 testifying 26:15,16,19 35:11 46:4,11,17,24 47:3,9,18 54:21 63:19 64:2,3 154:8 172:10 189:6 198:6 199:5 218:7 testimony 27:4 28:8,10 35:10,13 55:8 56:12 60:19 68:8 72:15 90:24 116:13 145:14 156:2 170:18 174:1,9 184:17 218:8 219:12 Thank 5:17 20:17 31:23 83:12 224:2 That'd 109:12 theoretically 121:12,15 148:23 theories 125:4 theory 36:7 61:17 64:14 65:8,8,10,12,15 97:11 99:24 144:16 147:19 190:14 203:22 204:6 they'd 17:7 thing 13:10 14:1 26:7 36:21 40:17 44:19 45:16 48:9 69:23 70:14 71:25 73:3 82:14 86:10 89:21 91:3 93:12 98:16 103:13 107:20 117:17,17 147:1 178:8 190:16 209:10 things 12:25 34:6 39:9 87:16 89:10 113:4 120:8 121:20 124:2 124:23 140:20,21,21 140:24 146:11 154:6 163:9 187:13 210:4 217:11 think 3:25 8:19 12:12 16:23 19:17 21:2,4 25:9 32:24 38:7,9 40:1 41:17,23 46:17 46:21 48:16 49:16 53:10 59:13 60:20,21 63:15,17 64:24 65:21 69:12 71:12 77:16,17 78:21,23 79:23 80:18 80:23 81:8 85:10,11 86:17,21 90:15 91:9 91:14,18,25 93:25 94:15 95:1 101:2,2	111:7 114:3,25 115:19 116:19 117:7 119:11 125:16,24 126:8,12,22 129:15 132:13 135:22 141:17 142:20 143:1 145:16,17 147:24 148:11 149:4 152:5 157:15 161:14 162:9 162:24 164:2 167:10 172:10 175:21 177:15 186:16 187:6 187:25 188:1 193:13 196:15 201:23 202:20 204:1 206:17 208:12 209:23,23 210:4,18,23 211:1,19 211:25 212:19 213:12,17,17,19 214:1,10 223:18 224:17 thinking 49:22 thinks 49:5 72:13 172:2 thought 7:24 12:24 16:2 21:22 23:14 24:9 25:2 34:20 41:9 47:1 50:17 54:5 60:22 77:10 84:1,5 113:13,20 115:18 116:22,24 117:1 119:21,22 126:12,25 127:22 130:5 134:12 134:16 135:13 141:14 147:17 148:1 148:25 158:8,9 162:13,21,23 168:19 182:19 191:8 193:16 193:18 195:23 210:5 211:2 212:13 213:4 213:10 217:20 222:18 223:11 threats 192:22 three 63:5 133:18 140:15 166:10,16 176:18 205:14 207:17 211:21,24 three-year 22:15 throw 69:22 thrown 48:9 ti 48:7 ticket 187:19 tickets 88:2 Tim 3:19,19 time 4:25 5:18,20 7:21 8:21 9:6,18 11:4,4 12:25 13:10,14 14:20 16:24 19:8 21:20 40:14 45:19 46:14,16	47:11,12 48:3,4 49:13 52:24 53:18 55:25 61:2 62:15,21 69:2 70:1,9 71:6,9 74:20 79:12 80:11 85:3,11,17 87:22 88:24 89:3,24 90:1 90:23 93:8,10 94:10 103:6 105:21,22 116:24 119:1,16 120:2,18 132:9 137:8 138:5 140:3 159:2 161:13,16 164:22 165:1,18 166:4,14,15 166:15,17 172:10 182:19 183:4 189:9 192:7,21 197:5,15,17 197:23 198:11 201:21 202:10 210:23 211:23 214:11 215:19,21 216:10 223:10,25 224:23 times 94:16 125:8 tired 70:1,4 title 37:16 191:19 Toby 198:4,6 199:5 today 3:18 48:25 75:14 82:21 83:1 85:25 90:7 223:25 told 7:12,23 8:21 9:22 10:5 12:16 13:1 14:5 14:13,15 17:25 18:2 18:8,12 20:19,23,25 21:4,4,8,23 22:18,18 22:21 23:14,22 24:4 24:18,20 25:4 26:3,3 30:13,15,16,22 31:4 31:17 32:19 36:1,24 44:20,24,25 46:1,3,3 46:12 55:12 59:21 69:13 73:15,19 74:1 74:13,13,20 75:6 76:7 80:12 84:20,23 88:22 90:1 92:15,20 94:23 95:6,8,8,15 96:5 97:20 99:18 101:17,17 102:4,17 102:19 103:17,20 104:21 105:10 109:23 110:9 114:19 115:4,5 116:10,11,22 117:1 118:20 119:7 119:25 121:1,4,8 123:16 132:25,25 133:22 134:5 135:6 145:17 152:6,9,10,16 154:10 158:10,14,18	159:17,18,21 161:14 166:4,6 173:10 180:18 183:5,5 190:2 190:4,13,14,14,15 191:4,15 192:13 193:7,25 194:4,11 195:2,23 198:14 199:22 204:1,9 208:13 209:17 210:8 210:10 213:10 219:11 Tom 3:25 4:2 7:18 129:14,19 173:2 187:24 Tony 29:22 114:3 152:9,24 176:24 177:2,9,11,13,18,21 177:22,25 178:5,7,16 187:24 198:7,10,13 198:14,14,15,18,18 198:19,20,22 199:1,4 199:6,6,10,10 219:12 totality 209:21 totally 61:4 69:17 135:14 tough 51:15,16 tourists 192:23 touting 28:14 town 78:18 track 110:18 141:19 tracks 12:23,24,25 136:1,3 141:21,23 220:15 transcript 38:11 39:25 78:5 153:12 194:3,5 206:18 transcription 112:19 transcriptions 102:11 transferring 78:24 translation 185:11 trap 38:15,18,20 217:19 trapped 38:17 trapping 27:19,21,22 28:2 37:25 38:19 148:2,3 221:18 222:23 traps 27:20 travel 108:24 144:24 traveled 144:12 trial 8:6,6,14,17 9:20 9:21,22 10:6,8,13,14 10:17,24 16:18,19 18:17,19 20:12 24:3 24:4,6,12,12,22,25 26:2,9 28:5,8,11,24 29:8 36:13 37:12 38:6,8,9,10,12 39:10	39:18,25 44:3 47:15 47:23 51:2 53:21 54:7 56:25 58:10 61:12 65:19 66:6,8 68:7,17 72:15,16 78:6 79:8,13,14 82:3 83:14 89:10 93:19,23 94:1 95:20 97:14 100:2 102:1 103:3,8 104:6 120:9 121:6,9 125:19 132:11,11,14 132:19 133:3,25 134:4 135:1,3,6,9 140:3,5 143:22 152:20 153:12 154:3 157:6,11 164:8,8,9,17 165:17,19,19 169:24 170:6,14,23 171:2,5,7 172:3 173:12 174:9 174:10,18 175:4,9,10 175:15 176:6,13,19 183:19 184:2,4 186:18 189:7 196:25 197:2 199:6 208:25 209:1,5,8 216:12 217:5,9,24,24 218:20 219:6,11,17 221:2 222:11 223:10,23 trial's 133:11 tried 23:15 35:20 93:10 150:2 191:19 201:9 206:14 217:10 triple 76:16 troop 51:7 trooper 29:15 36:17 39:13,20 40:15,18 41:14,16 43:14,24 49:23 60:20 63:11,12 64:19 68:5 70:20 74:13 77:16,25 78:3 78:14,17 79:6,17 84:16 115:23 116:14 130:15 131:16 143:23 144:16 145:7 150:2 153:13,25 154:7 155:16,20 169:18 171:14 173:22 174:10 175:21 176:14 184:21 196:24 197:4 197:15,25 198:1 200:2,14 201:6,10,12 212:5 218:10 troopers 59:4 74:22,23 78:9,20,21,24 131:16 195:16 220:5,8 trooper's 41:23 trouble 183:16
---	---	--	--	---

true 7:14 8:8 12:19
 13:2 14:2 15:14 19:6
 26:19 29:16 30:18
 31:19 36:24 37:1
 45:1 50:2 58:15 59:7
 65:2 66:1,4,5 91:16
 120:24 123:3 135:5
 136:24 142:6 155:9
 155:10 189:22 192:9
 192:18 193:24
 201:10 202:17
 204:14 207:25
truth 121:8 172:3
 188:21 189:1,2,4,8,11
 189:17,20,24 191:7,8
truthful 204:11
truthfully 28:24
truths 189:14
try 5:17 8:10 15:6
 17:21 26:16 40:16
 50:18 77:22 85:22
 93:2,22 101:13 103:7
 112:6 118:23 121:25
 124:23,23 135:14
 151:13 158:20 159:4
 163:23 166:5 178:2
 180:8 199:4 209:2
 219:16 223:22
trying 9:11 16:20 22:7
 36:17 38:24 48:9
 53:19 55:20 56:17
 60:19 64:14 65:13
 67:21 79:11 97:19
 99:16 100:3 103:19
 108:20 112:13 122:9
 124:12 128:10 163:8
 199:16 200:20
 210:24 211:4 217:8
turn 5:18 31:14 81:22
 153:21
turned 8:25
turning 98:20 169:15
twice 52:25 108:23
twisting 115:20
two 6:5 9:17,19 16:14
 17:16 22:8 28:1,2
 58:9 67:4 98:21
 116:8 166:10 176:18
 190:22 199:13
 205:14 217:17
type 126:2 204:15,16

U

UCLA 88:2
ultimately 16:17 19:12
 53:12 57:6 67:24
 70:18
uncharged 157:14,14

unclear 113:9
unconscious 70:3
unconstitutional 67:17
underlined 107:17
underlying 178:16
undermine 211:8
understand 8:9 36:4
 37:7 52:2 66:19
 102:21,25 105:5,8
 113:17,19,19 122:9
 148:18 155:7 173:17
 173:18 178:20
 179:15 181:6,11
understanding 9:4,9
 10:1 15:16 18:21
 22:4,8 32:8,17 44:1
 75:5 96:13,14 156:9
 178:21,22 181:16
 192:13 216:18 222:8
understood 24:6,9,15
 166:24
undisputably 143:16
undisputed 96:10
 97:23
unfair 170:20
unfairness 210:21
unfortunately 224:10
unhappy 60:4
unique 136:5
unit 39:11 142:2,4,22
 142:25 143:1 149:25
 150:12 152:23 153:5
 171:13 210:13
 220:22
unjust 172:22 173:8
UNKNOWN 43:20
 76:13 81:21 98:13,18
 124:15,17 133:14,15
 169:9 171:4 179:2
 207:11,13,24 211:16
unnecessary 123:8
unrelated 60:22
unring 61:11
unsworn 27:10,16
upheld 126:25
upset 154:13,17 167:11
use 15:21 16:2 24:19,23
 25:2,4 29:17 30:3,9
 33:17 35:10 36:17
 45:25 73:4 76:23
 79:7 85:19 91:11,13
 107:25 121:22 136:7
 138:23 139:17,19,21
 140:10,10,19 145:14
 160:18 161:6 171:19
 172:20,22 180:11,23
 181:8,20 208:21
 211:7 219:19,25

usual 65:11,12
usually 47:19 86:6
 136:8 187:13
utilized 25:7 218:19
 219:4
utilizing 25:18

V

v 3:15 31:12 67:3 87:12
 203:7 222:6
valid 30:19
valuable 168:22
value 166:12 210:3
 211:4 213:14
vehemently 157:8
verified 11:16
version 28:17
versus 102:1 122:15
 126:8 151:10 153:9
 163:11 210:21
viable 9:21
Video 43:18,19
village 78:19
violating 32:4 108:19
 146:22 148:24 149:7
violation 35:17 38:23
 38:23 45:6,23 139:1
 160:19 193:6 221:19
violations 37:10,11,13
 108:18
vol 168:7
voluntarily 62:18
 113:22 114:1 115:21
 116:10 127:14
voluntary 168:8

W

W 7:5,10 11:19 12:14
 17:22 20:18 23:18
 24:17 31:15 77:19,20
wa 154:12
wait 16:17 42:13
 160:15 222:21
waived 54:20 55:8
 183:15 216:22
waiving 24:7
walk 87:3
walked 197:20
walking 197:12,24
want 6:4,11,22,22 8:13
 8:16 13:23 22:11
 26:17 43:20 57:1
 72:1,18 73:18 77:21
 80:24 85:18,18,22
 86:4 93:6 95:1 97:13
 97:13 101:19,20,20
 103:6 105:6 107:18
 140:8,10 154:11,12

160:9 161:16 163:15
 164:1 165:24 166:3
 166:14 167:18,23
 172:5 173:2 189:1,2
 189:24 194:18
 196:15 200:1 202:5
 212:9 219:16
wanted 8:17 19:23
 22:12 25:25,25 26:16
 27:2 30:8 38:12 46:6
 46:7,7,18,23,24 49:5
 56:5 59:2 61:6 65:15
 78:11 84:2,14 106:16
 109:6 114:2,15,17,20
 118:19 119:2,4 120:1
 120:1 122:25 140:25
 154:4,21,23,24 166:6
 175:13 176:23
 184:16 185:23,24
 201:14,21 202:22
 209:2 211:1 213:10
 213:16,18 214:2
wanting 56:19 70:13
 135:4
wants 26:10 57:3
 117:19 209:20
warnings 27:1
warrant 39:14 40:11
 127:12,16,18 128:22
 141:9,10 153:8
warrants 12:17 88:6
 131:16 142:22 153:4
 153:6,7
Washington 84:12
wasn't 8:14 9:1,9,12,15
 9:25 12:6 15:2 19:22
 23:25 29:4 33:10
 35:19,19 52:15,16
 54:13,17 55:20,20
 58:8 59:7,21 61:7,8
 69:24 70:3,3,4 72:11
 72:22 73:2 74:3 75:9
 75:11 79:4 91:18,22
 92:16 94:5 95:22,25
 96:17 97:23 99:6,16
 101:18 102:18
 103:21 104:3,4
 105:11,15 106:14,15
 111:6 115:8,12,14
 119:23 120:2 122:21
 124:8 136:4,20
 138:16 145:20 146:5
 148:10 155:1,1
 173:14,23 178:17
 190:3 192:9 201:10
 201:14 203:10,14
 207:5,5 208:3,8
 209:4,11 213:9

215:24 216:22
 222:25 223:8
Waste 163:11 222:6
wasted 61:2
watch 93:2
water 121:23
waters 38:15,22
way 4:9 7:3 14:4 22:19
 23:16 40:15 41:14
 43:7 57:2 73:23 86:9
 87:17 90:19 91:1
 93:25 97:12 103:11
 103:19,19 104:12
 107:14 111:13 112:1
 119:1 120:16,20
 143:8,12,13 144:20
 145:12 146:25 152:6
 152:11 155:16
 158:15,20 167:25
 168:1 174:13,14
 176:6 187:20 189:14
 190:16,17 196:1
 201:20 205:23
 210:15 218:9
ways 34:10,12,22
WC 18:3
WCP 192:25 221:14
WCT 37:10,14
week 88:19
weighed 101:24,25
Wendell 187:25
went 7:19 9:3 10:14
 12:25 13:3 22:13
 69:8,18,25 85:11
 93:4 94:1 106:18
 115:2 117:7 120:6
 121:9 122:7 123:21
 125:12 126:11
 129:13,14 132:17,19
 133:20,25 135:8
 156:20 157:7,20,22
 158:6,7 175:15
 176:17,18 188:16
 193:8,15 211:19
 216:12
weren't 30:3 53:18
 146:4 148:4 151:11
 154:17 158:25
 161:17 162:15
 193:18
West 88:3
Western 88:4
we'll 7:3 10:6 12:13
 29:14 113:4 121:21
 151:13 224:5
we're 3:14 5:19 8:5,5
 31:12 42:13 43:16
 49:21 67:2 76:13,15

<p>87:11 95:21 97:11 98:19 107:24 111:3 122:14,15 170:22 202:4,8,9,11 203:6 we've 3:18 4:8 5:2,22 41:15 45:22 75:8 86:18 115:24 202:15 211:25 215:13 219:15 wheel 152:22 When's 85:24 wheth 46:12 whipped 152:21 Whispered 6:23 122:12 156:17 169:13 211:18 whispering 3:8 70:19 116:2 143:25 170:4 207:24 224:20 whiz 152:22 Whoop 66:25 why'd 192:9 widely 193:12 widely-published 193:11 wife 116:8 willing 18:8 81:11 107:4 155:1 180:21 182:1 184:13 willingly 112:5 win 13:16 30:14,16,17 30:23 93:23 94:2 103:2,2 135:14 145:18 wind 94:4 window 53:20 113:10 wintertime 115:12 wishy-washiness 207:22 withdraw 72:6 75:24 75:24 witne 120:21 witness 3:5 5:3,10 18:5 18:7,11 28:25 60:20</p>	<p>148:24 149:7,14,15 190:2 192:19 198:7 204:22 205:25 207:2 217:19 219:14,15 220:12 wolves 18:2,9 19:8 20:23 27:4 36:8 39:9 41:16 42:4,6 45:8,11 50:21,23 55:5,10 64:24 65:13,16 68:4 68:9,18 83:20 84:1,2 84:4 142:4,7,15,17,21 142:24 143:13,14 144:2,11,23 146:4,12 147:2,11,13 148:5 149:4,9,12,16,19 150:3,21 151:4,7 153:14 154:1 155:21 169:19 170:7,24 171:12 172:12 174:10 176:7 177:15 177:20 178:10 190:6 190:25 191:2,4 192:23 209:25 210:3 210:6,21 211:3 213:11,14,15 219:18 219:21,22 220:8,10 221:1 woman 84:20 197:22 wonder 179:16 wonderful 104:11 wondering 93:16 word 13:21,21 102:7 115:7 153:8 words 9:13 13:14 29:3 38:15 43:6,8 83:25 86:8 95:11,25 96:17 97:23 106:9 110:7 125:23 129:12 132:15 135:13 142:17 154:17,21 168:5 172:23 184:1 187:9 206:3 211:2 220:14</p>	<p>32:13 33:6 44:5,7 50:9 61:23,24 71:7 71:16 95:22 96:4,4 106:12 111:9 113:11 113:15 114:23 123:6 125:4 139:9,17,18 143:3,10 150:18 154:16 184:6 196:18 199:7 221:14 wrapping 76:17 write 142:25 writing 71:23 177:14 196:17 written 89:7,11,11 187:23 188:1,3,4 201:16 wrong 11:21 112:5,6 120:6 152:1,6,10,18 152:24 154:11 155:22,24 172:8 173:7 190:6,15,17 193:3 209:3 220:23 wrongdoing 158:1 wrote 192:4</p>	<p>132:12 133:15 142:12 145:17,23 151:1 152:2 153:2,7 153:24 155:15 157:25 159:2,24 164:16 165:10 166:17,24 167:14 168:25 170:1 171:4 172:1,17 173:6 180:24 182:25 183:4 183:17 186:3 187:8 192:8 193:12,22 195:15 198:5 199:3 199:15,19 201:13 202:2,11 203:13,23 204:9 205:1,2 207:13 208:3 211:6 212:15 213:2 214:1 215:23 216:20 222:12 223:7 223:16,18 224:4,12 224:12 225:5 year 21:14,17 60:14 61:14 62:7,20 63:6 84:11 113:8,10,16,22 113:22,25 115:6,9,10 115:11,12,13,22,25 116:16,18 117:14,14 118:9 119:18 120:20 152:20 164:10 167:9 167:17,23 168:8,16 184:18,22 199:21 years 26:24 47:25 52:7 52:10,12,13,14 63:5 91:5 160:15 173:11 173:15 205:1 year's 168:6 Yup 100:12 207:11 225:3</p>	<p style="text-align: center;">0</p> <p>04 16:11,12 05 16:13</p> <hr/> <p style="text-align: center;">1</p> <p>1/25/05 107:9 1:00 86:25 116:23 118:11 10 24:18 29:6 52:13,14 89:5 160:15 202:12 10:05 5:1 11 29:6,13 30:11 11th 83:7,13 11:00 69:6 123:17,20 123:21 12 30:11 1262 78:6 1263 78:6 1295 98:20 13 30:24 31:15 14th 49:3 15 89:5 16 76:16,19 19 7:2 41:15 126:22 172:12 19-B 146:5 19-C 39:11,24 41:13 68:5,6 143:1 146:5 153:5,9,14 154:5 170:7,24 172:6 173:23 174:10 220:23 19-D 39:11,24 40:4 41:11,13 45:9 68:6 68:12 153:9 154:5 172:5 173:24 174:11 219:16 221:10,10 1909 126:19 1972 52:24 1974 51:21</p>
<p>61:23 63:9,10 64:3 89:1,1,14 93:6 132:16 187:20 197:25 198:1,2 200:14 witnesses 4:13,13 20:12 61:21 88:19 112:4 120:22 157:25 188:4 188:21 189:23 198:24 217:16 wolf 12:1 36:3,21 37:22 64:25 66:21 68:24 83:24 108:21,24 143:25 146:22 148:5</p>	<p>work 7:3 52:4,8,9,15 52:20 91:12 125:5,16 187:13 214:23 215:1 217:10 222:16 worked 22:9 36:21 51:25 52:22,23 80:15 222:17 working 17:11 27:20 55:22 114:4 115:5,13 works 43:7 80:13,13,15 224:11 worse 19:16 124:8 worth 50:17 115:11 wouldn't 29:25 32:11</p>	<p>69:10 71:5,19 73:15 74:8,16 75:20 76:21 78:4,9,13 79:3 83:22 87:4,7,21 88:2,14 89:3 90:13,16,22 91:9,11 93:9 94:11 94:13,18,23 102:21 102:25 105:3 106:20 106:23 107:10,19 109:7,25 110:10 111:15,25 113:19 117:9 119:5 124:4 126:20,22,24 127:6 128:19 131:24 132:4</p>	<p>175:19,19 176:2,4,12 176:24 177:9,13,18 178:16 198:19 219:12 Zellers 7:23 28:3,7,14 28:20 29:22 35:10,11 63:8 68:9 114:3 152:10 177:2,22,25 178:7 183:2 187:24 198:11,14,14 199:6 218:6,7,10,14 Zeller's 176:10 177:11 177:21 zone 83:21 221:3,14,15</p>	<p style="text-align: center;">2</p> <p>2:00 69:25 2004 14:4,17 15:2 161:17 2005 15:15 16:8 32:1 47:23 49:3 83:14 165:23 2011 5:2 225:1 22.15.060 131:5 23 38:11,12 24 38:12 25 175:22 26th 164:15</p> <hr/> <p style="text-align: center;">3</p> <p>3KN-10 98:19 169:15 3KN-10-1294 169:16</p>

3KN-10-1295 3:15
31:13 43:23 67:3
87:11 122:14 133:17
203:7
30(d)(1) 4:18
310 4:24
318 107:7

4

4:25 224:25
478 40:1
479 40:1

5

500 108:24
56 57:25

6

6th 32:1
601 4:25

7

72 52:25
73 52:25
74 51:24

8

8 37:16

9

9th 5:1,2 224:25
9:30 90:15
91-C 171:13
99568 107:7



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

DAVID S. HAEG,)
)
 Applicant,)
)
 v.)
)
 STATE OF ALASKA,)
)
 Respondent.)

Trial Court No. 4MC-04-00024 CR
PCR Case No. 3KN-10-01295 CI

DEPOSITION OF BRENT R. COLE

FEBRUARY 7, 2012

APPEARANCES:

FOR THE APPLICANT: DAVID S. HAEG
In propria persona

FOR THE RESPONDENT: A. ANDREW PETERSON
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PURSUANT TO NOTICE, the deposition of BRENT R. COLE was taken on behalf of the Applicant, David Haeg, before a Notary Public in and for the State of Alaska at 32283 Lakefront Drive, Soldotna, Alaska, 99501, at the hour of 10:00 o'clock a.m. on the 7th day of February, 2012.

* * * * *

TABLE OF CONTENTS

	<u>PAGE(S)</u>
Examination by Mr. Haeg	4, 175
Examination by Mr. Peterson	170
<u>EXHIBITS:</u>	<u>IDENTIFIED</u>
A - E-mail	161

P R O C E E D I N G S

1
2 (On record)

3 MR. PETERSON: Why don't we go around the table and
4 identify everybody who's.....

5 MALE: Hold on here.

6 MR. PETERSON: Okay. So let's go around the table and
7 identify everybody who's here. Andrew Peterson with the
8 Office of Special Prosecutions. We have Lieutenant Chastain
9 with the Alaska Wildlife Troopers.

10 MR. HAEG: David Haeg.

11 MR. STEPENOSKY: Tom Stepenosky.

12 MR. ZELLERS: Tony Zellers.

13 MR. COLE: Brent Cole.

14 MR. DOOLEY: Ken Dooley.

15 MR. BRUMMEL: Dave Brummel.

16 MR. PETERSON: Okay. And so we're here for the deposition
17 of Brent Cole in the matter of Haeg versus State which is a
18 PCR case. Just got to figure out what number this is. I
19 didn't know if I have one in the file or not so -- but Mr.
20 Haeg's PCR case here in Kenai. So, Mr. Cole, you want to
21 raise your right hand?

22 (Oath administered)

23 MR. COLE: Yes, sir.

24 MR. PETERSON: Anything else?

25 MR. HAEG: I think that'll work.

1 MR. PETERSON: Okay. So this is your deposition, Mr.
2 Haeg, kind of the same ground rules we had before. I would
3 ask that you try to ask direct, non-leading -- well, direct
4 questions. Try not to testify. I know it's -- I know you're
5 not a trained attorney, as you've indicated before, but let's
6 focus on, if we can, the issues that pertain to your PCR claim
7 which is why we're here and, I mean, I always say this is
8 limited to a set period of time. The state's going to need a
9 little bit of time to redirect so, hopefully, we can finish
10 this up rather efficiently.

11 MR. HAEG: Well, I'll -- like I said, I have got my.....

12 MR. PETERSON: It -- it's your day.

13 MR. HAEG: Yup.

14 MR. PETERSON: Okay.

15 BRENT R. COLE

16 called as a witness, testified as follows on:

17 EXAMINATION

18 BY MR. HAEG:

19 Q Yeah, Mr. Cole, did you represent me for a -- in 2004, I
20 believe it was, for wolf control over -- or a case
21 involving wolf -- what was done to wolves?

22 A A criminal case?

23 Q Yeah.

24 A Yes. Yes.

25 Q Okay. I guess I was going to ask a couple other

1 questions here too. Have you ever been arrested?

2 A What relevance is that?

3 Q Well, I read this thing on how to do depositions and it
4 said -- anyway.....

5 A It's none of your business.

6 Q Okay. Ever been convicted?

7 A None of your business.

8 Q Okay.

9 MR. PETERSON: And, again, he's indicated he's going to
10 tell the truth. I mean, I'd ask that you focus on the stuff
11 that pertains to your PCR claim. His prior criminal history
12 or conviction history has no relevance.

13 MR. HAEG: Well, we don't necessarily know that.

14 MR. PETERSON: Well, you can do a criminal search or do
15 whatever you want to do to find it.

16 MR. HAEG: Okay. All's I know is I looked up how to do
17 depositions and it said that's the first thing you start off
18 with so.....

19 MR. PETERSON: Yeah.

20 MR. HAEG:I just -- like I said, I'm not an
21 attorney.

22 Q Do you believe the U. S. Department of Justice is
23 investigating my case?

24 A I have no idea.

25 Q Okay. You have no indication that they are then?

1 A I have -- my response is I have no idea.

2 Q Okay. No idea. And nothing has occurred to lead you to
3 believe that?

4 A No.

5 Q Okay. Do you believe that I've been meeting with the
6 Department of Justice?

7 A What does this have to do with the deposition? I mean,
8 you're going to have to ans -- ask me questions about
9 your PCR. I'm not going to go into a whole list and
10 litany of topics that you want that have nothing to do
11 with your PCR. If you think I'm wrong, call the judge.
12 I have -- I have no idea what you're doing.

13 Q Okay. I actually wanted to talk to you beforehand but in
14 return for immunity, are you willing to testify that the
15 state would sanction you for advocating for me while you
16 representing me?

17 A I -- I don't know what you're talking about.

18 Q Okay. So you wouldn't or (simultaneous speaking).

19 A I don't know what your question means. No, I can't
20 answer either because I don't know what your question
21 means.

22 Q If you were given immunity.....

23 A For -- from who? From what?

24 Q The U. S. Department of Justice.

25 A I'm not answering any questions involving the Department

1 of Justice, David.

2 Q Okay.

3 A You got questions about my representation of you, go
4 ahead. This is your opportunity.

5 Q Well, I'm just trying to cover all the bases that -- at
6 fee arbitration that I filed against you, did you express
7 a concern I was taping the proceedings?

8 A No, I knew you were taping the proceedings. The tape
9 recorders were out on the desk.

10 Q Okay. You didn't express a concern that I was doing so?

11 A What -- what are you talking about, express a concern?

12 MALE: We're asking for your response.....

13 A No, you're not the person that asks me questions. Okay?

14 MALE: Let's not get argumentative here.

15 A No. I am. No, this is David Haeg's.

16 Q Let's.....

17 A If you got a problem with that, step out. He gets to ask
18 me questions and nobody else does.

19 Q And could you please answer them?

20 A If you can give me a question that I can answer, I'd be
21 happy to.

22 Q Did you express a concern that I was taping the fee
23 arbitration proceeding?

24 A What's -- what do you mean by a concern? Was it
25 negative? Did I not want you to do that? Did I

1 (simultaneous speaking)?

2 Q Correct, you did not want me to do it because you didn't
3 know where the tapes would go.

4 A No. I don't remember that. I have no idea.

5 Q Okay. You don't remember that? Okay. Was the
6 proceedings taped by the Bar Association?

7 A It was -- it was supposed to be taped and it was supposed
8 to be a confidential meeting and I think I did express a
9 little bit of a concern that you would distribute it and
10 I think you were sanctioned by Mr. Metzger in the course
11 of that and told that it was a confidential proceeding
12 and you were not to distribute it. So I think that I did
13 now that my recollection.....

14 Q Okay. And was the proceeding taped by the Bar
15 Association?

16 A It was supposed to be.

17 MR. PETERSON: Okay.

18 Q What happened.....

19 MR. PETERSON: Mr. Haeg, I want to.....

20 A ... What does this have to do.....

21 MR. PETERSON: What relevance does this have to do with
22 the PCR?

23 MR. HAEG: I.....

24 MR. PETERSON: Your represent -- Mr. Cole represented you
25 from April of 2004.....

1 MR. HAEG: I thought this is my opportunity to build the
2 case that I didn't get effective representation.

3 A Your opportunity is to grow your PCR.

4 MR. PETERSON: With respect to the time he represented you
5 and.....

6 MR. HAEG: It also boils down to what happened afterward
7 when the cover-up started for what occurred.

8 MR. PETERSON: He was not representing you at that time.
9 If you disagree with that.....

10 MR. HAEG: If he's covering up.....

11 MR. PETERSON:you're entitled to call Judge Bauman
12 and ask for clarification.

13 MR. HAEG: No, the rule is is he answers the question and
14 afterward, then it can be presented to the judge as to be.....

15 A No, I'm not doing that.

16 MR. HAEG: That is the way it is. I -- I'm -- that's the
17 rule. Is that -- am I wrong?

18 MR. PETERSON: You are. He's not going -- if he's not
19 going to answer the question, you can't force him to. He said
20 he's going to answer.....

21 MR. HAEG: I can ask the question though.

22 MR. PETERSON: And he will not answer it.

23 MR. HAEG: Okay.

24 Q Did those -- did the tape recordings made by the Alaska
25 Bar Association end up blank?

1 A I don't know.

2 Q Is it possible?

3 A I'm not going to ask questions about -- answer questions
4 about things other than a -- on your PCR. I -- pull out
5 that PCR that you filed and in areas where you have
6 listed my name, you can ask me questions about that and
7 I'll answer it. This is for your PCR. This is not a
8 general deposition for -- you can go on a wild goose
9 chase.

10 Q Is it true the state bent over backwards to make an
11 example of me for political reasons?

12 A I have no idea.

13 Q So you never made a statement like that?

14 A I -- I didn't represent you.

15 Q You didn't represent you?

16 A I didn't represent you at your sentencing. You decided
17 that you didn't want a one-year license revocation. You
18 were going to have your license back by.....

19 Q Didn't I.....

20 A ~~Just listen to me. You were going to have your license~~
21 back on June -- July 1st, 2005. You were going to be
22 guiding July 1st, 2005 and you decided you weren't going
23 to accept that. What happened after you fired me is on
24 you.

25 Q Did I give up guiding while you represented me?

1 A I -- I advised you to give up -- to not guide in the fall
2 of 2004.

3 Q Did I -- did you get an agreement from the state that I
4 would get credit for that?

5 A You were getting credit as part of our deal, yes.

6 Q How come I never got credit for that though?

7 A Because you didn't take the deal, David. It's not -- if
8 you'd have taken the deal, you would have gotten the
9 credit. You decided not to take the deal.

10 Q And what was the deal?

11 A The deal was you were to get -- and it's clearly outlined
12 in my testimony in fourth fee arb but my recollection is
13 it was five counts. You were going to get a thousand
14 dollars with 500 suspended on each count. So it was like
15 \$5,000 with 2,500 suspended. So that avoided the \$1,000
16 penalty. You were going to get 60 days with 55 suspended
17 on each count so that was going to avoid the five-day
18 penalty. You were going to forfeit the bat mobile or
19 whatever you called that plane and you were going to get
20 a license revocation that was going to be 36 months which
21 was suspended for 24 months. So you were only going to
22 serve a one-year license revocation and initially, it was
23 going to be September 1st and we pushed that back to, I
24 think, July or June 1st. I think it was July 1st but it
25 may have been June 1st. You were going to do 250 hours

1 of community work service. I can't remember if there
2 were surcharges back then and you were going to be on
3 probation for, I think, seven years, no hunting and
4 fishing violations and I think that we had arranged that
5 it was no trapping for that period of time because you
6 didn't care, that you didn't want to trap anymore anyway.

7 Q Okay. So listen, the state filed.....

8 A I -- I'm not done yet. I'm not done yet.

9 Q Really?

10 A Yeah.

11 Q Well, I think you've answered the question.

12 A Are you sure?

13 Q Yup.

14 A That was the deal that we agreed to on November 8th,
15 2004, the night before the arraignment and that was the
16 deal that we had until you fired me later that month when
17 you learned that the state was not going to exchange the
18 Super Cub for the PA-12; your modified PA-12. I think
19 that's about -- that encompasses it but I will tell you I
20 had a better recollection of all this when I did my.....

21 Q Eight years ago.

22 A No, when I did my sworn statement in front of the fee arb
23 people and probably agreed -- I would agree with that,
24 eight years ago also.

25 Q Okay. Did the state file lesser charges and then later

1 on, increase the severity of the charges?

2 A The state filed the same charges but under different
3 provisions of AS 08.54.720. The original ones that you
4 were going to be arraigned on only called for a one-year
5 minimum loss of your guiding privileges. They later
6 filed a amended complaint and my recollection is -- and I
7 don't have it in front of me so you'd ha -- the best
8 evidence would be what is on -- in the file but my
9 recollection is they changed it to A-15 from A-8 and I
10 think that required a minimum three-year loss of your
11 guiding license, yes.

12 Q Sure. The answer's yes. Why did they do that?

13 A Because you had expressed an interest in going open
14 sentencing which I told you never to do in order to try
15 to get back your plane and when I originally broached
16 that with the state, they said yes and then they said no
17 and then I think they filed it like the Friday before the
18 Thursday -- or the Tuesday arraignment and I think you'd
19 have to talk to them as to why they did that.

20 Q Okay. Did you protest that?

21 A No, because it didn't make any difference, we had a deal
22 that night. There was no reason to.

23 Q Okay. So it's your testimony we had a deal on the night
24 of November 8th?

25 A I thought we had a deal, yes. I thought we had a deal.

1 We were -- on the 9th, we conveyed to the court that we
2 had a deal and we needed to get it checked out with the
3 Dep -- Occupational Licensing and -- and we were still --
4 we were working on getting some of your stuff back or
5 something like that. You had some bunny boots in the
6 plane. There was some personal stuff you wanted back and
7 we were.....

8 Q Okay. Did I ever ask you to.....

9 A No, no, wait. No.

10 Q Did I ever ask you for a (simultaneous speaking).

11 MR. PETERSON: Please allow him to finish the question.

12 A I'm -- no, I'm not done yet. And then there was also
13 this issue of -- that you kept harping about, well, what
14 about getting the plane back and so we were -- and they
15 hadn't turned us down at that point so we were still
16 working on trying to get your PA-12 back from the state.
17 So it wasn't -- I thought we had a deal. It wasn't in
18 writing but I thought we had a deal. We discussed it.
19 We went out and had beers that night. We ate at the Brew
20 House. We went over to your hotel. We had beers. We
21 didn't have to go out to McGrath. Everybody was happy
22 and so yes.

23 Q And so our conversations at the time would lead anyone to
24 believe that we had a deal on the night of November 8th?

25 A I -- I thought we did.

1 Q Okay.

2 A That was my impression, yes.

3 Q Why didn't you enforce the deal I thought we had?

4 A We talked about that on a number of occasions and, as I
5 told you and I'll tell you again and I told you and it's
6 in the tape recorded proceedings, I -- you could have
7 done that but the minute you did that, what would that
8 do? That would put you in open sentencing on -- to get
9 your airplane back. You wanted to go open sentencing and
10 I'm like David, do you really want to be open sentencing
11 when you've gone out as a guide with an assistant guide
12 and killed wolves and falsified documents and lied to
13 people and then go in front of a judge with the fact that
14 they thought you guys had same day airborne a moose as a
15 guide and as an assistant guide. Do you want to go in
16 front of a judge in open sentencing when all the judge
17 has to do is give you \$1,000 -- more than \$1,000 fine on
18 any count or more than five days in jail on any count and
19 then you would lose your guide license for five years
20 which you continually told me was unacceptable. You were
21 not going to lose your guide license for five years and I
22 repeatedly told you then if you don't want to lose your
23 guide license for five years, don't file the motion to
24 enforce. You had every opportunity to file the motion to
25 enforce the plea agreement when Mr. Robinson hired you

1 and I told that to the investigator.

2 Q Okay. Is it my decision to ask you to enforce a plea
3 agreement or your decision?

4 A It's ultimately the client's decision and -- but you.....

5 Q And you are stating here under oath that I never asked
6 you to enforce the plea agreement?

7 A You asked me to enforce the -- and I -- we would -- then
8 we would go into this argument where I'd say David, okay,
9 I'll do it. Where is that going to get us? Okay?
10 Here's what we would say -- you would say I really want
11 to do it, I'm a fighter, and you sat right there and I
12 said really, you want to fight this. Okay? So what are
13 we going to do? We're going to enforce this plea
14 agreement and I told you time and time again in front of
15 open sentencing, in front of judges which you later found
16 out because you wouldn't listen, open sentencing in front
17 of judges, this -- the judges look at the state, they
18 look at the troopers and they accept them nine times out
19 of 10 and I knew that Scott Leaders was going to ask for
20 ~~more than a thousand dollars in fines and more than five~~
21 days in jail on each one of those counts which was going
22 to mean that a judge, faced with that, was going to give
23 you one of those two and take away your guide -- your
24 hunting privileges and that meant you were going to lose
25 your guide license for five years which you told me from

1 the beginning you didn't want to happen. I told you. So
2 we would sit down and you would say well, why can't we
3 enforce this, why can't we enforce this and I'd say.....

4 Q Can we (simultaneous speaking) or is this.....

5 A No, I'm answering this.

6 MR. PETERSON: You've asked him a direct question. He's
7 entitled to answer the question.

8 MR. HAEG: Can he just talk for the whole time?

9 MR. PETERSON: If his answer is non-responsive.....

10 A I may tell you.....

11 MR. HAEG: If it's non-responsive.....

12 MR. PETERSON: It is responsive. You asked him.....

13 A You asked me.....

14 Q Okay.

15 Aand so I would say okay, what are we going to do,
16 are you going to file this. If we file it, then we're
17 going to be in a position where I'm calling Scott Leaders
18 a liar, he -- we're both filing affidavits. He's going
19 to say there's no deal. A judge is going to make the
20 decision and then we're left at the mercy of Scott
21 Leaders when I've got a deal negotiated for you and every
22 time we had that conversation, you would say okay, I
23 don't -- you never said I have to have this thing filed.
24 You always wanted the deal. You wanted to not lose your
25 guiding license.

1 MR. PETERSON: And, for clarification, what deal, enforce
2 what plea agreement are we talking about?

3 A David wanted.....

4 Q I thought I get to ask the questions here.

5 MR. PETERSON: Do you want -- I'll do it later but I just
6 want it to be clear on the record.

7 MR. HAEG: Okay. That's cool.

8 Q Did you and attorney Kevin Fitzgerald work together on my
9 case?

10 A He didn't do that much. I did most of it.

11 Q Okay. But you worked together on the case?

12 A Kevin Fitzgerald represented Mr. Zoeller. I did 90
13 percent of the case. I would check in with Kevin. When
14 the moose case came out, we -- we talked about the
15 evidence against both Mr. Zoeller and you and were
16 comfortable that the state would not be able to prove its
17 case against you if it went to trial but that's the
18 extent of it. We were counsel for individuals that were
19 charged with the same offenses.

20 Q ~~Did you call Kevin Fitzgerald to testify during fee~~
21 ~~arbitration?~~

22 A I'm not talking about fee arbitration.

23 Q Did you testify truth -- since you brought the fee
24 arbitration, can I ask you about it now then?

25 A No, I'm not talking about fee arbitration.

1 MR. HAEG: Well, he opened the door. Am I allowed to
2 question things he opens the door on?

3 MR. PETERSON: This isn't trial where a door gets opened.
4 We set the ground ru.....

5 MR. HAEG: So I can't -- you guys decide what I get to ask
6 questions about, is that what you're saying?

7 A No, you can call the judge if you don't think I'm doing
8 it right. Call the judge.

9 MR. HAEG: No, what happens is is I get to answer the
10 questions and he has to answer them and then you can protest
11 it.

12 MR. PETERSON: Unless he refuses to answer questions.
13 This subpoena.....

14 MR. HAEG: Okay.

15 MR. PETERSON:is for your PCR.

16 Q Have you.....

17 MR. PETERSON: If you disagree with that limitation, call
18 Judge Bauman.

19 Q Have you testified truthfully about my case in the past?

20 A Yes.

21 Q Has Kevin Fitzgerald testified truthfully about my case
22 in the past?

23 A I -- I -- I can't speak for Kevin. You need to talk to
24 him.

25 Q Was he your witness?

1 A I'm not going to go into the fee arb. Okay? I'm tired
2 (simultaneous speaking).

3 Q We're not talking about the fee arbitration.

4 A Yes, you are. That's exactly what you're talking about.
5 The only time there was any testimony given by me or by
6 Kevin was in the fee arb. That's all you're talking
7 about.

8 Q Was it about my case?

9 A I'm not talking about the fee arb.

10 Q I'm talking about my case and how you represented me.

11 A I wasn't representing you at the fee arb.

12 MR. PETERSON: Is there a question pertaining to his
13 representation during.....

14 MR. HAEG: Yeah, it's getting there. I'm trying to set
15 the stage like you do.

16 Q Has Kevin Fitzgerald testified at your request about my
17 case?

18 A I'm not talking about the fee arb.

19 Q Have you testified that I had immunity for a statement
20 that I made?

21 A I'm not talking about the fee arb. If you want to talk
22 about the fee arb, go read the fee arb.

23 MR. HAEG: I guess we can call this off because this is
24 about my case where he had me go in and give an immunized
25 statement and he testified ahead (simultaneous speaking) about

1 that.

2 MR. PETERSON: Why don't you ask about that?

3 MR. HAEG: I just did and he said I'm not going to testify
4 about my immunized statement.

5 MR. PETERSON: Ask him about what happened in July of
6 2004.

7 Q While you were representing me.....

8 A Yes? That's all you got to do.....

9 Qdid you.....

10 Aask questions about what I represented you, David.

11 Q Did you.....

12 A I know he's calming you down. It's okay. I understand.

13 Q Okay. I know, you're kind of excited too.

14 A Oh, not really. I -- I'm actually looking forward to
15 this.

16 Q Okay. Did you testify I had immunity for the
17 statement.....

18 A I'm not going to talk about testimony.

19 MR. PETERSON: When he represented you.

20 A Ask me questions about when I represented you, David.

21 Q When you represented me, did you have me give an
22 immunized statement?

23 A Yes. I didn't have you do anything, you chose to do
24 that.

25 Q I chose to make a statement?

1 A Yeah, that was a choice you made.

2 Q Did you tell me that the state required me to make a
3 statement?

4 A Yeah, if you didn't want to lose your guide license and
5 be shut down in Aug -- in April and May of 2004, you had
6 to give a statement, you're right. That was your choice.

7 Q Did I have immunity for that statement?

8 A Yup. I -- I believed you did and I confirmed it in a
9 letter to Mr. Leaders. (Simultaneous speaking).

10 Q And what did that immunity mean?

11 A It meant that they couldn't use that statement against
12 you in your case, in your trial.

13 Q But they could use it everywhere else but the trial?

14 A That's right.

15 Q What law or rule says that?

16 A I don't know. That's the way I understand immunity.

17 Q Okay. You don't unders -- you don't believe that in the
18 State of Alaska when you're given immunity, it's called
19 transactional immunity?

20 A There's different types. There's use immunity and
21 there's transactional immunity and a.....

22 Q In this state, what kind of immunity can be given?

23 A Transactional.....

24 Q Okay.

25 Aand it's for all your crimes. It's not just for

1 what -- it's -- the difference -- do you know the
2 difference between transactional and use immunity?
3 Q I'm trying to ask an attorney -- I get to ask questions
4 here.
5 A Okay.
6 Q So you testified that I had transactional immunity.
7 A You had what we call king for a day, immunity for that
8 statement. You could go in and testify and it would not
9 be used against you.
10 Q Why was the statement used to justify the charges against
11 me in every information including the two that were filed
12 while you were my attorney?
13 A David, it didn't make any difference, we had.....
14 Q I'm not asking what it -- made difference. Why was it
15 used?
16 A You need to talk to Scott Leaders.
17 Q As my attorney.....
18 A He's the one who took -- he's the one you told of.....
19 Q As my attorney, are you supposed to exercise my rights to
20 protection?
21 A I -- and I did.
22 Q Why didn't you.....
23 A Yes. Yes, I did.
24 Q So you're saying that you exercised my right not to have
25 my statement used against me? Is that what you're

1 testifying?

2 A Yes. Yes. I wasn't your attorney at the trial.

3 Q Were you my attorney when information number one and

4 information number two were filed?

5 A Yeah.

6 Q And you're saying my statement was not used in those

7 informations?

8 A I have -- maybe it was. That's not uncommon. That's not

9 the question. The question.....

10 Q Was that allowed?

11 A Yeah, I think it was.

12 Q You think it was allowed for them to use my statement to

13 justify the charges?

14 A What difference does it make, David? What difference

15 does it (simultaneous speaking).

16 Q I got screwed out of a fair trial. That's the

17 difference.

18 A No, you didn't.

19 Q Yeah.

20 A It wasn't used at your trial. Your statement wasn't used

21 at your trial.

22 Q Okay. At the statement I made, did I make a map? Did

23 Scott Leaders.....

24 A Yes.

25 Q Okay. Was that map allowed to be used against me at

1 trial?

2 A I have no idea. I wasn't your attorney then.

3 Q No, I'm saying when I made the map under your tutelage,
4 could they use that map against me ever?

5 A I don't know. I -- I didn't think they could. I didn't
6 think they could but I wasn't your attorney at trial.

7 Q Why did they use it against me?

8 A I don't know. Ask Chuck Robinson. I wasn't your
9 attorney, remember?

10 Q Okay.

11 A You fired me.

12 Q When you were my attorney, why did they -- you let the
13 State of Alaska release my statement to the Anchorage
14 Daily News and let it be published in all the major
15 newspapers?

16 A I don't -- I wasn't -- I wasn't your attorney. I had no
17 control over what Scott Leaders did or what the troopers
18 did. I -- what could I do? Tell me what I could do.

19 Q Could you have filed a motion to suppress my statement?

20 A No.

21 Q Okay. You could not file a motion to suppress my
22 statement? (Simultaneous speaking).

23 A Well, for what?

24 Q If you get the.....

25 A What -- for what?

1 MR. HAEG: Are you here listening to this?

2 A David.

3 MALE: I'm here to make sure that people behave
4 themselves.

5 MR. HAEG: Okay.

6 A David, what would you want me to file the motion to
7 suppress for? What was the grounds?

8 Q Use of my immunized statement.

9 A No, I could not have file.....

10 Q Could not?

11 A A motion to suppress is for a trial, what evidence gets
12 presented at trial. I could have filed a motion to
13 suppress your statement at trial but you fired me, number
14 one, so I didn't -- and you had that opportunity with Mr.
15 Robinson. He -- if anybody was going to file it because
16 you wanted a trial, it was Mr. Robinson. I could not
17 file a motion to suppress your statement because they
18 distributed it to the newspaper.

19 Q Okay. How did you exercise my rights?

20 A I don't know what that question means. What do you mean,
21 exercise your.....

22 Q My right against self-incrimination.

23 A I confirmed it in my letter to Scott Leaders in November,
24 2004.

25 Q Why didn't you do anything when they violated my

1 right.....

2 A Well, I don't know what.....

3 Qwhile you represented me?

4 A I don't know what I could have done. The -- the -- the
5 suppression motion that you wanted, David, is only for
6 evidence to be presented at trial and so.....

7 Q So you're telling me -- okay. You got anything further?

8 A No.

9 Q Okay. So what you're telling me is they could use my
10 statement against me for going to find other evidence
11 before trial?

12 A I think that's a hypothetical that -- I don't know the
13 answer to that.

14 Q Okay. As my attorney or back then as my attorney, were
15 you supposed to know that?

16 A That's a very complex question that is not easily
17 discernible just sitting here.

18 Q Because I.....

19 A I think it's a -- I -- quite frankly, I think it's a --
20 it's a hypothetical that is -- never came to fruition so
21 I don't think there's any reason to even consider it.

22 Q Because you were my attorney when I was given immunity,
23 shouldn't it be your duty as my counsel to know that?

24 A You know, as lawyers, we like to think we know all the
25 answers but there's just a lot of issues out there that I

1 cannot give you a definitive answer on as we speak.
2 That's why we have a sup -- court of appeals. That's why
3 we have a supreme court. There are issues out there that
4 get resolved. They take briefing. I don't know as I sit
5 here right now what the answer to that question is.

6 Q Okay. Did you ever object to the use of my statement?

7 A I represented you at one hearing. I didn't object at
8 that -- at that hearing, no.

9 Q Could you have asked for a different hearing or filed a
10 motion without a hearing to object to the statement?

11 A Yes, I could have.

12 Q Why didn't you?

13 A For the same reasons we talked about all along. I
14 thought we had a deal on November 9th and I didn't think
15 it was necessary to muddle it up and, by filing that
16 motion, I would be only endangering the deal that was
17 going to get you guiding on July 1st, 2005 and I didn't
18 want to endanger everything we'd worked for for six
19 months and I -- you didn't either is my recollection.

20 Q ~~Did I ever object to them using my statement to you --~~
21 did I ever object to you that they were using my
22 statement?

23 A I think you said something about it, yeah.

24 Q And why didn't you do anything when I objected?

25 A Because to me, they could -- okay. So -- so I object.

1 What -- what -- where does that get us? They just re-
2 file an amended complaint charging you with the
3 information contained from the troopers' investigation
4 which clearly supported all 12. Then they don't use your
5 statement, they go to trial so it wouldn't have put you
6 any further.....

7 Q Could you have filed a motion of prosecutorial misconduct
8 that they could never charge me again?

9 A No. I don't believe so. Not in my opinion.

10 Q Okay. And it's not your opinion that transactional
11 immunity prevents all prosecution no matter what other
12 evidence there is? Is that what your testimony is?

13 A You know, I don't -- I think I -- I don't think that's
14 right that it's -- that it was transactional immunity, I
15 think it was only use immunity that you had.

16 Q Are you saying that in this state, they allow use
17 immunity?

18 A I think there's oppor -- there's -- there's -- people can
19 make agreements. I'm not sure on what the answer is on
20 that but I knew they couldn't use your statement at the
21 trial and they didn't and that's what I interpreted it to
22 mean and I think that's what the letter said. Do you
23 have the letter that I sent to Mr. Leaders?

24 Q Why.....

25 A Do you have the letter that I sent to (simultaneous

1 speaking)?

2 Q I get to ask the questions, Mr. Cole.

3 A I'd like to see the letter that I sent to Mr.

4 Q I get to ask the questions, I believe.

5 A Okay.

6 Q Why did they use the map that you had me make against me
7 at trial?

8 A I don't know, you have to ask Scott Leaders and your
9 attorney, Chuck Robinson.

10 Q Why did they use the statement I made to justify the
11 charges against me while you were my attorney?

12 A You need to ask Scott Leaders. He's the one who made
13 that decision.

14 Q Was it not your duty as my counsel that I hired for \$200
15 an hour to tell me my rights of what I could do?

16 A And I did.

17 Q Did you tell me that I could protest -- that you could do
18 something about the statement use against me?

19 A I -- I -- I -- again, David, you're looking at minutiae.

20 ~~I was looking at the forest.~~

21 Q I.....

22 A I -- I didn't see that as helping us or moving forward
23 your opportunity to get your guide license back on
24 July 1st, 2005. That was my focus. That's what you told
25 me was your -- that's what your wife told me, that's what

1 you told me and I didn't want anything that I did on your
2 behalf to interfere with that. Now, if you had told me
3 absolutely, this is the only thing that can happen, I
4 would have done it but I constantly told you that would
5 be a poor decision because right now, Leaders is agreeing
6 to us, you're getting your license back in July of 2005.

7 Q Was my statement -- or have you heard testimony from Tony
8 Zellers and Kevin Fitzgerald that Tony cooperated with
9 the state and gave a statement because of my statement?

10 A I'm not going to talk about what Tony Zellers testified
11 to at the fee arb. You want to talk about.....

12 Q Tony Zellers.....

13 A I have no idea why Tony Zellers did that. You need to
14 ask Tony Zellers and you need to ask Kevin Fitzgerald. I
15 have no idea.

16 Q Do you know if my statement was used by Scott Leaders and
17 Trooper Givens to force Tony Zellers to cooperate?

18 A No, I have no idea. You need to talk to Scott Leaders or
19 Kevin Fitzgerald.

20 Q Could -- okay. Could.....

21 A My understanding is we were all doing it together.

22 Q While you were my attorney, could my statement be used to
23 force Tony to testify against me?

24 A That's -- that's not what we were doing. We were all in
25 it together. Tony knew exactly what.....

1 Q I asked you a question, could they do that?

2 A I don't know.

3 Q You don't know. You don't -- okay. You don't know
4 whether my statement could be used.....

5 A I don't know.

6 Q Okay. At that time, did you know?

7 A I -- it -- it wasn't even an issue because we were all
8 working together and we were all resolving this together.
9 Tony didn't want to lose his gui -- assistant guide
10 license for five years either. He was following what you
11 -- he didn't want to hurt you, David. Everybody wanted
12 to help you. You didn't realize it.

13 Q Is it ineffective assistance of counsel to let me be
14 prosecuted after I was given transactional immunity?

15 A You -- you didn't receive transactional immunity for all
16 your claims, David. You didn't receive that. Nobody
17 would testify to that. You didn't receive (simultaneous
18 speaking).

19 Q So you're stating.....

20 A For what pass?

21 Q No.

22 A What -- it was never intended that that was a free pass,
23 no. To come in and testify, you were not getting a pass
24 of all your sins to be -- to -- to get them all taken
25 away. What it was is your opportunity to testify in your

1 -- and to create the window of negotiation so that we
2 could get this down from a five-year license revocation
3 so that you could do your spring bear hunting. It was
4 our offer of good faith that you wanted to cooperate,
5 that you wanted to reach a deal which you did at that
6 time. You changed course, obviously, and that statement
7 was not to be used at trial. Now, you can call it
8 whatever you want. I don't think that's transactional.
9 Transactional means I give a statement and I get absolved
10 of all crimes and everything and that's not what it was.
11 Q If the law in the State of Alaska says the only immunity
12 that can be given is transactional immunity, are you
13 saying that everybody violated the law to prosecute me?
14 A You should have had Chuck Robinson file your motion. You
15 fired me. You could have had Chuck Robinson file that
16 motion.
17 Q Why has Chuck Robinson told me it was your duty to do it?
18 A Why me? I wasn't your attorney. You fired me. I
19 couldn't. Ask Chuck Robinson about that.
20 Q I have. He said it's your duty.
21 A No. Then you should have kept me as your attorney.
22 Q So are you testifying it was his duty to file the motion?
23 A Yes. He was the one -- he was the trial attorney.
24 Q Was it ineffective assistance of counsel for him not to
25 file a motion to suppress because of my statement use?

1 A I -- I have no idea. I didn't think your statement was
2 used at the trial.

3 Q And you're going to testify that not only I had
4 transactional immunity.....

5 A No, I'm not testifying that you had transactional.....

6 Q You just testified that I did.

7 A Well, I -- I will -- I will retract that because you did
8 not have transactional immunity in the sense that all of
9 your crimes being.....

10 Q How can that be when the law in the State of Alaska says
11 that's the only immunity available?

12 A I -- that's not what the law says. I -- I don't agree
13 with you.....

14 Q Okay. So you -- okay. So you -- I don't know where it
15 is but it's AS 101.50, whatever, 055, I believe, but,
16 anyway.....

17 A That's a formal grant of transactional immunity and
18 that's not what we had going here. You had use immunity
19 for that statement and that's where it was and, as far as
20 I know, it was always.....

21 Q And your testimony is even if -- okay. They could -- the
22 use immunity, they could use it for everything they
23 wanted except at trial. Is that what you're testifying?

24 A That's what you get, transactional immunity, so you don't
25 get convicted at -- at your trial, yes. That's why you

1 get immunity.

2 Q So they can use your statement to go build their whole
3 case, find all the witnesses they want.....

4 A No. I -- I don't think they did that.

5 Q Did they ever use my statement to find a guy named Tony
6 Lee?

7 A I have no idea. I don't know who To -- I can't remember
8 who Tony Lee is.

9 Q Okay. Is it true because of enormous public and
10 political fall-out, substantial pressure was brought to
11 bear on my prosecutor and judge to give me a very serious
12 sentence?

13 A I have no idea.

14 Q Have you said that to me?

15 A I said that was a possibility at the beginning. I have
16 no idea.

17 Q Do you believe that occurred?

18 A I -- I have no idea, Dave. I wasn't at your sentencing.
19 I have no idea.

20 Q So while you represented me, you do not believe that
21 pressure was brought to bear to make an example of me?

22 A David, you had such a great deal on the table on
23 November 8th, it kills me. It pains me to this day that
24 you turned it down. So do I think -- I -- I have no idea
25 why.

1 Q Was pressure brought on -- bear -- was it your -- kind of
2 getting ahead of myself here but did the state bring
3 pressure to bear on you to not advocate for me?

4 A Absolutely not.

5 Q Was it your impression that if you had advocated for me
6 like enforced the plea agreement or filed motions to
7 suppress, that it would, quote, piss Leaders off?

8 A Is that the question?

9 Q Yup.

10 A I -- I was concerned about that and I told you that
11 because I wanted him to make our agreement so that you
12 could guide again in 2005 or 2006. That's what I
13 continually reminded you of, we needed him on our side.
14 If we had a district attorney who did not like you who
15 was not willing to make a deal who simply said you got
16 open sentencing, then you were going to get screwed and I
17 told you to avoid getting screwed like that.

18 Q Did you ever tell me that part of your concern was what
19 Leaders would do with other clients that you had?

20 A ~~I -- I know you've said that out there but I --- I --- I~~
21 litigate against prosecutors all over the state. I go to
22 trial on fish and game cases all over the state. I
23 negotiate.....

24 Q Excuse me, is that a yes or a no?

25 A I don't remember if I said that or not.

1 Q Could you have?

2 A I might have.

3 Q If you did, did that mean you had a conflict of interest?

4 A No.

5 Q Why not?

6 A Because I was your attorney. I advocated a deal that to
7 this day, you wish you would have taken. I was the one
8 attorney that helped you get in a position that would
9 have resolved this in 2005, and if you'd simply listened
10 to me instead of going off on this airplane, you'd be
11 guiding and you wouldn't be going through any of this.

12 Q So you're testifying that you expressed a concern about
13 pissing Leaders off and that there was also your concern
14 of what he would do with other clients of yours?

15 A I piss U -- district attorneys and U. S. attorneys off
16 all the time. Ask Trooper Shan -- Chastain here.
17 They're all pissed at me right now.

18 Q Because you're sitting here testifying?

19 A No, because I am a good advocate for my clients.

20 Q Is it true that filing a motion against a prosecutor
21 makes an enemy out of the last person you'd want to make
22 an enemy of?

23 A I would agree with that. That would be you being you,
24 being the defendant, not me.

25 Q So when you stated that you were concerned about what was

1 happening with your other clients, that meant those
2 clients were me, is that what you're saying?

3 A No, here's -- here's what you're talking about, on the
4 three days before you were arraigned, I went out to
5 Dillingham and handled two guiding cases and I told you
6 about this. The two of them were one guy who had taken
7 -- allowed a client to take two bears and that client had
8 misrepresented and tagged.....

9 Q This does not the -- go to the question.

10 A Yes, it does, it has everything to do with the question.
11 You asked me about my other clients.

12 Q I asked the question (simultaneous speaking) the
13 prosecutor make an enemy out of the last person you want
14 to make an enemy of and now you.....

15 A No, I said -- I said you.. When I -- when you said --
16 when -- when you say you, I meant you defendant. It's
17 the last person you want to be making an enemy out of and
18 which is what you would be doing.

19 Q Did I ever tell you I didn't want to make an enemy out of
20 the prosecutor?.....

21 A In so many words because you wanted your guide license
22 back. You wanted to be able to guide within five years.
23 You wanted it back in one year and you were told
24 repeatedly if you piss off the prosecutor and we don't
25 have a deal and you have to go in and plead open

1 sentencing, you're going to get more than five days in
2 jail, more than a thousand dollar fine and you're going
3 to lose your license for five years.

4 Q Are you telling me that when a client -- when I asked you
5 what could be done to protect me and my business, that
6 you didn't tell me because of a plea agreement?

7 MR. PETERSON: Can you clarify that question? I don't
8 have any idea what you just asked.

9 MALE: I don't understand your question.

10 Q Are you stating that because there was a plea agreement
11 you thought I wanted or maybe I did want at one time,
12 that resolved you from telling me what I could do to
13 oppose the state's prosecution?

14 A No.

15 Q So you told me all the things I could do?

16 A No, I said no. That's all I answered is no.

17 Q Okay. So do you have to tell me what I could do to
18 oppose the state even if a plea agreement is being
19 negotiated? In other words.....

20 A I think that's -- go ahead.

21 Q In other words, are you supposed to tell me all my
22 options, not just plea agreement but how to file motions
23 to suppress, how I could enforce a plea agreement?

24 A I guess -- I guess -- let me answer it this way, David.
25 You were always concerned about spending money and I

1 could sit down and write memos to you about this and that
2 and this and that about things that were never going to
3 happen because those issues that you're talking about
4 don't have to do with sentencing. Now, when you asked me
5 questions about what your options were, I gave you the
6 answers. I gave you your options.

7 Q So you told me you could file a motion to suppress?

8 A Suppress what?

9 Q The use of my statement or the evidence that was
10 falsified.

11 A Whe -- what -- where -- what -- where were we going to --
12 in what -- in -- in -- you've got to be more clear, to
13 suppress your statement in front of the jury?

14 Q The use of my statement in the informations charging me
15 with crimes.

16 A Again, I don't understand what you're talking about,
17 David. If you file a motion on that and the -- and so
18 the state says okay, then we'll amend the charge. They
19 just file it without your statement in it and the case
20 moves forward. How is that.....

21 Q Do you tell me that I could do that?

22 A I -- I think we talked about it.

23 Q Okay. So you believe.....

24 A I don't know why I would even -- I don't even -- I can't
25 even imagine -- I -- I -- I don't even think it's a

1 viable motion so I don't know.

2 Q Thank -- not a viable motion to suppress. Okay.

3 A You can take words out of -- out of my mouth but that's
4 not what I said.

5 Q What did you say?

6 A Filing a motion to suppress a statement that's made in an
7 information is not productive or viable if you're trying
8 to negotiate and get your license back in one year.

9 Q Did you tell me that I could file a motion to suppress
10 the evidence because of false information on the search
11 warrants?

12 A I -- I -- I don't remember there being false information
13 on the search warrants. There was an issue about a
14 mistake or maybe a mis-identification and we talked about
15 the case law on that, that it has to be intentional for
16 the judge to throw out a search warrant but what you have
17 to remember is there was another search warrant before
18 that case. So I think we discussed that at some point
19 during my representation of you and I told you filing a
20 motion to suppress on the search warrant will result in
21 all negotiations ending and that means you're either
22 going to trial or pleading open sentencing, neither of
23 which I felt were good options for you and neither did
24 you.

25 Q So you remember -- you're testifying that while you were

1 my attorney, you filed -- you told me.....

2 MR. PETERSON: You want to wait? You want to wait?

3 MR. HAEG: Sure. Thanks. You can run this on B.

4 Q So while you were my attorney, you told me that I could
5 file a motion to suppress because of the false
6 information on the warrants?

7 A What I remember is this, at some point -- and I can't
8 remember when -- you indicated that there was information
9 that was incorrect on the search warrant that was done at
10 your house and it had to do with where these wolves were
11 found and where your guiding area was. I can't remember
12 everything and there was a question about, you know,
13 whether we're going to fight the case and I can't
14 remember when this came up, whether we were going to
15 fight the case or whether we were going to negotiate it
16 or whether this came up after we had, you know, done the
17 preliminary negotiations but, anyway, as I explained to
18 you, you can file the motion to suppress in -- in an
19 effort to suppress the evidence seized in the course of
20 the search warrant but the standards are not just if
21 there's an error, it's got to be an intentional error by
22 the trooper who prepared the affidavit and, again, once
23 you filed that motion, you were not going to be
24 negotiating your case, in my opinion. So we discussed
25 that at some point. I don't know when and I know that,

1 you know, I always came back to yeah, you can if you want
2 but at the same time, now you're going to be doing what
3 you -- you're going to be putting yourself in a position
4 that we all a -- I thought we agreed on was not a good
5 deal, getting in an open sentencing situation.

6 Q You testified that the false information was only on one
7 warrant, is that correct?

8 A Today I testified?

9 Q Yes.

10 A I -- I don't know. I -- I just remember seeing one
11 warrant. I -- I -- and my recollection is that.....

12 Q How many warrants were issued in my case?

13 A I thought there were two.

14 Q Two?

15 A I thought. I -- I don't know.

16 Q Why don't you know?

17 A Because that wasn't what we were working on, David. We
18 were working on negotiating. We got.....

19 Q Are you telling me that you were working on negotiations
20 without even looking at the warrants used to take my
21 business property? Is that what you're testifying?

22 A I can't remember if you brought in the warrant on the
23 business property or not. I -- I can't remember that.

24 Q If I didn't bring it in, are you supposed to get it from
25 the state?

1 A And we asked for the discovery of repeated opportunities
2 and we got it sometime in July.

3 Q And then did you go through the warrants?

4 A I -- yeah, I'm sure I did.

5 Q And how many warrants were there then?

6 A I don't know. It's been eight years, David. I can't
7 remember them all.

8 Q And your testimony is here that the false information was
9 only on one warrant?

10 A No, I didn't say that, I said I thought so but I'm not
11 sure.

12 Q Okay. So it could have been on all of them?

13 A I -- I guess it could have.

14 Q Okay. And was the -- was what the -- the falsehood on
15 the warrant, was it what you had called material?

16 A No, I didn't really think so.

17 Q And why is that?

18 A Because it had to do with an issue about whether or not
19 you guided in the area where you killed the wolves and
20 ~~you killed the wolves outside and that's the only issue~~
21 that was there. I -- my recollection is it -- it had to
22 do with where you guided or where your -- your lodge was
23 and -- and that may have been a mistake, I don't know,
24 but the issue was did David Haeg and Tony Zellers get in
25 a plane and kill wolves from the air outside the permit

1 in the wrong and you always said that you'd done that.
2 You'd admitted that.

3 Q Did I ever tell you that the state told me and induced me
4 to do that?

5 A Yeah, you told me that.

6 Q And what was your response to that?

7 A I found that highly unlikely but, I mean, I.....

8 Q So you.....

9 Aacknowledged what it was.

10 Q You didn't tell me that was not a legal defense?

11 A I -- I don't think it was a legal defense, quite frankly.

12 Q Okay.

13 A There's a case out there that talks about this -- and --
14 and I think this is a -- this happened in a -- in a --
15 yeah, I remember this now because there's a fishing case
16 out there that really has always bothered me to this day
17 and I've talked to Andrew about this at times where a
18 fisherman comes in and gets some advice about where he
19 can put his commercial fish net and the trooper gives him
20 advice and he goes out and puts it there and it turns out
21 that it's not the right place and the state charges him
22 and convicts him and his defense was well, he told me,
23 the troopers told me to go there and they say no, that's
24 not a defense and I think that's kind of what I was
25 saying is I -- I was a little skeptical that somebody

1 would say it but I -- you were my client and so I was
2 willing to accept that but the law is not good on your --
3 on your side on that one either. You flew outside the
4 area of your permit and you same day airborne wolves and
5 you admitted that so we didn't -- we didn't have a lot of
6 leeway or leverage there.

7 Q I didn't have a lot of lev -- or there was no leverage if
8 the state told me that it was in the best interest of the
9 state for me to fly outside the area and take wolves?
10 You're saying that that.....

11 A I -- that -- that's not a defense. That might have been
12 a good.....

13 Q Not a defense?

14 A It might have -- I don't think that's a defense.

15 Q Okay. Not a legal defense for the state to tell me it
16 was for the greater good to go out and shoot wolves.

17 A The state. You -- you said a -- it was an individual who
18 worked on the big game -- or the Board of Game is my
19 recollection, some guy that you met out in McGrath.

20 Q Okay. What evidence could have been suppressed had we
21 filed a motion to suppress?

22 A Well, motions to -- to suppress of the evidence seized in
23 the course of the search warrant.

24 Q Are you testifying the evidence they found out in the
25 field couldn't be suppressed?

1 A What I said is my answer.

2 Q What evidence.....

3 A The suppression only went to the evidence that was seized
4 pursuant to the search warrant. That's the only -- you
5 -- you get to suppress evidence when the police don't
6 follow procedure and the search warrant, I could
7 understand, you know, there is some problem with the
8 affidavit. You could file a -- a motion to suppress on
9 that if you thought it had merit but as to the other
10 stuff, I don't -- I don't know anything. What are you
11 talking about? What other motion to suppress are you
12 talking about?

13 Q If the evidence they found in the field was claimed to be
14 found in a whole different game management unit than
15 where it actually was, you couldn't seek to suppress that
16 evidence also?

17 A The question was did you kill -- shoot wolves from an
18 airplane (simultaneous speaking).

19 Q That ain't the question I asked.

20 A Yes, it is. Listen. Yes, it is. The question that I
21 had to involve -- to answer was did you shoot wolves
22 outside your permit area. Where you happened to do it,
23 whether it was 35 miles or whether it was 60 miles, those
24 are all issues that no, I don't think so.

25 Q Okay. So you're saying that they -- you could not

1 suppress the evidence that was found in a.....

2 A You can file any motion you want. The question is were
3 you going to succeed.

4 Q Okay. And was it material to the state's case that I was
5 taking wolves to benefit my guide business by claiming
6 the evidence was found where I guide?

7 A Not to the underlying crime. It might be of interest in
8 the sentencing but it wouldn't be if.....

9 Q What was I charged with?

10 A You were charged with 08.54.720(a)(8) and (a)(15).

11 Q And verbal -- and not the letter terms (simultaneous
12 speaking).

13 A As a guide.

14 Q Okay. And you don't think that falsifying the evidence,
15 to my guiding area would help them make that case?

16 A No, it -- the evidence of making that case was the fact
17 that you're a registered guide. Tony Zellers is a
18 registered assistant guide. That's all they need to
19 know. You guided and did illegal activities as a guide.

20 Q How.....

21 A You are not a regular person.

22 Q How come the state specifically said the reason for
23 guided -- charging Mr. Haeg with guiding charges is
24 because he took the wolves where he guides to benefit his
25 guide business?

1 A You'll have to ask the state. I have no idea why they
2 said that.

3 Q Do you think that statement to my judge and jury could
4 affect the outcome of my trial?

5 A I have no idea.

6 Q Okay. So what you're saying is no matter where we took
7 the wolves, I should have been charged as a guide?

8 A You were a guide, yes, David. I told you that from the
9 beginning. Guides are held to higher standards than
10 everybody else.

11 Q What I'm saying though is the location.

12 A I don't know if the location had anything to do with it.

13 Q So.....

14 A I mean, it was a factor, really, for sentencing more than
15 anything. The fact was you were a guide and you
16 committed illegal activities in the hunting and fishing
17 as a guide. You.....

18 Q Why did the state if it was for (simultaneous speaking).

19 A You have to ask the state why they do things. I'm -- was
20 your attorney until November 22nd when you fired me.

21 Q If the state was using that to prosecute me, was it your
22 duty to oppose it by saying the evidence was not found
23 where I guide?

24 A When would I have done that, David?

25 Q File a motion.

1. A When?

2 Q As soon as you got the warrants proving the evidence had
3 been falsified.

4 A At that point, David, we were negotiating. You wanted
5 your lodge back. You didn't want to take the risk of
6 going to trial, of filing the motions. I was telling you
7 we can negotiate it. In fact, we were talking three
8 years at the most. You wanted your lodge back. We had
9 the opportunity of one and, as it moved along, you didn't
10 want to go and file motions because we explained it. You
11 didn't want a trial because you had this deal that we
12 were negotiating that was going to avoid the five-year
13 license revocation.

14 Q So you're here testifying I did not want to file any
15 motions?

16 A You brought it up. We've talked about this on time and
17 time again. You would bring up these issues, you would
18 talk about you wanted to fight, that you're a fighter,
19 that you thought that -- and -- and we'd say okay, we can
20 do that but what are the downstream consequences, David.
21 What is going to happen?

22 Q Okay. Did you tell.....

23 A Listen. No, you asked me the question. I want to answer
24 it. And we'd go back to it and we'd go okay, if we file
25 the motion, we're not going to have any negotiations,

1 David, and where is that going to put us. We're going to
2 be in trial or you're going to be pleading guilty and
3 getting more than a \$1,000 fine and more than five days
4 in jail, do you want to do that and every time, you would
5 say I -- I want my lodge, I don't want to lose my guide
6 license, I worked my whole life for my guide, for my
7 business, for my wife, everything. I don't want to give
8 that up and I'd say okay, then we shouldn't file these
9 things, we should keep negotiating.

10 Q But you told me all these motions could be filed,
11 correct?

12 A I -- I believe that I told you that you can file any
13 motion any time if you want when the charges come out but
14 we didn't get -- you didn't get charged -- my -- I can't
15 even remember, I think it was like September. So there
16 was nothing to char -- to -- to file a motion to suppress
17 on.

18 Q You couldn't file a motion to suppress on the search
19 warrants before I was charged that were used to ease my
20 claim?

21 A (Simultaneous speaking).

22 MR. PETERSON: Hey, can we -- he need to change the tape.

23 MR. HAEG: Okay.

24 MALE: Okay.

25 MR. PETERSON: Why don't we take five or 10 minutes?

1 MALE: Okay.

2 MR. PETERSON: Ten?

3 MR. HAEG: Okay.

4 MR. PETERSON: That look -- that sounds good.

5 MALE: Thank you.

6 MALE: I'll wait.

7 MALE: Stop tapes.

8 (Off record conversation)

9 (Deposition recessed)

10 MALE: Okay. We can start any time you want.

11 MALE: Okay. Well, I guess we start. Roll tape. I

12 always wanted to say that. Got it going, Dave?

13 MALE: You're judge.

14 MR. HAEG: Just.....

15 MR. PETERSON: Any time you're ready.

16 MR. HAEG: Okay.

17 Q Is it true Leaders informed you he would not be honoring

18 my immunity?

19 A No, I don't remember that.

20 Q Is it possible that he told you that?

21 A No.

22 Q Okay. Leaders never told you he wouldn't be honoring it.

23 Is it true that a client and attorney should discuss the

24 materiality of anything that might be able to get

25 suppressed?

1 A I can't say yes or no. Depends.

2 Q Why didn't you discuss any of this with me?

3 A I don't know what you're talking about when you say any
4 of this stuff.

5 Q Why didn't you discuss the materiality of what might have
6 been able to be suppressed with me?

7 A I did discuss these things with you at certain points
8 along the line of my representation of you.

9 Q Okay. So you told me that we could -- you told me what
10 and -- what could possibly be suppressed and how to
11 suppress it?

12 A At what point, David? I represented you for six months.
13 At what point are you talking about?

14 Q From the day I hired you to the day I fired you.

15 A Did I talk about the things that could have been? Yes,
16 in that period of time, I absolutely did.

17 Q Okay. Is it true we didn't go to McGrath on
18 November 9th, 2004 because we had resolved the case?

19 A It's true we didn't go to McGrath. I believed we hadn't
20 -- that we had resolved the case, yes. Well, we still
21 had a few things to work out. We were still working on a
22 couple things. We needed the approval -- we wanted to
23 get the approval of the Occ -- Occupational Licensing.
24 We were still -- we were still banging on the issue of
25 exchanging the planes. I think we were still talking

1 about one other thing but I can't remember it. There may
2 have been some things that we were getting returned but
3 the essential elements of that deal I thought were
4 resolved on the night of the 8th and in effect on the
5 night of the 9th -- or the morning of the 9th.

6 Q Isn't the real truth that we didn't go because Leaders
7 had greatly increased the severity of the charges at the
8 last minute to get the plane also?

9 A No. No. You need to ask Leaders but that's not my
10 understanding.

11 Q You've never told me that he increased the level of
12 severity of the charges in order to get my airplane?

13 A No, it -- well, that's not the right way to characterize
14 it. You wanted the opportunity to go open sentencing on
15 AS 08:54.720(a)(8) which was only a one-year mandatory
16 minimum and he was unwilling to do that so he filed -- he
17 -- you know, I don't -- you have to ask him why he filed
18 it but I assume he filed it so that if you tried to go in
19 and plead guilty or if you had tried to plead guilty at
20 that time, that he would have been in the position where
21 you would have been facing a year minimum and the
22 possibility of getting your plane back and for them, that
23 was unacceptable to them, I guess. You need to talk to
24 him about that.

25 Q Okay. But you never told me the reason why he increased

1 the severity of the charges at the last minute was to get
2 the airplane.

3 A Well, again, it -- it comes down to this issue of you
4 wanted the opportunity to argue for the return of the
5 aircraft and you wanted the one-year license revocation
6 mandatory minimum. He was unwilling to do that. He --
7 it was either take the two years -- no, it wasn't, it was
8 -- it was take three years and argue about the plane or
9 take one year and don't argue about the plane.

10 Q Okay. Can you just answer this to a yes or no, did you
11 tell me that Leaders had greatly increased the severity
12 of the charges at the last minutes to get the airplane?
13 Did you tell me that or not?

14 A I -- I don't think it -- I put it in those terms, no.

15 Q Okay. And just after.....

16 A Besides, you already had the plane. They didn't have to
17 get it, you already had it.

18 Q Have you ever stated that prosecutor Leaders reneged on
19 the deal?

20 A He reneged on what he told me was acceptable initially,
21 yeah, at one point.

22 Q Did he do -- did he renege after we had placed
23 detrimental reliance on the -- what he had agreed upon?

24 A I -- I don't know. I don't think so.

25 Q So you don't agree that I flew Tony in from Illinois, I

1 flew Grue in from Silver Salmon and, well, I took my kids
2 out of school and my wife away from work and we drove up
3 to Anchorage in reliance on one agreement and then on
4 November 8th, the same day we got here, he reneged?

5 That's not your impression?

6 A No, you drove them all because we were going to have a
7 hearing at the sentencing. Originally, the idea was you
8 were going to get arraigned and you were going to get
9 sentenced on the same case but the -- the sentencing was
10 going to involve -- everything had been negotiated except
11 for whether you were going to get a one-year license
12 revocation or whether you were going to get a three-year
13 license revocation which Leaders intended to argue and
14 that was because the state, even to that day, contended
15 that you had -- you and Tony had been involved in same
16 day airborning in the fall of 2003 and they wanted to put
17 on evidence at the sentencing that day. And so you flew
18 them back and we were going to have a hearing on that
19 issue in and of itself and you were going to be
20 sentenced. And it was either going to be everything else
21 had been negotiated, your jail time, your -- your fine,
22 all those were under the mandatory mi. -- the minimums and
23 then we were just going to have a legal argument, an
24 evidentiary hearing, on whether or not you two had been
25 involved in that unlawful guiding activity in 2003 and

1 our opinion was if we prevailed at that argument, the
2 judge was going to give you a one-year and if the state
3 prevailed and the judge found that he thought that you
4 had been involved in that, that you were going to get a
5 three-year and that was why everybody was flown in and
6 that's why we had done all the letters for your
7 sentencing and everything else.

8 Q Okay. It wasn't to -- you never told me that what
9 Leaders did was all about the airplane.

10 A I -- I -- that's not how I characterized it. I told you
11 why he did it. You have to ask him why he did it. I
12 told you why I suspected he did it. He's the only
13 one.....

14 Q And that was all about the airplane?

15 A It was to preclude you from coming in and pleading to a
16 -- counts, opening sentencing and having the opportunity
17 to argue to get your airplane back.

18 Q Okay. And is Leaders allowed to renegotiate the deal
19 after we'd relied on it by flying Tony in and all that?

20 A I -- I've already answered that question. No, I don't
21 agree with that.

22 Q You don't agree that he can do it or you agree that he
23 could do it?

24 A I don't agree with the premise that you relied upon it.
25 We were relying upon something totally different.

1 Q Oh.

2 A And whether he could do it is up to him. He's the
3 prosecutor. He -- he has an extreme amount of
4 prosecutorial discretion in the deal he allows people to
5 make.

6 Q Have you testified that while you were my attorney, I
7 told you I want to fight this, I want to fight this, I
8 want to fight this?

9 A I'm not going to test -- talk about what I've testified
10 before.

11 Q Have you -- have you -- did.....

12 A Ask me about questions about when I represented you.

13 Q Did I tell you while you were my attorney I want to fight
14 this, I want to fight this, I want to fight this?

15 A Periodically at times, you would say that. You would
16 also call me crying from under your table, crying on my
17 phone at -- every day on Saturday and Sunday. Your
18 mother-in-law called me, your wife talked to me. I heard
19 you say things that were totally opposite during this
20 whole time but, yes, on occasion, you would say that and
21 then we would talk about what would that mean and what
22 would the consequences be and the down side.

23 Q How did you tell me I could fight the case?

24 A Very simple, go to trial.

25 Q Did you.....

1 A Plead guilty at open sentence, go to trial, file motions,
2 refuse to negotiate. There was a lot of ways you could
3 fight it and we talked about all of them.

4 Q Did you tell me that I could file motions to suppress,
5 that I could file the defense of entrapment to enforce a
6 plea agreement, that I could get the plane back,
7 et cetera, et cetera?

8 A Well, a coup -- you -- you've asked a compound question
9 so ask me one at a time.

10 Q Okay. Did you tell me you could file motions to
11 suppress?

12 A Yeah, we talked about it. That was always an option. At
13 some point, we talked about that, yes, from -- in the
14 six-month period.

15 Q Did you tell me we could file the defense of entrapment?

16 A I -- I think we talked about entrapment and I didn't see
17 that the state was compelling you to do anything. You
18 did it on your own volition. You got in the plane, you
19 flew out, you made a determination there were no wolves
20 in the area. Nobody was holding a gun to your head.
21 Nobody was threatening your family. There was none of
22 that, you just went out and did it.

23 Q Okay. But -- so did you or did you not tell me I could
24 file the defense of entrapment?

25 A I -- I think we talked about that and I told you that

1 that was an automatic loser and you would not win on
2 that.

3 Q Okay. You didn't say that it was a -- not a legal
4 defense?

5 A You are mixing up, David, what Ted Spraker said to you in
6 our conversations about whether that is a legal defense
7 and the defense of entrapment. The intent of -- in the
8 defense of entrapment has specific elements that have to
9 be met. What I was talking to -- there is a legal
10 defense of entrapment. What you are talking about is
11 when Mr. Spraker, the guy that was on the big game
12 commercial services board talked -- you said talked to
13 you and -- and authorized you to do this and I said I
14 don't think that's a legal defense.

15 Q Okay. Did you tell me that we could file motions -- or
16 bond the plane out?

17 A I -- I don't think I did initially because, as I told you
18 from the first day that you walked in, I believe, when
19 guides go out and commit violations of the hunting laws
20 in the State of Alaska with airplanes, the troopers
21 forfeit them and they forfeit them almost on every
22 occasion. So when you came in and told me that you guys
23 had violated the criminal laws with your airplane and big
24 -- and you were a guide, I had every degree of certainty
25 from that point on that that plane was going to be

1 forfeited no matter what. At certain times, I really
2 didn't focus on it because we were able to get through
3 the spring bear hunt and you had another plane there, a
4 Super Cub, which you used to service your clients that
5 spring and there were no problems. At some point later
6 on in the course of my representation, I think you might
7 have brought it up and I kept saying okay, again, David,
8 this is like what do you want to do. We're at -- we --
9 we've crossed the stream, do you want to negotiate or do
10 you want to fight this. If you file a motion to get your
11 airplane back, I can tell you what's going to happen,
12 you're going to be fighting this and that means you're
13 going to subject yourself and your wife and your family
14 and your employees to a five-year loss of license which I
15 understood was unacceptable to you from the beginning of
16 this case until the end.

17 Q Isn't it true at the time you said I couldn't legally get
18 it back, get the plane back?

19 A There was a statute in place that made it very difficult
20 to get back information on -- that is seized in the
21 course of search warrants. There is some case law out
22 there that says that if it's a indispensable part of your
23 business, you can get a bond on it or something like
24 that. I can't remember all our discussions at that time
25 but, again, it all comes down to did you want to fight

1 this and subject yourself to a five-year loss or
2 limitation or did you want to negotiate it down. You
3 chose to negotiate it down so we didn't go down that
4 route.

5 Q Is it because of your desire that I plea out -- is the --
6 your desire that I plea out why you never told me of
7 these defenses?

8 A No, I -- I disagree with that, no.

9 Q Did you repeatedly tell me to forget the plane because I
10 would never get it back?

11 A Yeah, pretty much. I think I repeatedly told you that
12 because that was my professional opinion. I've been
13 doing guiding cases both as a prosecutor and as a defense
14 attorney. I've seen what happens to guides and their
15 planes when they commit fish and game violations both at
16 the federal and state level, they get forfeited and the
17 judges forfeit them.

18 Q Okay. But isn't it true that, by law, I could have got
19 it back?

20 A There was a possibility that would be against your best
21 interest in the negotiations.

22 Q Why didn't you tell me of that when I asked how to get
23 the plane back?

24 A Because we explained again and again, David, if we go
25 down that route and if you file that motion, that means

1 we're not going to reach a negotiated plea which,
2 ultimately, is going to lead you to get into an opening
3 sentencing situation and you're going to lose your guide
4 license for five years, you're going to lose your plane
5 anyway.

6 Q Do you believe it was my right to know all my defenses
7 even if I wished to plea out?

8 A Yes.

9 Q So why didn't you tell me about them?

10 A I did.

11 Q Okay. You tol.....

12 A I don't know what ones I didn't tell you about.

13 Q Well, you test.....

14 A There's a difference between telling you about them and
15 doing them. We would talk about them over the whole
16 course of this time. At the end of the day, you made the
17 determination that you wanted to continue to negotiate
18 and you didn't want to go down that path because of the
19 consequences that were out there.

20 Q Is it reasonable or do you think maybe the reason why the
21 plea negotiations went on for so long is because I didn't
22 know I could fight the charges?

23 A Nope, you were told you could fight the charges from the
24 beginning.

25 Q Okay. And you told me how to fight the charges?

1 A Yeah.

2 Q Okay. And how did you do that?

3 A Well, at various stages, I said you're entitled to a
4 trial. We can stop negotiating with the state and I
5 expect within a short order, they will file an
6 information or a complaint or indict you for a felony for
7 evidence tampering and then we will be in trial and you
8 can fight it all you want. You can file motions to
9 suppress evidence. You can file motions to dismiss and
10 you can have a trial.....

11 Q Okay.

12 Aand at the end of the day, in my humble opinion, you
13 will be convicted and you will lose your guide license
14 for five years and you will lose your privileges and I
15 said I highly advise against that and at the beginning of
16 this case, you said I don't want to lose my guide
17 license, I don't want to lose my lodge, I don't want to
18 lose everything that I've worked for, I want to
19 negotiate.

20 Q Okay. Would being acquitted of the charges.....

21 A You weren't going to be acquitted, David.

22 Q I get to ask the questions. Would being acquitted of the
23 charges prevent me from losing my guide license and
24 airplane, et cetera, et cetera?

25 A No. No.

1 Q So even if I was innocent, they could take away my guide
2 license and airplane?

3 A Being acquitted is very different than being innocent.
4 Being acquitted means you're not guilty. That does not
5 mean you're innocent. The state -- as I explained to
6 you, even if you were acquitted, the state could bring
7 civil actions to forfeit your airplane. The state -- the
8 big game commercial service board, even if you're
9 acquitted, could take your guiding license. All of those
10 things could happen and that's -- I explained that to you
11 also.

12 Q Okay. Have you testified that two other cases of yours
13 were part of the reason that I need to get the DA on
14 board?

15 A I'm not going to talk about testimony. If you're asking
16 me in the course of our representation.....

17 Q Okay. In the course of you representing me, did you tell
18 me the reason I needed to get the DA on board was because
19 of two other cases of yours?

20 A I -- I'll tell you the two cases. One of them was a
21 guide who we were arguing -- I was in an argument with
22 the DA.

23 Q I know, I didn't ask.....

24 A Yes.

25 Qabout the cases, I asked have you -- did you tell

1 me.....

2 A Yeah, I related -- I related to you they were.....

3 Q That they were part of the reason (simultaneous
4 speaking).

5 MR. PETERSON: I'm going to ask for clarification. Would
6 you please ask what -- clarify what the reason is. You're --
7 I don't understand it.

8 A Just rephrase the question. I apologize. I started too
9 soon there.

10 Q While you were representing me, did you tell me that part
11 of the reason I needed to get the DA on board was because
12 of two of your other cases?

13 A No, absolutely not. What -- you want to know what I was
14 referring to, David, since you've misquoted me?

15 Q No. If I didn't get on board, would the DA have done
16 some -- something different with the other cases?

17 A No.

18 Q Okay. Was this your impression?

19 A You -- you're -- you're taking what I said out of context
20 and I'm not -- and I'm not going to agree to it, no.

21 Q Do you remember who these other two cases were, the guys'
22 names?

23 A I remember the two cases and what we were talking about,
24 David, and what you've taken out of context is I had two
25 cases where people had gone open sentencing, guides, and

1 they had both lost their guide license for five years and
2 I was telling you it's not a good deal to be a guide and
3 going in front of a judge open sentencing and here are
4 the two cases. So my advice to you is to strike deal
5 (simultaneous speaking).

6 Q Okay. The only thing I asked was their names.

7 A I don't remember their names right off the bat.

8 Q Okay.

9 A I can find them though.

10 Q During my immunized statement, did the state demand I
11 circle on a map where the wolves were killed?

12 MR. PETERSON: I'm going to.....

13 A During your.....

14 MR. PETERSON: Objection, just talk about your statement.
15 You're calling it an immunized statement. You've already had
16 that discussion.

17 A You're king for a day. We've already discussed that.....

18 Q Okay.

19 Aand you were asked to provide a map -- I think -- I
20 thought -- for some reason I thought we faxed that. I
21 thought you signed it and we faxed it before the
22 statement and I think it may have been reconfirmed in the
23 -- in the interview but my recollection was they wanted
24 that information then.

25 Q So at my statement, did the state require me to take a

1 pen and draw on a map where the wolves were killed?

2 A I can't remember but it makes -- it -- I -- I believe
3 that happened.

4 Q Okay.

5 A I thought it hap -- like I said, I thought it happened
6 earlier than that. I thought we faxed it to them but
7 they may have gone over it again in the -- in the
8 statement.

9 Q And why would they want this map?

10 A You need to ask the state.

11 Q Were they allowed to use this map to find evidence
12 against me?

13 A You need to ask the state.

14 Q I'm asking you as my attorney that when you had me make a
15 map whether they could use it against me, whether they
16 could use -- yeah, use it against me, find evidence.

17 A I -- I don't -- it would have been my position if I was
18 your trial attorney that no, they could not, that it was
19 evidence.....

20 Q No?

21 Aat -- that was given pursuant to the immunity for a
22 day, king for the day and it could not be used at your
23 trial against you. That would have been my position at
24 the trial.

25 Q Okay.

1 Aif I had been your trial attorney. I wasn't so.....

2 Q Okay. Are you testifying that they could use it to

3 justify the charges in the informations against me while

4 you were still my attorney?

5 A See, if -- if I had concerns about it.....

6 Q Did -- okay. Did I ask -- did I protest to you that they

7 were using my statement against me?

8 A Yeah, I think you did.

9 Q Okay. Why didn't you do anything about that?

10 A Because we had a deal, David. On November 8th, we had a

11 deal. There was no reason. Before that, we had a deal

12 on (simultaneous speaking).

13 Q (Simultaneous speaking).

14 A No, listen to me.

15 Q Okay.

16 A I want to answer the question.

17 Q Okay.

18 A Before that, we had a deal on the parameters of the

19 sentencing that was going to be a one to three. On the

20 8th, we had a deal on what the parameters were going to

21 be. From that point on, there was no reason to do that.

22 Everything was going to be resolved. If you didn't want

23 to plead to any of that, it didn't -- you didn't have to

24 but at that time, there was no reason because we had a

25 deal. I would have been wasting your time and money

1 doing a lot of other things that were not necessary for
2 the completion of your case and getting your license back
3 in July 1st, 2005.

4 Q Could you have filed a motion protesting my statement use
5 and asking that all prosecution be ended because of
6 prosecutorial misconduct?

7 A Anybody can file a motion for anything.

8 Q Did you tell me that you could file that motion?

9 A I don't know that we ta -- I -- you may have asked me
10 about it and I said anybody can -- you can file any
11 motions you want. Defense attorneys file poor motions
12 all the time but where is that going to get you at the
13 end of the day is what I told you.....

14 Q Did you.....

15 Aand it -- and I said that's not a good idea because
16 it's not going to prevail.

17 Q Did you tell me while you were my attorney that you
18 didn't know what we could do about it?

19 A You're talking about the decision to re-amend the
20 complaint in that statement. Is that what -- what do ---
21 in what context are you talking about, the dec.....

22 Q When the -- when they were using my statement against me
23 and it came out in the Anchorage Daily News and it came
24 out in all the informations, did I say how can they use
25 this against me?

1 A We ta -- I -- you said how can they publicize it and I
2 said I cannot control what the troopers put out as a
3 press release. I can't control what the state puts out
4 as its charging document. I can complain but at the end
5 of the day, we had a deal so it wasn't going to make any
6 difference anyway is how I looked at it and how I
7 explained it to you.

8 Q If we had a deal, how come I went to trial?

9 A Because you rejected the deal. You fired me.

10 Q I didn't.....

11 A You fired me. You said you wanted a trial. You hired
12 Chuck Robinson and went to trial. You rejected
13 everything that we had worked for and accomplished.

14 Q Deal or not, when the state violated my right against
15 self incrimination, was it your duty to defend me?

16 A That wasn't a violation of your right against self
17 incrimination.

18 Q Exactly what was it?

19 A It was a use of a statement that you'd given pursuant to
20 an agreement to disclose your wrongdoings in return for
21 leniency in the charging decision and the sentencing.

22 Q I thought you testified under oath I had immunity.

23 A You had king for a day, you had immunity. That's right,
24 they couldn't use that statement against you at your
25 trial.

1 Q And what law? Because I believe Mr. Cole here is
2 committing perjury. I think you're a law enforcement
3 officer, aren't you?

4 MR. PETERSON: Mr. Haeg, please direct your questions to
5 Mr. Cole.

6 MR. HAEG: Okay. He's committing -- I believe.....

7 A I'm not answering your questions. You -- you either ask
8 questions or do what you want.

9 Q Okay.

10 A I'm tired of that.

11 Q Okay. Anyway, you've testified that they can use my
12 statement against me, is that what you're.....

13 A You can't use the statement at trial, David.

14 Q But you can use it other places? Is that what you're
15 testifying?

16 A Other places outside the trial. Immunity is at trial.
17 That's where you get it. It's at trial. They can't
18 present evidence at trial. It doesn't have anything to
19 do with the charging decision although, as a practical
20 matter, you should -- they shouldn't have done that but
21 in the great scheme of things.....

22 Q Okay. If they shouldn't have done that, don't you think
23 that would matter to me what charges I actually went to
24 trial on?

25 A What trial? I wasn't involved in what charges you went

1 to trial on. I was involved with the negotiation of a
2 plea deal and that is all I cared about because up until
3 that point, we were never going to trial. Trial was the
4 last thing you needed and I told you that over and over
5 and over again and you agreed until you fired me and then
6 you went and got Chuck Robinson and went to trial and
7 exactly what I told you was going to happen happened.

8 Q Did the state use my statement to justify the charges
9 that they wanted me to plea to?

10 A The state put -- I -- I -- I -- I don't have the
11 information but my recollection is that in the
12 information that they filed, they said that you had
13 admitted to this, yes.

14 Q Why would you, as my attorney.....

15 A Listen, you've already asked me this 10 times.

16 Q No, not -- this is a new one. Allow the state to use my
17 statement to justify charges that they wanted me to plea
18 to during -- for a plea agreement?

19 A Because we've reached a negotiated deal. It didn't make
20 any difference. We weren't fighting the charges, David.

21 Q Was there a deal when I made the statement?

22 A No. No, you didn't have a deal. You don't get a deal.

23 Q So did they use my statement to make the deal?

24 A No. Well, they were looking at whether you were
25 truthful, whether you were cooperating. All these

1 factors went into whether or not they were going to reach
2 a negotiated disposition and what the terms were going to
3 be and we talked about all that.

4 Q So you allowed the state to get a statement they could
5 use against me before you even got a deal?

6 A They didn't use the statement against you, number one,
7 and, number two, you didn't have any leverage. You had
8 eight, five to 10 spring bear hunters coming in. The
9 state had seized your airplane. They were on the verge
10 of shutting your whole operation down and causing
11 catastrophic failure. We negotiated that you were able
12 to do the -- your whole spring bear hunt and we were
13 negotiating all the terms which did not include the five
14 years which I told you from the beginning you had a true
15 -- good chance of getting. So you got a lot from that
16 statement. You don't want to admit it and, ultimately,
17 you rejected it and you went to trial and it cost you
18 because of it.

19 Q Did you tell me the state wanted me to make a statement
20 ~~---or required me to make a statement quickly?~~

21 A That was one of the requirements and conditions of you
22 being able to keep your business going, yet.

23 Q And why did they want the statement quickly?

24 A Because they wanted to know whether you were going to
25 reach a deal with them or whether you were going to fight

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it.

Q You never have told me that they wanted it quickly so they could go find more evidence against me?

A I -- I don't believe that.

Q Okay. You never told me they wanted a statement quickly so they could go get more evidence?

A No, I don't -- no.

Q Okay. No. You never.....

A I don't -- I don't ever reme -- I don't -- no, I just -- my -- my response is I don't remember saying that. That is not something that I would have said. I don't remember that.

Q Okay. Something you wouldn't have said. Is it true the state knew why I was getting up a year of guiding before I was ever convicted?

A Got to ask the state that.

Q Did you tell the state why I was giving up guiding before I was convicted?

A I only dealt with you through the arraignment, David, so I don't know anything that happened after you fired me. I advised you and had negotiated a deal that was going to get you your license back on July 1st, 2005, in part, because you had voluntarily not guided in the fall of 2004 and you weren't going to guide in the spring of 2005 and that was going to get you your one-year license

1 revocation. So they were aware of that.

2 Q Okay.

3 A You ultimately did not choose to go that route.

4 Q Could the state after that, after you represented me,
5 claim under oath they had no idea why I gave up guiding?

6 A I don't know. You have to ask the state.

7 Q But you just testified you told them why I gave up
8 guiding.

9 A You have to ask the state.

10 Q Is it your opinion the state forgot or lied or did
11 something bad so that I wouldn't get credit for that year
12 of guiding?

13 A You -- you weren't going to get credit for it anyway,
14 David, when you refused to make the deal. The deal was
15 conditioned upon you accepting the deal. That's where
16 you were going to get credit.

17 Q Why would you.....

18 A After you deci -- because at the time, we were
19 negotiating to get your license back. When you said I'm
20 not getting -- I'm not taking any deals, I'm going to
21 trial, you lost. You lost giving up because the state
22 wasn't bound by that. It was going to be okay, open
23 sentencing on the time that you were convicted. That's
24 your fault. That's what your attorney should have
25 explained to you which I did explain to you was going to

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happen.

Q Did you tell me that the judge was going to give me credit for the guide year?

A If you agreed to a sentencing with us, we were going to get -- that's what our argument was going to be, yes, and I had been successful in making that argument in front of other judges.

Q So you had talked to the judge and the judge had said.....

A No, I'm not going to talk to the judge.

Q So why did you tell me that the judge was going to give me credit for it?

A That was just my legal opinion. I thought when you went to a sentencing, you would get credit for it and in the end, we negotiated that very thing so the judge didn't even have to give that because you were getting your license back on July 1st, 2005 and that was retroactive.

Q Did you tell me that the number of charges initially filed was, quote, kind of overwhelming?

A No, I said -- what I said was don't get carried away, I know there's a lot of charges but in the end, we're not very far apart, don't get overwhelmed. It was 11 charges.

Q And were those 11 charges a result of my statement?

A What they charge you with and what you get convicted of

1 are two different things and, yes, I believe that some of
2 those charges were the result of your statement.

3 However, they, in my opinion, were not going to be able
4 to convict you of any charges that were based on your
5 statement if they were going to use -- try to use your
6 statement at trial and, again, we're not even talking
7 about trial at this time.

8 Q Why would you let them use my statement to file charges
9 that they wanted for a plea agreement then?

10 A I can't -- I can't dictate what the state puts in its
11 information.

12 Q Okay. Was it your understanding that they would not use
13 my statement?

14 A At trial.

15 Q No. No, was it your understanding.....

16 A No.

17 Q So you.....

18 A I didn't know what they were going to do.

19 Q Okay. You had me give a statement without.....

20 A I didn't have you do anything.

21 Qme knowing that they could use it to justify the
22 plea agreement charges.

23 A I didn't have you do anything.

24 MR. PETERSON: Mr. Haeg, is there a question?

25 MR. HAEG: Huh?

1 MR. PETERSON: Is there a question here at this.....

2 MR. HAEG: Well, I -- maybe you can help me. You're
3 smart.

4 MR. PETERSON: I'm not going to help you with your
5 questions. Why don't you ask him a question or opine in your
6 pleadings?

7 Q Before I gave the statement, did you tell me they could
8 use them to file charges that they (simultaneous
9 speaking).....

10 A No. I don't think we talked about that.

11 Q Why didn't you?

12 A Because you can file all the charges you want. That's
13 not the problem. The problem is can they convict you of
14 them and if they can't take the evidence and use it at
15 trial, they can't convict you of them.

16 Q Is it likely that if they file 50 charges based mostly on
17 your statement, that they may get you to agree to plead
18 guilty on half of them?

19 A No.

20 Q Okay. Is it more likely for that to happen than if you
21 didn't give them a statement and they had evidence of
22 like three charges for them to then charge you with more
23 than three if they didn't have evidence?

24 A I -- I don't know what you're talking about. I can't --
25 I can't follow your hypothetical.

1 Q Did me giving a statement harm me during plea
2 negotiations?

3 A No, it helped you significantly. It was the.....

4 Q By what, increasing the number of charges?

5 A No, it helped you because you -- they didn't shut you
6 down, they didn't file charges immediately. They didn't
7 shut your (simultaneous speaking).

8 Q Did it increase the number of charges.....

9 A No.

10 Qthat they wanted me to plea to pursuant to a plea
11 agreement?

12 A We never talked about the need for.....

13 Q Answer the question, please.

14 A No. No.

15 Q No, it did not increase the number of charges that they
16 wanted me to plea to for a plea agreement?

17 A I don't think so.

18 Q Okay. That's.....

19 A That's up to them.

20 ~~Q Okay. I got where I wanted there. Is it true the state~~
21 ~~could bring in the moose issue to enhance my sentencing~~
22 ~~-- or sentence and there was nothing you could do about~~
23 ~~it?~~

24 A At what point?

25 Q At any point for -- during the plea agreement, did you

1 tell me the state could talk about the moose issue to
2 enhance my sentence?

3 A We talked about scenarios, one of which you could be
4 charged for that case, one of which they could use the
5 evidence at a sentencing of other charges to enhance it,
6 yes.

7 Q And that's legal for them to do?

8 A Yup.

9 Q And so because it's legal for them to do, you never
10 protested it?

11 A Ab -- absolutely I protested it all the time. We talked
12 about that too. We argued with them, I talked with them.
13 I told them they didn't have a case.

14 Q Did you file a motion with the court protesting the
15 state's desire to use uncharged and unproven allegations
16 to increase the sentence?

17 A No.

18 Q Why not?

19 A Well, because when you were originally going to be
20 sentenced, we were going to have you charged -- you were
21 going to be charged with the stuff from 2004 and then we
22 were going to have a sentencing hearing in McGrath and at
23 that sentencing hearing, the state was going to argue and
24 present evidence. The guides and the hunters who
25 testified that you and Tony Zellers same day airborne

1 that moose right in front of them and they were going to
2 use that evidence to argue that you deserved a three-year
3 license revocation because you were a habitual guide
4 violator. I felt comfortable at that hearing that you
5 wouldn't -- they were not going to be able to prove that
6 and that you would get a one-year loss of license.

7 Q But if they could prove it, they would then get my guide
8 license for three years rather than one?

9 A Yup, that was what we -- that's what we talked about and
10 I explained that to you.

11 Q Yup. And if that wasn't legal for them to do, why did
12 you let them do it?

13 A It was legal for them to do.

14 Q Okay. It is?

15 A Yeah.

16 Q Okay. The law allows them to use uncharged, unproven
17 allegations to enhance the sentence?

18 A Yup, if they put on the evidence and prove it, they can
19 do it.

20 Q Okay. And just put on the evidence and prove it and who
21 -- did they prove it to my jury?

22 A They don't have to prove it to the jury, it's to the
23 judge.

24 Q Okay. I -- okay. That's good. While you were
25 representing me, did I tell you I'm not a man of great

1 means, you know, they've taken away -- they've taken my
2 way of support away?

3 A They took your airplane and that's it. I think you might
4 have said things like that. You didn't want to lose your
5 lodge, you didn't want to lose all that you'd worked for.
6 You were concerned about all those things. Yeah.

7 Q Okay. After I told you that, why didn't you tell me how
8 I could get the plane back?

9 A Because it wasn't your only means, you had a Super Cub.
10 You serviced all your clients, your bear clients, in the
11 spring of 2004. You didn't have any problem servicing
12 any of those and so you would have had to have come in
13 and tried to bond out that aircraft and the minute you
14 did that, the troopers and the district attorney would
15 have been in a non-negotiating mode which would have then
16 resulted in you either pleading guilty to charges or
17 going to trial and I told you time and time again and you
18 agreed that was not a good idea.

19 Q Is it my right to determine what is important for my
20 livelihood or yours?

21 A It's -- for purpose of that motion?

22 Q Yeah.

23 A It's the judge who makes that determination.

24 Q When you're deciding whether we should file to get the
25 plane back, at that time without the judge, me and you,

1 me hiring you, whose opinion do we go on what's important
2 for my life, my opinion or your opinion, for my life?

3 A Your opinion is preeminent. However, when ex -- this was
4 explained to you again.....

5 Q Pre.....

6 Afiling -- filing that motion to get your plane back
7 would have terminated the negotiations which you were
8 unwilling to do. You wanted a negotiated deal.

9 Q Okay. I never told you I might want a trial?

10 A That's -- yeah, certain points, you always did. You'd
11 come in and you'd talk and we'd -- you came in with your
12 friend and you'd say you wanted to fight and you wanted
13 to do this and we'd sit and we'd talk and at the end of
14 the day, David, I don't know how many times I have to say
15 this, you said okay, that's not a good option. You're
16 right, I don't want to have a five-year loss of my
17 license, I'd rather have you negotiate something better
18 and we did.

19 Q So if it was my right -- if I was coming in telling you I
20 might want a trial, don't you think you should have told
21 me and I could get my airplane back?

22 A David, at various points of time, you would come in and
23 say things like what if I wanted a trial about -- because
24 of entrapment and we'd go through that and I'd go well, I
25 don't think that's a good idea because I think you're

1 going to lose for these reasons and if you end up losing,
2 this is where it's going to get you and then you'd come
3 in and you'd say well, what if I wanted my airplane back
4 and I'd go well, we could work on that but at the end of
5 the day, where is that going to get us. Where do we want
6 to be in six months? Do we want to be fighting this case
7 in trial and have the potential to lose big or do we want
8 to be guiding next year and you always said to me I'd
9 rather be guiding next year. So whenever you would come
10 up with these ideas that you wanted to fight or you
11 wanted to file motions or you wanted to file a motion to
12 dismiss, we discussed it, we talked about it and you
13 never demanded I want you to file that motion, I want you
14 to go to trial, I want you to terminate these things.
15 You never said that. At the end of the day, you would
16 say well, okay, I don't want to lose our negotiation.

17 Q I never told you that I wanted to get the airplane back
18 no matter what or for (simultaneous speaking).

19 A No, you never told me that.

20 Q Did I ever tell you that I wanted the plea agreement no
21 matter what that we had?

22 A No, I -- I thought you did. Yes, you did.

23 Q Okay.

24 A On the 8th when we were celebrating after we'd reached
25 the deal, we went out to dinner, we had beers, the next

1 day, I thought you were very happy because you were going
2 to be guiding. Yes, you were losing your aircraft but we
3 were still in the mix because we were talking to them
4 about exchanging the Super Cub for the PA-12.

5 Q While you were my attorney, did I ever agree to give up
6 the PA-12 airplane?

7 A You resisted that the whole time. I -- I -- I thought
8 until you resisted that -- that -- that concept the whole
9 time and I told you, you know, David, give it up because
10 we can spend a lot of time and money trying to get that
11 thing back but.....

12 Q Okay. If I resisted giving up the PA-12 the whole time,
13 how could there have been a plea agreement as you've said
14 there was?

15 A Because on the 8th, it was still in play whether or not
16 the state was going to accept your Super Cub in exchange
17 for the PA-12.

18 Q How come you said that there was an agreed to agreement
19 then?

20 A It was we were still working out the major components but
21 the essential terms were there. At the time, they still
22 demanded that your PA-12 be forfeited. At the time, you
23 kept insisting to me Brent, please try to get the PA-12
24 back, make -- se if they'll go for the Super Cub and I
25 was working on that and in mid-November, we got the word

1 they were not going to do that and that's -- shortly
2 thereafter, you fired me.

3 Q On November 8th, 2004, was I, quote, unhappy about the
4 position I was being put in?

5 A Initially, I think so, yeah.

6 Q Why?

7 A You -- you -- only you can answer that, David.

8 Q Did I tell you it was because Leaders had broke the deal
9 and wanted the airplane to boot?

10 A No.

11 Q Okay. You never agreed that it was all about the
12 airplane?

13 A I -- I am -- you -- you know, don't put words in my
14 mouth. What I said was that the decision to amend the
15 complaint I suspected was over your desire to try to get
16 that aircraft back and they were going to require you to
17 receive a three-year loss of license if you were going to
18 get the opportunity to get your aircraft back.....

19 Q And did they.....

20 Abut that's purely supposition but that's what I
21 thought was going on.

22 Q And the first time we were informed of that was on
23 November 8th, is that correct?

24 A I -- I don't think -- I -- I know that that's when he
25 filed it. My recollection, as I testified earlier, was

1 that I called you and told you that they weren't going to
2 accept open sentencing on the one year. Now.....

3 Q Prior to November 8th?

4 A Yeah, at some point, I called you on the phone and told
5 you about that.

6 Q Okay. So before a -- November 8th, you notified us.

7 A I notified you. I didn't say us.

8 Q Okay. You notified me. Did you ever tell, actually,
9 quite a few of us here -- tell us the only thing you
10 could do to enforce the plea agreement was to, quote,
11 call Leaders' boss?

12 A No, that's not what I said, I said to en -- require him
13 to go back and file the amended -- the complaint the way
14 we had agreed was the -- and I can't remember exactly
15 what it was but it had to do with I could talk to their
16 -- his boss about it but there wasn't a lot we could do.

17 Q Okay. In other words, you told us there wasn't a whole
18 lot we could do and the one thing we could do was call
19 Leaders' boss?

20 A That was something that I could try to do to try to get
21 us back on track.

22 Q But.....

23 A That hap -- you know, and that was -- now, wait a minute,
24 that happened in the afternoon and later that night, we
25 negotiated the case. So after that, it made no

1 difference.

2 Q Okay. So after November 8th, it made no difference -- or
3 November 9th?

4 A I -- in my opinion, no, it didn't.

5 Q Okay. So there would have been no conversations after
6 that date at which I was bringing up had you ever called
7 Leaders' boss to complain about the plea agreement being
8 broken?

9 A No, I -- I wasn't doing that because the minute I call
10 Leaders' boss, now all of a sudden we're in that argument
11 with Leaders and we don't have the deal that we've
12 already agreed to that puts you back guiding on July 1st.
13 All that does is create the opportunity for them to say
14 no deal, you can plead open sentencing and put your faith
15 in the judge's decision.

16 Q Was it ineffective assistance of counsel if you told us
17 the only thing you could do to enforce the plea agreement
18 was to call Leaders' boss?

19 MR. PETERSON: I'm going to object. That calls for a
20 legal conclusion. It's not a question.....

21 MR. HAEG: He's a lawyer.

22 MR. PETERSON: He's -- that is a decision to ultimately be
23 made by a judge. So if you want to ask him about the.....

24 MR. HAEG: Okay.

25 Q Was it deficient performance.....

1 A No.

2 Qfor you to tell us the only thing we could do to
3 enforce the plea agreement was call Leaders' boss?

4 A We went through all of your options in the room that day
5 of what your legal options were and one of those was that
6 -- one of them there was a number of other options on the
7 table. Ultimately, we resolved the case that evening.

8 Q So when I asked you how to get the plea agreement we had
9 and you told me the only thing that you could do was call
10 leaders' boss, that that's all you needed, that.....

11 A I -- I don't think we had a plea agreement.

12 Q That's.....

13 A You keep referring to this plea agreement. You wanted
14 the deal. We did not have a plea agreement in place.

15 Q That.....

16 A The plea agreement that was in place was the one and
17 three with the evidentiary hearing out in McGrath over
18 the moose. That's the only thing that was in place.

19 Q Okay.

20 A There were other option -- listen. I want to.....

21 Q Okay.

22 A There were other options out on the table but -- and --
23 and you still had that option. We could have gone out
24 there the next day but, ultimately, we reached a deal on
25 all the essential elements. There was no reason for the

1 -- to go out for the arraignment the next day. We
2 canceled that. We did everything telephonically. You
3 had the choice.

4 Q Was I happy with what Leaders had done on the day of like
5 November 8th, November 9th?

6 A I think he'd done it on the 7th -- I -- I -- I mean, on
7 the Friday before is when he filed it or Thursday. I --
8 I -- you know, I can't speak for you. You were nev --
9 you weren't happy.....

10 Q Okay.

11 Aunless you had your airplane back is what I
12 remember. That's the only thing that I think would have
13 made you happy because everything else I negotiated in
14 light of what you did was unbelievable.

15 Q Were you happy with what Leaders did on November 8th?

16 A I -- I -- I -- I -- I wasn't happy about it, no.

17 Q Okay. If you and I were not happy about what Leaders had
18 done on November 8th, why did you tell me the only person
19 we could complain to was Leaders' boss?

20 A I didn't tell you the only thing we could do, the -- the
21 fact of the matter is we got the state to come down to
22 one year at that point. We were going out to do a
23 hearing where you could get up to three years and that
24 night, I negotiated it down to 12 months and a -- I think
25 it was at that time September 1st.

1 Q You're not answering the question.

2 A Yes, I am.

3 Q No, he's not.

4 A Yes, I am. Yes, I am.

5 Q No, you're not.

6 A And you don't want to listen. That's your fault. You

7 don't want to listen. You had that opportunity and you

8 -- you could have had all those choices. You could have

9 done a lot of things. Ultimately, Scott Leaders called

10 us up that night and we negotiated things down and you

11 were agreeable and happy with the decision at that time

12 and agreed to it.

13 Q I was happy with the.....

14 A You were happy with where -- you were going to be back in

15 business on September 1st is my recollection in 2005

16 after being out and thinking you were going to be out of

17 business for five years. Yes, you were very happy about

18 that issue.

19 Q Okay. Since you've testified both you and I were unhappy

20 about what Leaders had done, why didn't you tell me or on

21 your own file a motion with the court protesting what

22 Leaders had done?

23 A What, in the three hours that we were in the room before

24 we had negotiated this thing, I should have told you that

25 and that makes a difference? Is that what you're telling

1 me?

2 Q No, in the weeks and weeks afterwards.

3 A No, no. No, no. We found out.....

4 Q Up until the time that I fired you, why did you tell me

5 that the only thing.....

6 A Because we negotiated the deal. You were happy with it.

7 Why worry about it if we've already negotiated the terms

8 of the deal?

9 Q If I was happy with the deal, why were we having

10 conversations about how upset we were with Leaders?

11 A We -- we did have that at the beginning and then we -- we

12 were happy because he came down to a year.

13 Q Okay.

14 A He came down. We were.....

15 Q So after November 9th, we were all happy with what

16 Leaders had done? Is that what you're testifying?

17 A I thought you were.

18 Q Okay.

19 A I was -- I thought -- I was ecstatic.

20 Q That made you happy? You were ecstatic? Okay.

21 A I thought it was a great deal.....

22 Q Ecstatic with Leaders (simultaneous speaking).

23 Athat we had negotiated. We'd avoided a sentencing

24 hearing, we'd avoided all those costs.

25 Q After.....

1 A We had -- we had gotten the charges down to five counts.
2 We had reduced the probation. We had gotten only the
3 trapping restriction. There was only a one-year.....
4 Q Okay.
5 Alicense revocation. It was effective September 1st
6 but we were working on that and at that time, it was a
7 great deal compared to what we had been dealing with for
8 the past six months and, I might add, compared to what
9 you ended up getting.
10 Q Did you say on November 9th, 2004 come on, Scott, give me
11 a bone?
12 A There's a transcript out there. What I said is on the
13 transcript. I can't remember exactly.
14 Q Okay. Why would -- on November 9th, why would you say
15 come on, Scott -- and this is Scott Leaders -- give me a
16 bone?
17 A Well, he was requiring you to enter a plea on A-15 and
18 since we already had a deal, it just didn't seem that it
19 was necessary to do that and I thought at that point
20 well, as a gesture of good faith, Scott, why don't you do
21 that. That's what my thoughts were.
22 Q Okay. And why didn't you inform the court of your
23 concerns over what he was doing?
24 A I -- I didn't have any concerns because I knew that at
25 the end of the day when you got sentenced, the plea

1 agreement required only a one-year loss of license. So
2 he was going to have to amend the information and reduce
3 the charges to A-8 on the day that you got sentenced. So
4 I was not worried about it at all. You were going to get
5 the amend -- you were going to get the benefit of it at
6 the time of your sentencing because we negotiated
7 everything. He had to reduce them because A-15 required
8 a mandatory three-year license revocation so that charge
9 could not be brought under our plea agreement. I knew
10 that amended information -- and that happens all the time
11 -- was going to get filed on the date that you did your
12 change of plea sentencing.

13 Q Isn't it true the reason you said that is because we had
14 agreed with everything he required for the lesser charges
15 and then at the last minute, he increased the severity of
16 the charges to also force me to give him the airplane?

17 A No.

18 Q Okay. Is it my duty to find major mist -- when I hired
19 you, was it my duty to find mistakes in the search
20 warrants or was it your duty?

21 A We've already gone over this.

22 MR. PETERSON: Hey David, why don't you hold on for --
23 while he's changing the tape.....

24 MR. HAEG: Okay.

25 MR. PETERSON:and let's just do two-minute break --

1 or one. I just want to use the bathroom. If you guys need
2 more.....

3 MR. HAEG: Okay. Ooh.

4 (Deposition recessed)

5 A I'm obligated for six hours under the rules. You're at
6 10:07 and we started shortly thereafter. I'll be -- if
7 we don't take a lunch break, I'm done at 4:07. Okay? If
8 we take a lunch break for half an hour, I'll stay until
9 4:30. If you don't agree with that, you can call the
10 judge and I'll explain my situation and you can explain
11 yours but.....

12 Q No.

13 Athat's where I'm going and that's -- I'm leaving at
14 -- if we don't take a lunch, I'm leaving at 4:07.

15 Q Okay. Well, we're up here and I think we should just
16 breeze through it because (simultaneous speaking) at home
17 so.....

18 A Whatever you want to do. It's up to you.

19 MR. HAEG: Everybody ready?

20 Q ~~Is it true you never discussed a motion to suppress with~~
21 me because you never felt that it was a good option?

22 A I -- no.

23 MR. PETERSON: That's a compound. Why don't you break
24 that into two parts so we know what he's saying no to?

25 Q I don't actually know how to do that. Is the reason you

1 never discussed a motion to suppress with me because you
2 didn't feel it was a good option?

3 A No.

4 Q Okay. Why did you never discuss a motion to suppress
5 with me?

6 A I did discuss it.

7 Q Okay. You did. Did discuss with me. I forgot maybe if
8 you answered this and you may have is if -- what evidence
9 could have been suppressed because of the false evidence
10 location?

11 A We already talked about this.

12 Q Okay. And did we discuss what would have been left, what
13 evidence would have been left? I don't think we did
14 discuss that.

15 A You'll have to pull out the search warrant. I don't have
16 it in front of me. I can't remember that.

17 Q Okay. But it's possible we could have suppressed the
18 evidence that was obtained with the search warrants, is
19 that correct? I'm not saying it would have absolutely
20 but it's possible.

21 A The -- anything is possible. You could -- if you file a
22 motion on a search warrant after the charges are brought,
23 you could -- it could result in the suppression of all or
24 part of evidence seized pursuant to that search warrant.

25 Q Okay. And is it possible that the evidence seized out in

1 the field could have been suppressed also because the
2 state had claimed it was -- had falsely claimed it was
3 found somewhere other than where it was?

4 A We already talked about this.

5 Q Okay. And did we talk about had those two things been
6 suppressed, what evidence would have been left?

7 A I did -- I -- in my opinion -- like I said, I don't have
8 the search warrant in front of me. I think we talked
9 about the fact that I -- I -- I don't know a theory -- I
10 didn't rem -- I don't recall -- I don't recall a theory
11 that would have resulted in the suppression of
12 everything. You -- if you had -- as I told you then and
13 at -- every time, if you find that an -- a -- a law
14 enforcement officer has intentionally misrepresented
15 material facts, then that can be the basis for
16 suppressing the evidence. If you don't find that they
17 acted intentionally, all that it results in happening is
18 you take that section of the affidavit or the sworn
19 testimony out of consideration and you make a
20 ~~determination of whether there was probable cause to~~
21 search based on the information that has not been
22 excluded.

23 Q Okay. At the statement I made, did I inform Leaders and
24 Givens and yourself because you were there that the
25 evidence had been falsified, the evidence locations had

1 been falsified?

2 A I -- I don't remember that, no.

3 Q Okay. If I had informed you and them, did anybody have

4 -- including the state, did anybody have an obligation to

5 look into it?

6 A You'll -- you're asking the wrong person.

7 Q Okay. And I -- you know.....

8 A I don't remember that happening. The trooper was right

9 there in the office who'd given it. If you had told him

10 you falsified that, I think that would have been

11 something I remembered. I just don't remember that.

12 Q Okay. So you don't remember me saying hey, these

13 evidence locations are false and Trooper Givens going

14 well, I'll have to go re-check that and.....

15 A I don't remember that, no.

16 Q Okay. Don't remember. And you don't -- if -- and this

17 is where I -- you know, I guess I'll just ask it and

18 people jump up and whatever but if the state continued to

19 falsify the evidence locations at trial and they were

20 found out and had to admit it was wrong, would that have

21 proved that back at the search warrant time, that they

22 knew the evidence was false then?

23 A No.

24 Q So you're saying that if later on the state is proved to

25 be knowingly testifying falsely about the evidence

1 locations, you can't claim that it's more likely than not
2 that they were -- knew it was false back at the
3 beginning?

4 A That's not what you asked me before.

5 Q Okay. But what I just asked you -- I mean, does it --
6 well, put it this way, did the state -- when I brought it
7 up or if I brought it up since you don't remember, if I
8 brought up that the evidence locations were false at my
9 statement -- during my statement, did the state and the
10 trooper -- or did the prosecutor and trooper have a duty
11 to fix it?

12 A The state. Fix what?

13 Q The false statements on the affidavits and on the
14 warrants.

15 MR. PETERSON: What is the false statement you're
16 referring to? Let's make sure we all understand exactly what
17 you're referring to.

18 Q Okay. The location of where the evidence was found, if
19 that was.....

20 A You mean whether it was in -- within your guide unit?

21 Q Correct. Yeah.

22 A I can't speak for the trooper.

23 Q Okay.

24 A I'm not a trooper. I don't work in law enforcement so I
25 don't know how to answer that as far as the trooper's

1 informed.

2 Q But if it were.....

3 A Just listen to me.

4 Q Okay.

5 A I need to -- I want to answer my question, please. And
6 with regard to the prosecutor, I mean, if a prosecutor
7 knows that something is intentionally false, he has a
8 duty, I believe, to -- under our ethical rules to take
9 some steps to correct that.

10 Q Okay.

11 A I don't know anything more than that. I mean, that's
12 just the general obligations that I'm aware of. I can't
13 speak for the troopers.

14 Q Okay. And if I'd hired counsel to represent me, should
15 they have been making sure the prosecutor corrected the
16 false information?

17 A If you were hiring counsel to go to trial and -- and
18 challenge all the charges against you and take the risk
19 of going to trial, yes.

20 Q Okay.

21 A You ultimately made the decision not to do that and --
22 and you wanted to avoid being put in the position of
23 being in open sentencing.

24 Q Okay. So Robinson had an obligation to make the state
25 correct their mistake?

1 A I -- I can't speak for Mr. Robinson. He may have had a
2 lot of reasons for doing one thing or the other. You
3 have to ask Mr. Robinson.

4 Q Okay. But you're saying that even though you knew.....

5 A I -- no, I'm not saying I knew. I told you I don't
6 remember that.

7 Q Okay.

8 A Don't put words in my mouth, David.

9 Q Okay. If I have the -- a tape recording proving that
10 that occurred, did you have a duty to say hey, Leaders
11 and Givens, you might want to clean up your mess here?

12 A When was this? When -- when is this tape recording, what
13 date?

14 Q I don't know but it was the day I gave a statement in
15 your office with Scott Leaders, Trooper Brett Givens and
16 Tom Stepnosky.

17 A I -- at that point, we were talking about negotiating the
18 case and resolving it so that they wouldn't stop you from
19 guiding, they wouldn't shut down your operation and take
20 your business away for five years. So at that point, I
21 was not concerned about crossing the I's and dotting the
22 T's because, ultimately, in my mind, you were going to
23 lose on that. You had admitted to me that you and Tony
24 had killed these wolves outside the area. That's -- the
25 defense was not there and so, ultimately, it was damage

1 control and we were trying to stay focused on negotiating
2 the case, not challenging the state.

3 Q So you're telling me that the state moving the
4 evidence.....

5 A Moving the evidence? What are you talking about?

6 Q Or claiming it was found somewhere other than it was.

7 Okay?

8 A Moving the evidence. I -- this is the first time I've
9 heard that the evidence was moved.

10 Q Okay.

11 A That's a serious allegation.

12 Q Okay. Is claiming it was found somewhere it wasn't just
13 as serious?

14 A People make errors all the time on guide back -- guide
15 use -- or guide unit areas.

16 Q Okay.

17 A They make -- they make errors all the time on that. I
18 have clients that have failed or put in the wrong one.
19 So that's a lot different than falsifying.

20 Q Okay. But when that's put on a affidavit that a trooper
21 swore to and it was on the search warrant application and
22 they had my guide area in there all is the same when it
23 wasn't the same in truth and everyone was notified about
24 it including yourself, tell me exactly why no one,
25 including yourself, did a thing about it.

1 A Well, I can't speak for the other people but I've.....

2 Q Okay.

3 Aalready given you the answer on why I didn't on the
4 other case.

5 Q Okay. And do you believe that if you would have forced
6 them to clean up their error, they would have held that
7 against you and refused to plea -- refused to negotiate
8 with me because I -- we made them correct an error, a
9 material error? Is that what you're saying?

10 A I didn't -- I didn't see what the -- what the benefit,
11 what -- so they correct it, so what did -- where does
12 that get us? I -- I couldn't understand what the benefit
13 was. They still had the evidence. They still were going
14 to bring charges. You were still a guide and it's.....

15 Q Don't you believe that when they said the reason for
16 charging me as a guide was because I was doing it to
17 benefit my guide area, that maybe I should have been
18 doing it in the guide area but I wasn't and they
19 falsified it?

20 A ~~No, I believe that they did it because you were a guide.~~
21 You were a registered guide. That's why you got charged.
22 It.....

23 Q So no matter where I took the wolves, I'd be charged as a
24 guide?

25 A I think you would have, yeah. Absolutely I think you

1 would have. I have no doubt in my mind.

2 Q Even inside the open area for the wolf control program?

3 A Yeah. If you were in your permit, you were okay but.....

4 Q But anywhere else, I'd be charged as a guide, is that
5 what you're saying?

6 A Yup. Yup, that's the way I interpreted it.

7 Q Okay. Even though there were donut holes inside the open
8 areas, I went into one of those donut holes, big game
9 guide charge, is that what you're saying?

10 A If you did not comply with the terms of the permit, you
11 were then a big game guide who were either violat.....

12 Q Okay.

13 A Listen. Violating the law under AS 08.54 or you knew of
14 a violation and didn't turn it in and those were your
15 obligations when you signed up to be a big game guide.
16 You didn't like those obligations. You weren't a regular
17 person and I told you that from the beginning. A big
18 game guide had extraordinary responsibilities to the
19 public and you abandoned those because you didn't like
20 the way things were going.

21 Q And I never told you that the state told me I had to do
22 that to make the program a success?

23 A That -- you told me that and I told you just what we've
24 already talked about. I didn't think that was a legal
25 defense and it certainly wasn't entrapment.

1 Q Have you stated that the reason I was made an example of
2 is because of the harm I caused the state wolf hunting
3 program?

4 A If you're talking about my testimony at the hearing, I'm
5 not going to go into that. If you -- if you're talking
6 about some other time, identify it.

7 Q While you were representing me, did you ever tell me the
8 reason they were coming after me and going to make an
9 example of me is because of the harm I caused to the
10 state wolf hunting program?

11 A I -- I told you at the very beginning that was a concern
12 of mine, yes, and that this was a very serious matter and
13 I expected that you were going to be made an example of
14 unless you made a deal, you're right.

15 Q And how exactly do they make an example of somebody that
16 they want to.....

17 A They make them -- they don't give them a deal is what
18 they do. They just say no deal. Okay. You're going to
19 -- we're going to charge you with this, you'll get -- you
20 can go in and plead guilty and we'll let the judge make
21 the decision or you can go to trial but no deals. That's
22 how they make an -- an example of you and then they come
23 into your sentencing and they bring in every person that
24 they can bring and they tell the judge this person cannot
25 be a guide ever again, you should take their privileges

1 away because they don't deserve it anymore.

2 Q Okay.

3 A And I expected that that was a possibility with you.

4 Q Could they have falsified the evidence locations to help
5 them make an example of me?

6 A I -- that -- that's a very serious accusation and until
7 today, this is the first I've heard about moving
8 anything. I -- I just -- I don't know what to tell you
9 about that. I -- I.....

10 Q But it could be -- in other words, what you're testifying
11 is that could be a possibility?

12 A What could be a possibility?

13 Q That they falsified the evidence location to help make an
14 example of me.

15 A No, I -- I -- I -- I -- when you say falsified the
16 location, are you saying that they mis-identified the
17 location? In other words, they put the wrong game
18 management unit or that they took it out of one area and
19 put it in your unit?

20 Q I'm telling -- I'm asking you that is it possible they
21 intentionally falsified the location of where the
22 evidence was found.

23 A When you say intentionally falsified, what do you mean?
24 Do you mean they.....

25 Q I mean, knowing that it was found in game management unit

1 19-D, they on all the warrants and on everything re --
2 given to the judge and my jury put no, it's all found in
3 19-C where Dave Haeg guides and has a guide lodge.
4 That's what I'm saying.

5 A Did -- is it a possibility?

6 Q Yes.

7 A It's -- I guess it's a possibility.

8 Q Okay. If that's a possibility, why didn't you protest
9 it?

10 A David, how many times do we got to go over this? How
11 many times do I have to explain?

12 Q Until we get to the truth, Mr. Cole.

13 A No, you know what, it's -- it's -- it's about what you
14 want to hear, not what I'm telling you. You want to hear
15 something that's other than what I'm telling you. We
16 didn't go down that path.

17 Q Did I ever.

18 A Listen, we didn't go down that path because you couldn't
19 stand the possibility you were going to lost your guide
20 license for five years. You were in tears. You were an
21 emotional wreck and you laugh about it now, David, but I
22 heard you and I know that you were underneath the table
23 when you called me and you were crying. I understand all
24 that. I told you look, these are your options, if you
25 want to fight this, we can but you better put up a lot

1 more money and -- number one and number two, you better
2 figure out that you're willing to accept the consequences
3 and you weren't.

4 Q Okay. So you told me that to fight, I had to put up more
5 money, is that correct?

6 A I told you it was going to be a lot more expensive to
7 fight this than the \$2,000 I charged you.

8 Q While you were representing me, you told me that I had to
9 put up more money.....

10 A At some point -- no, I didn't say that.

11 Qto fight it.

12 A No, I said it -- know what I said? You -- you take words
13 out of my mouth. I said if you want to fight it, it's
14 going to cost you more money and, ultimately, you would
15 owe it because there's the motions, there's the trial. I
16 had done a number of trials. I've probably done more
17 trials for guides than anybody in this state. I know
18 exactly what it was going to cost and I told you look,
19 David, you don't want a trial, we want to get out of the
20 situation.

21 Q Okay. Is it possible that the state told me to take
22 wolves wherever I had to but claimed they were in the
23 wolf control program area?

24 MR. PETERSON: I'm going to object, calls on speculation.

25 Ask him if he knows. If he doesn't know, move on.

1 MR. HAEG: Okay.

2 MR. PETERSON: You can depose.....

3 Q Is it a possibility.....

4 MR. PETERSON:Mr. Spraker or you can
5 (indiscernible).

6 MR. HAEG: Okay.

7 A I wasn't at the -- I wasn't at the meeting.

8 MR. PETERSON: Depose Mr. Spraker.

9 Q Would that have been a pretty potent defense if that was
10 true?

11 A I -- we've already talked about this. No.

12 MR. HAEG: I always forget then where we've already been.

13 Q Was -- after I'd been given immunity for a statement, was
14 prosecutor Leaders and Trooper Givens allowed to the ones
15 that took the statement and be the ones that prosecuted
16 me at trial?

17 A I don't know why not. Okay?

18 (Whispered conversation)

19 Q Do you think that after prosecutor Leaders and Trooper
20 Givens took my statement, they knew where to go find more
21 evidence?

22 A Can't speak for them.

23 Q Okay. Do you believe that they would have -- is it your
24 opinion they would have had a better idea on how to
25 conduct the prosecution?

1 A Can't speak for them.

2 Q So you don't think that having somebody come in and
3 confess will allow you to have a better -- or a more
4 effective prosecution?

5 A That's not what I've said. That's not what I said.

6 Q Okay. In your opinion, if you have someone come in and
7 confess, do you have a better chance for a successful
8 prosecution?

9 A If that's your goal, yeah. Yeah, I think that's right.

10 Q Yeah? Okay. And so.....

11 A If you can -- if you could use the statement at trial, it
12 would help but if you can't use the statement at trial,
13 it doesn't help you at all.

14 Q So they couldn't use my map where I drew where it fly --
15 find evidence and then present that evidence against me
16 at trial?

17 A In -- in my opinion, they couldn't.

18 Q They couldn't tell Tony say and say hey, Dave gave a
19 statement implicating you and go to him and try to get
20 him to cooperate?

21 A That's -- that's not what happened.

22 Q There's been no testimony, sworn testimony, to the
23 opposite?

24 A There's been testimony on both sides of that, David.

25 Q Okay.

1 A I know what Tony said.

2 Q So you.....

3 A I'm in disagreement on that.

4 Q And didn't Mr. Fitzgerald have file the same thing?

5 A But at the end of the day -- but at the end of -- but at
6 the end of the day, David, you guys wanted your
7 opportunity to bear hunt. You wanted the opportunity to
8 keep your lodge. You wanted the opportunity to negotiate
9 with the state and so you gave up your right to go to
10 trial -- I shouldn't say that. That's not a good term.
11 You -- you made the decision that that's the avenue that
12 you wanted to go. Okay? That's all it was. You had the
13 choice to fight it and you had the choice to try to make
14 a dea -- a deal and do damage control and you chose to do
15 damage control and Tony had the same deal, could have
16 done the same thing and, in fact, Tony went behind your
17 back after this and made even a better deal and then went
18 in and testified against you.

19 Q You don't think that Tony -- the reason Tony did that is
20 I'd testified -- or I had implicated him with a statement
21 that they could use to prosecute him?

22 A I -- you have to ask Tony about that. I can't give you
23 any -- I can't testify.

24 Q Okay.

25 A I just know that at the end of the day, he went behind

1 your back, made a deal that even improved his situation
2 and then testified against you.

3 Q You're saying the second deal improved upon what the
4 first deal Tony had was?

5 A Yup. I think that the.....

6 Q Okay.

7 ATony got a better deal. That was my understanding.

8 Q Good deal. Tony got a better deal. Were you ever
9 subpoenaed to my sentencing?

10 A Yes.

11 Q And were you given an airline ticket also?

12 A Yes.

13 Q Why didn't you show up?

14 A Because Mr. Robinson told me I would not be necessary. I
15 stood by on the phone. I told him I would testify over
16 the phone if he wanted me but he didn't -- I didn't get
17 called.

18 Q Is Robinson allowed to tell me that he's going to call
19 you but tell you that you're not necessary?

20 A Can't speak to Mr. Robinson.

21 Q Okay. Is it true Robinson never told you what he
22 proposed to ask you at my sentencing?

23 A I don't know -- I -- my recollection is it had to do with
24 whether you'd get credit for not using -- not being a big
25 game guide is what there was some question about me

1 testifying, that you had -- you'd not guided in the fall
2 of 2004 and you should get credit for that at -- at your
3 sentencing. That's what I -- that's what my recollection
4 is.

5 Q Okay. And so Robinson went over that with you?

6 A I -- I -- I can't remember what he -- we talked about, I
7 just have this recollection that that was an issue that
8 you wanted me to talk about.

9 Q Do you think that would have been advantageous to the
10 sentence I received?

11 A I -- I don't think the judge had anything to do with it.
12 It didn't make any difference, David, because when you
13 got more than five days in jail, it wasn't up to the
14 judge how long you were going to lose your license. It
15 then became over to the Department of Occupational
16 Licensing and they had to take your license for five
17 years from that date. There was no ifs, ands or buts.
18 It was inevitable.

19 Q So even though you testified the state should give me
20 credit for a year we didn't guide, the state could just
21 tromp right over that?

22 A You didn't -- you didn't take the deal. The -- the only
23 reason you got that.....

24 Q Okay.

25 A you were going to -- we were going to be able to

1 make that argument was if you took the deal and you chose
2 not to.....

3 Q You don't.....

4 Aand so, no, you didn't get it. You went to trial
5 and it -- the judge had nothing to do with it. Mr.
6 Robinson had nothing to do with it. It was going to
7 happen automatically by law. Once you got convicted and
8 the sentence was for more than five days or for more than
9 a thousand dollar fine on any count, AS 08.54.605 says
10 from that date forward, you cannot apply for five years.
11 The judge had nothing to do with it.

12 Q Irregardless of what the statute says, is it fair for me
13 not to have got credit for a year I did not guide?

14 A I can't talk in terms of fairness. That was what the law
15 was. You knew it going into it. It's your fault. We
16 told -- if they didn't tell you, that was your fault.
17 That would be something to talk about.

18 Q Would it be.....

19 A I don't know. I told you that that -- I -- I told you
20 and went over the issue of what -- the implications of
21 AS 08.54.605. You're a smart man. You could have read
22 that statute. You could have gone over and talked to the
23 Department of -- big game commercial services. At that
24 time, I don't know what it -- what was the name of it but
25 you could have gone and talked to them, what are the

1 implications if I go to trial and I get convicted, when
2 does this go into place. You could have done all of
3 that. You're smart. You were always smarter than me.
4 You always told me that, David. Don't you remember?
5 Q Why did I hire you then, Mr. Cole?
6 A You always told me that. You always told me how smart
7 you were.
8 Q Why did I hire you for your advice, Mr. Cole?
9 A I don't know, you -- only you can answer that.
10 Q Okay. Did you ever tell me I could lose credit for the
11 year that I'd given up?
12 A It never came up because I always had a deal negotiated
13 that was going to allow you to gain it.
14 Q Did I ever tell you that I was thinking of going to
15 trial?
16 A And I would always tell you that's a real poor decision,
17 David.
18 Q Okay. And at that point, did you ever tell me if you're
19 thinking of going to trial, you're going to lose credit
20 for the year you've given up?
21 A I think we discussed that.
22 Q Discussed.....
23 A That's why I always said don't go get open sentencing.
24 Q Okay. So we discussed that.
25 A At some point, yes.

1 Q And the reason why we discussed it is you'd be -- as my
2 counsel, you'd be telling me my rights and my -- what
3 might happen to me with different choices that I'm
4 making, correct?

5 A Scenarios that you were bringing up almost whenever we
6 talked, different scenarios. It was like you would go
7 back, you would talk with your friends, you'd come up
8 with new ideas and you'd come and you'd say we want to
9 fight it. We'd talk about it again and you'd -- so no, I
10 don't want to do that. We'd not talk about it for awhile
11 and you'd come back, well, I want to fight it with a new
12 idea.

13 Q Have you told me that the recordings -- in the recordings
14 I made of you while you were still my attorney, that you
15 told me do you want to file this?

16 A Say that question again?

17 Q Okay.

18 A I didn't (simultaneous speaking).

19 Q Have you ever told me that in the recordings, the
20 transcripts that I made.....

21 MR. PETERSON: Why don't you just ask him in general if
22 he's ever told you whatever the question is irrespective of
23 what's in the transcript?

24 Q Okay. Have you ever told me do you want to file this in
25 regard to a motion to enforce the plea agreement?

1 A I -- I -- it's been eight years. I can't remember. I --
2 I -- I can't.....

3 Q Okay.

4 Aliterally can't remember. I -- I -- it would be
5 something that I would say, yes. I can't remember
6 verbatim all the conversations we had.

7 Q Is it true that on November 8th and 9th, everybody was
8 happy with the state of my case?

9 MR. PETERSON: Mr. Haeg, this has been asked and answered
10 several times.

11 MR. HAEG: Well, I'm going.....

12 A It's been asked and answered. Move on.

13 Q In fact, isn't it true that after November 9th, even you
14 were so angry, quote, you were burning?

15 MR. PETERSON: Can you specify angry with respect to what?

16 Q Isn't it true that because of what Leaders did on
17 November 8th and 9th, that weeks afterward, you were
18 burning about it?

19 A I was burning about how I had been treated
20 professionally. I was really happy about the deal I had
21 negotiated for you. I thought he treated me
22 unprofessionally.

23 Q Okay. And can you explain exactly what he did that made
24 you think he treated you unprofessionally?

25 A One more time, we had a deal where you were going to get

1 a hearing on -- through AS 08.54.6 -- let's see,
2 720(a)(8) which was going to allow there to be a hearing
3 on a sentencing. Those were the charges. There was
4 going to be a hearing about whether you got between one
5 and three years and everything else was negotiated on
6 your license revocation and we were going to go to this
7 hearing and it was going to be on the moose thing. At
8 some point, you asked me what about if I just go open
9 sentencing on the misdemeanors, AS 08.54.720(a)(8), and I
10 said David, why would you do that and you said I want the
11 opportunity -- I -- I want to think about the opportunity
12 of getting my plane back and I said you're not going to
13 get it back but I said I'll ask. So I did ask Scott
14 Leaders is my recollection about that and, initially, he
15 agreed to that which I would have done if I was a
16 prosecutor. I mean, if you think that a big game guide
17 has used an aircraft illegally as a prosecutor, you got
18 to have every confidence in the world that in an open
19 sentencing situation, a judge is going to forfeit that
20 aircraft, whether it's as a stipulation or whether the
21 parties are asking you to make that decision. So
22 originally, he said yes but later on, he said no and I
23 was really -- I felt that he had not treated me with the
24 professional courtesy that I would have treated him.
25 That's all.

1 Q Okay. And.....

2 A That's why I was unhappy.

3 Q And because of that same actions that made you burn
4 because he treated you unprofessionally, was it -- was
5 that why I became unwilling to make any more deals?

6 A No. I mean, it made me work harder to get you a good
7 deal which I ultimately did. It made me work that much
8 harder. That's what you don't understand.

9 Q And.....

10 A I then was able to negotiate no exposure on a three-year
11 license revocation, no exposure on a two-year license
12 revocation. I got you a one-year deal that was starting
13 you on July 1st. I was extremely happy with that and I
14 -- and we had avoided all the problems. All we needed to
15 do is get signed off by the Division of Occupational
16 Licensing and clear up a couple of the little small
17 issues. I was extremely happy with that deal.

18 Q Okay. Did I ever -- after what Leaders did of changing
19 -- you know, agreeing and then reneging, did I ever tell
20 you or ask you if Leaders can get me to do this and break

21 the deal, why wouldn't he make a new deal and break that
22 one also?

23 A I -- I think you did ask that and I said I'm not that
24 worried about that. I mean, we had a solid -- yeah, I
25 think you did ask me about that.

1 Q If he did that a second time, would you be paying the
2 consequences or would it be me paying the consequences?

3 A Well, he didn't do that so it's a hypothetical that
4 doesn't mean anything.

5 Q But did he do it the first time?

6 A No.

7 Q Who paid the consequences for him reneging on the first
8 deal, you or I?

9 A That -- that reneging and not agreeing had nothing to do
10 with the consequences that you suffered, David. The
11 consequences you suffered is because you chose not to
12 accept a deal that you later did and you went to trial.
13 You ended the negotiation and went to trial in the face
14 of everybody telling you that's a really poor idea. You
15 had to prove a point and, of course, you did. You proved
16 that you should have listened to your attorney's advice.

17 Q From our discussions at that time, did I tell you because
18 of what Leaders did on November 8th and November 9th, I
19 no longer trusted him?

20 A You may have said that at some point, I don't know.

21 Q Okay. After what Leaders did on November 8th and 9th,
22 did you trust him?

23 A Well, I was -- I -- I trusted him because we made the
24 deal on the 9th and I was very happy with that deal and I
25 did -- had no expectation that that deal was not going to

1 be honored and we had it nailed down and I had no
2 problems with it. Was I going to make sure that in my
3 dealings with Scott Leaders in the future that I was a
4 little more careful? Obviously. Yeah.

5 Q Okay. And if that is making you change your actions in
6 the future, why couldn't you have done something to help
7 me or protect my rights in the present at that time?

8 A I did. I made a great deal for you that you ultimately
9 rejected.

10 Q Did you -- okay.

11 A It was -- if -- if I had done anything other than that,
12 David, you would have been right where you're at right
13 now which is in trial convicted and five years later in
14 litigation.

15 Q Well, it's eight years later.

16 A Well, eight years, sorry.

17 Q Anyway, let's see, have you ever -- at the time in
18 question.....

19 MR. PETERSON: What time?

20 MR. HAEG: Well, while he represented me.

21 A It's six months now.

22 Q Did you tell me that you never knew -- or never believed
23 I wanted open sentencing?

24 A What I told you is open sentencing would never be in your
25 best interest. Did you express an interest at some point

1 of wanting to go at -- open sentencing? Yes, you did
2 because that's why I asked Leaders for it. All that time
3 I was saying -- what I asked him was is this a
4 possibility of this happening in full expectation that
5 that would be the single poorest decision that could
6 occur but at least respecting and -- your decision to at
7 least make the inquiry, I did it.

8 Q Have you told me that at the time you represented me, I
9 never told you I wanted my plane back or the plane back?

10 A Clarification, when have I told you this?

11 Q Well, while you represented me, did you never te -- or
12 did I never tell you that I wanted the plane back?

13 A It's like a double negative but I think what you're
14 saying is yes, you did tell me you wanted the plane back
15 if you could get it back and we talked about an exchange,
16 yes, and you might have even brought up getting it back
17 and bonding it out at some point and I always told you
18 that's a bad idea.

19 Q Did you ever tell me that it could be bonded out?

20 A I don't know if I did or -- that or not. I don't
21 remember that.

22 Q Should you have?

23 A No, because we were negotiating a deal. That was not in
24 line with negotiating a deal. That was contrary -- that
25 would be giving you advice contrary to negotiating a

1 deal.

2 Q Is it true that one of the central negotiations, maybe
3 the main one, as things turned out -- or as it
4 progressed, was getting the airplane back?

5 A That was never the central one until you made it. You
6 and Leaders made it more one than I did because I told
7 you from the beginning you were going to lose that plane.

8 Q Okay. And once it was made a central issue while you
9 were still representing me, wasn't it your duty to tell
10 me I could bond it out?

11 A No.

12 Q Okay.

13 A I was negotiating for you.

14 Q Okay. Is it true that I thought my plane was important
15 for my livelihood but you didn't think so?

16 A I can't speak for you.

17 Q I did.....

18 A You had another -- you had another plane.

19 Q Then.....

20 A ~~I know you think it was a real special plane and it was~~
21 all these modifications and you were so proud of it and I
22 understand all that but the truth -- truth of the matter
23 is 95 percent of the guides in this state use a Super Cub
24 and they're very successful and they do it just fine with
25 a Super Cub and you had a Super Cub and you had used your

1 PA-12 to illegally kill wolves and so that plane, in my
2 opinion -- and I expressed it from the beginning -- you
3 were never going to get back. I never saw a situation
4 where the troopers were going to allow you to get that
5 plane back.

6 Q Did I tell you that the plane was important for my
7 livelihood?

8 A Oh, you told me how important the plane was to you
9 personally.

10 Q So yeah.....

11 A I don't know if you told me (simultaneous speaking).

12 Q Is that a yes or a no?

13 A No, I -- I don't know if you did or not. Maybe you did
14 but it was inconsistent with what I knew.

15 Q Okay. If I told you it was important for my livelihood,
16 were -- did you have a duty to tell me that I could bond
17 it out?

18 A No, because we were negotiating the case. You weren't
19 going to get the plane out. It nev -- no -- none of the
20 negotiations.....

21 Q Was.....

22 Aenvisioned you getting your plane back and so I.....

23 Q Did there come a point when I asked -- I told you I was
24 thinking of going to trial while you represented me?

25 A You said that -- you said that a number of times.....

1 Q Okay.

2 Aat different occasions and we always talked it
3 through and at the end of the conversation, you agreed
4 that wasn't a good idea.

5 Q And if I was telling you I was thinking of going to
6 trial, at that time, would it be your duty to tell me I
7 could bond the plane out?

8 A No. Your emotions were going up and down, up and down
9 and so I was never sure what you were going to say, what
10 your impressions were, what you wanted but every time you
11 came in and said I want to go to trial, we would talk it
12 over and you would realize that was a real poor decision
13 because you had no defenses. You and Tony had violated
14 the law and there was no getting around it.

15 Q Is it true that you have testified I had no right to a
16 prompt post-seizure hearing?

17 MR. PETERSON: We've already established he's not going to
18 talk about.....

19 MR. HAEG: I'm not talking about my prior testimony.

20 MR. PETERSON:prior testimony. Ask him.....

21 Q Okay.

22 MR. PETERSON:during your representation.

23 Q Is it true that while you represented me, you never told
24 me I had a right to a prompt post-seizure hearing?

25 A It never came up because the issue was are we going to do

1 damage control or are we going to fight this case. If
2 you wanted to fight it, you should have said we want to
3 fight it. Then we would have talked about going and
4 doing a post-seizure hearing but you didn't want that and
5 you were able to do your guiding that spring and you were
6 able to get significant concessions for the good things
7 that you'd done up to that point so it never came up.

8 Q Because the plane -- because I informed you the plane was
9 important even though we were negotiating, didn't you
10 have an obligation to tell me there was a required post-
11 seizure hearing?

12 MR. PETERSON: This has been asked and answered multiple
13 times, Mr. Haeg.

14 A Asked and answered.

15 MR. HAEG: Well, I'm going through and, like I said, I'm
16 not a good -- don't have secretaries to help so (simultaneous
17 speaking).

18 MR. PETERSON: But when you say the same question two or
19 three times, skip it.

20 Q Is it true that the state could not legally keep the
21 plane without providing me a prompt post-seizure hearing?

22 A Calls for a legal conclusion. I -- I -- I don't even
23 know how to answer that.

24 Q Okay.

25 A It depends on what your strategy is, David. It all comes

1 down to what is your strategy as a defendant. You had
2 given me no options as far as defenses. You had -- you
3 admitted to being in the airplane and shooting the
4 wolves, totally shot them. There was no question about
5 that. So the only question is what were we going to do
6 to diminish the damages.

7 Q Okay. You just testi -- is it true -- or.....

8 A I said what I said.

9 Qyou just testified that I gave you no options for
10 defenses.

11 A No, at the time, I had no belief that you had any.....

12 MR. HAEG: Can we play the tape back, please?

13 MR. PETERSON: I tell you what, why don't we take a five-
14 minute break here?

15 (Whispered conversation)

16 (Deposition recessed)

17 MR. HAEG: Well, we have to wait for the trooper or not?

18 MR. PETERSON: Go right ahead.

19 MR. HAEG: Okay?

20 MALE: Right.

21 MR. HAEG: Yeah.

22 Q Is it true that the reason you didn't tell me I could get
23 the plane back was that I was almost comatose because I
24 was so depressed about the state walking in and taking
25 all this stuff?

1 A No.

2 Q Did you ever state -- so you never stated that?

3 A That's not what I said. I just answered no to your
4 question.

5 Q Okay. Did you ever state that the reason why you didn't
6 tell me about the airplane is because I was almost
7 comatose because we were so depressed about the state
8 walking in and taking this stuff?

9 A At the beginning, that's one of the reasons why I didn't
10 worry about it. Yes, I said that.

11 Q And if I was so comatose about them taking my stuff,
12 wouldn't it be a good idea to tell me how to get it back?

13 A No.

14 Q Why not?

15 MR. PETERSON: This has been asked and answered repeatedly
16 why he chose that strategy.

17 A It -- it comes down to strategy, as I've told you again
18 and again. The strategy is do you fight or you do -- you
19 make a deal. (Simultaneous speaking).

20 Q And you were not (simultaneous speaking) though.

21 A No -- yes, it is.

22 Q Okay.

23 A You want to know why I didn't and I'm telling you. The
24 reason we didn't is because you made the decision that
25 you wanted to cut your losses and mitigate your damages

1 so that you didn't lose your guide license for five
2 years. That was unacceptable particularly at the
3 beginning of the case and so no, that wasn't an option
4 that we went into detail or even discussed at that time
5 because at that time, you were so shell shocked that what
6 you thought you were doing was right ultimately could
7 cost you your guide business. It was -- it was
8 unfathomab -- unfathomable to you. So no, we didn't talk
9 about it at that time because of everything else that was
10 going on.

11 Q Is it unreasonable for you not to tell me how to get the
12 plane back irregardless of plea negotiations.....

13 A No.

14 Qif -- if I was depressed because the state walked in
15 and took all this stuff?

16 A No.

17 Q Okay. So it's more important for you to negotiate out
18 rather than to give me back my property that I was
19 depressed and comatose about?

20 A Don't put words in my mouth, David. That's not what I
21 said and you know that. I didn't.....

22 Q Okay. What did you say?

23 A I said that you picked -- you were given the option and
24 you decided that -- that.....

25 Q I was given the option.

1 Ait was better to mitigate the damages, reach a deal
2 with the state, try to negotiate a -- a sentence that
3 would not cause you to lose your license for five years,
4 that fighting, that going about trying to get your
5 airplane back which was never even assured, would only
6 result in you losing the opportunity to negotiate. We
7 talked about it on numerous occasions and in numerous
8 different fact scenarios.

9 Q Okay. How exactly and what did you say were my options
10 when -- if I decided to fight?

11 A Your options were to not cooperate with the government
12 and not give them a statement and want a trial and plead
13 not guilty and fight and file all your motions.

14 Q Okay. And you told me all that?

15 A We discussed that at the beginning, the po -- but I told
16 you.....

17 Q Okay.

18 Aone of the concerns I had at the beginning.....

19 Q You told me.

20 Ais that the search warrant had indicated they were
21 going to -- that they were looking into felony charges
22 for evidence tampering and I kept telling you I really
23 don't think we want to get indicted for felony charges
24 and then lose your right to have firearms for the rest of
25 your life and you agreed with that and I said we really

1 don't want to get in a situation where the state is
2 coming in and taking over any of your other planes or
3 shutting down your business and you said I can't have
4 that. You demanded that I negotiate that and we did and
5 that's what you got in return.

6 Q And we did that after you told me I could file motions to
7 suppress and get the plane back to go.....

8 A I didn't -- we didn't really go into that, David, because
9 the option.....

10 Qabout the statement used, all these things that I
11 was concerned about, you told me all about it?

12 A We -- no. No, I didn't -- I told you that those things
13 happened throughout the course of your representation.
14 At the beginning, the -- the bottom line is what are we
15 going to do, are we going to fight this thing or are we
16 going to try to negotiate and I told you, in my opinion,
17 you should negotiate and you ultimately made that
18 decision and that's where we were.

19 Q Okay. And what you just said about doing all this for
20 me, that means to you you represented me zealously, is
21 that correct?

22 A Throughout -- I -- I did the best I could and I think the
23 results reflect that. If you'd just done what I had said
24 and followed my advice, you wouldn't be in the mess
25 you're in right now.

1 MALE: Hey, we're getting into this one.

2 A So what time is it right now? I just want to -- the
3 record to reflect what time it is.

4 MALE: 1:30.

5 MALE: 1:34.

6 A So we spent 3-1/2 hours going through this statement that
7 you've already had on me.

8 Q Why did you tell me the state could use my immunized
9 statement against me?

10 MR. PETERSON: You've asked and answered this repeatedly.

11 A Asked and answered and I didn't tell you that.

12 Q Okay. Didn't tell me that.

13 MR. HAEG: And I thought I get to ask whatever I want. I
14 don't think that you guys can have an objection.

15 MR. PETERSON: You don't get to ask it over and over and
16 over.

17 MR. HAEG: Well, like I said, I'm a pro se defendant and
18 I'm (simultaneous speaking) so.....

19 MR. PETERSON: The defendant, right, and that's why we're
20 telling you but it's not six hours of the same question
21 rephrased hundreds of times.

22 MR. HAEG: Well, it's -- most of the stuff I've been over.

23 Q Did you ever tell me -- while you represented me, did you
24 ever tell me that the state changed the rules?

25 A I can't remember. I might have.

1 Q Okay. And why would you have told me that?

2 A I told you I can't remember.

3 Q Okay. Well, I guess that's -- if you didn't remember
4 that you said it, I thought you might have remembered why
5 you might have said it.

6 A No.

7 Q Is the state allowed to change the rules?

8 A In what context?

9 MR. PETERSON: Vague and ambiguous. Would you -- yeah,
10 describe what kind of context. How are you referring to the
11 rules being changed?

12 MR. HAEG: Looking through it, I think it was they.....

13 A Are you asking a question -- is there a question on the
14 table?

15 Q Well, I'm just look.....

16 A What are you doing?

17 Q No, I'm just looking at my notes here.

18 MALE: I think he was responding to Mr. Peterson.

19 A Oh, I'm sorry. Maybe you're right. Apologize.

20 MR. PETERSON: I just don't know rule change you're
21 referring to so I don't even know.....

22 MR. HAEG: Well, I -- it was his words so I don't really
23 know either but I assume it was can Leaders agree to something
24 and we all show up to finalize it and then he changed the
25 charges that we'd expected to -- and I know it was about the

1 plane because it says this is all about the airplane -- change
2 the charges to force us to give up the airplane. I guess
3 that's.....

4 A It's not what happened.

5 Q Okay.

6 A We've already talked about that numerous times.

7 Q Did you -- while you represented me, did you tell me that
8 it's ethical for them to change the charges, demand we
9 give them the plane and then, quote, you can have your
10 day in front of the judge?

11 A I don't remember that. I could have. If I did, it was
12 in the context that, you -- you know, you have a right to
13 an open sentencing if you want. The state makes the
14 charging decisions.

15 Q But if we rely on.....

16 A We didn't rely on that, David. I -- I didn't -- we never
17 -- that was never the deal on the table. We've gone over
18 that.

19 Q Why -- okay.

20 A We've already gone over the whole thing, David, on
21 numerous occasions.

22 Q Well, it just -- it's important, I mean, so.....

23 A I understand it's important that I'm not answering the
24 way you want it but that's not how I recollect it so we
25 have a different recollection, move on.

1 Q What charges were in place when I flew Tony in and we
2 drove up to Anchorage on November 8th?

3 MR. PETERSON: That's a matter of record. It's already in
4 the file. I mean.....

5 A And it's already been discussed. We already talked about
6 it.

7 Q Okay. And it's -- is it true you told me it's ethical
8 and legal for the state to change the charges after we
9 all drove up?

10 MR. PETERSON: He just answered the question.

11 A We already talked about that.

12 Q Is that true? Okay. Man. Did you ever get in touch
13 with Leaders' boss?

14 A No.

15 MR. PETERSON: And you've already asked him about that
16 repeatedly.

17 MR. HAEG: Okay. Hey, thought I'd try again.

18 Q Who did you complain to about Leaders?

19 A No one.

20 Q Did you ever tell me -- while you represented me, did you
21 ever tell me.....

22 A No.

23 Q While you were representing me, when I asked what we
24 could do to enforce the plea agreement, did you tell me
25 you know I got to deal with these people and I guess did

1 you ever say that?

2 A I -- I don't remember.

3 Q Is it true that you have to deal with those people?

4 A I deal with prosecutors, U. S. attorneys, troopers around
5 the state. I deal with everyone who is a prosecutor and
6 does fish and game stuff almost around the state, every
7 one of them I do some dealings with them.

8 Q Okay. And if you tried to enforce a plea agreement
9 against one of them, would they be unwilling to make
10 deals with you after that?

11 A No.

12 MR. PETERSON: Mr. Haeg, that was asked and answered
13 previously. Mr. Cole has repeatedly said the you referred to,
14 it would be against your best interest, not his. He went over
15 that quite extensively in the beginning of the day.

16 MR. HAEG: Well, what I get confused about is at the time,
17 the recorders that have a time, he didn't say it was my best
18 interest, he says I got to deal with these people.

19 Q So is that true that when you were talking to me, you
20 weren't talking about my interest, you were talking about
21 your interest?

22 A Is this in a taped -- one of the taped statements that I
23 had with you?

24 Q Yup.

25 A I -- I think I probably did say that and I have to

1 professionally deal with every one of these guys all the
2 time.

3 Q And so it's not that.....

4 A But it's not going to interfere with my job for you or my
5 -- I -- I disagree with the prosecutors on a daily basis.
6 I do trials against them.

7 Q And so.....

8 A It's a professional thing. (Simultaneous speaking).

9 Q So when I wanted to enforce.....

10 MR. PETERSON: Let him finish his.....

11 Qthe agreement I thought I had, why did you say I got
12 to deal with these people?

13 A Because it was not in your best interest. I kept telling
14 you that. And you had every opportunity to enforce that
15 when you went to trial when -- when you hired Mr.
16 Robinson. Your investigator called me up. I told you
17 these are the options. I don't think you're going to win
18 on this. Even if you do, we're not going to have a deal
19 and you're going to be in an open sentencing situation.
20 It's -- it's throughout that statement.

21 MR. PETERSON: You want to stop for a second?

22 MALE: Yeah, could you stop one -- just one moment,
23 please.

24 MR. HAEG: Okay.

25 (Whispered conversation)

1 MALE: Whenever you're ready.

2 Q While you represented me, did you let me believe the
3 state could use my immunized statement to prosecute me?

4 MR. PETERSON: You asked this repeatedly.

5 A We've gone over this.

6 Q Well, gosh, I can't find any new ones.

7 A Maybe are we done?

8 Q Well.....

9 MALE: We still got a couple hours.

10 Q Okay. Well, we got through that one quick. While you
11 were representing me, did you tell me that you agreed the
12 state was overcharging me?

13 A I might have.

14 Q And why did you say that?

15 A I don't know, I can't remember. I said I -- I might
16 have.

17 Q Okay. And if you thought that was the case, is there
18 anything you could have done about it?

19 A The charging decisions are the district attorney's
20 office.

21 Q Okay. So you couldn't file a motion that they are
22 doing.....

23 A Three-quarter -- 90 percent of the cases are overcharged
24 that come into the courthouse at the beginning. That's
25 pretty routine.

1 Q And what happens then?

2 A Well, if you are in the mood to fight which you weren't,
3 you were in the mood to negotiate but if you're in the
4 mood to fight, then you go to trial and you make the
5 state prove its case against you beyond a reasonable
6 doubt which you ultimately did and they did. So that's
7 what happens. If you're not in the mood to fight, you
8 try to reach a resolution that winnows that down and
9 comes to an agreement on what charges you're going to
10 accept, what deal you're going to make and that's what we
11 did.

12 Q There's some questions I just wanted to ask him but I
13 think it's already been asked and answered. So, I don't
14 know, might be able to ask this one, could prosecutor
15 Leaders at my sentencing honestly claim I broke the plea
16 agreement?

17 A I can't speak for him.

18 Q Was it your impression I broke the plea agreement?

19 A You want my -- you really want that answer?

20 Q Yeah, I do.

21 A Yeah, I really do. I think you did, David. We had a
22 deal and all you had to do is accept the deal that we had
23 that was 36 months with 24 months suspended. It was a
24 one-year license. You had it all right there in your
25 hand. You weren't going to lose your plane, you're

1 right, but we'd negotiated everything. You had it there
2 and it was within your grasp and you decided that you
3 didn't want it. You didn't want it. You just were not
4 willing to accept that deal when you weren't going to get
5 your PA-12 back and after that, you fired me and you went
6 to trial. I felt bad about it.

7 Q Okay.

8 A I -- I -- I mean, I.....

9 Q So you're sworn -- okay.

10 A I -- I don't know whether you call that. ...

11 Q Okay.

12 A I -- I -- I understood that opportunity was there and you
13 turned it down. Now, you can characterize that however
14 you want it but you had it right there and you decided
15 you didn't want to go forward.

16 Q You said that -- you testified it's your impression I
17 broke the plea agreement deal.

18 A Well, it was -- it was an offer that was out there for
19 you to accept as soon as we had finished up getting the
20 approval from DMV. You know, was there anything signed?
21 No, but it was right there for you to do. That's what I
22 hurt so bad about. I just couldn't believe it.

23 Q And why wasn't anything ever placed in writing?

24 A There was no need to. We were working alone. In
25 retrospect, I sure wish I had. You're right but it

1 wasn't.

2 Q Okay.

3 MR. PETERSON: Let me -- can I clarify something? The
4 deal would have been to reduce char -- although there was
5 amended information, right?

6 A It would have been to reduce the charges, absolutely.
7 That.....

8 MR. PETERSON: The charges would have been reduced to what
9 was in the original information, is that correct?

10 A Yup. Yup, to 08 or A-8 which would have allowed for a
11 one-year license revocation.

12 Q Before you guys get all frisky tailed about that, I got
13 tape recordings proving that that's all perjury right now
14 so.....

15 A Okay.

16 Q I wouldn't get too frisky about it. And we -- I
17 don't want to roll that.

18 (Whispered conversation)

19 MALE: I think you need to get him a digital recorder for
20 Christmas.

21 FEMALE: He's got one.

22 MALE: I don't like them.

23 FEMALE: Just like all the other things.

24 MALE: I don't know how to put it on the computer.

25 FEMALE: Well, you just plug it in.

1 MALE: Push the cord in.

2 MALE: Yes.

3 MR. HAEG: Okay. Okay. Going?

4 MALE: Mm-hmm.

5 MALE: Oh, yeah, we're going.

6 Q While you were my attorney, did I ever ask you why didn't
7 Leaders let us go out to McGrath when there was 11 counts
8 and let the judge decide that and you respond I don't
9 know why he didn't do that, that pisses me off, he just
10 caused me to sit here and explain this to you 25 times,
11 he did it because he wanted to be a dick and it pisses me
12 off?

13 A I -- sure I said that.

14 Q Did you also say it caused me so much problems in my
15 dealing with you and I as much told him?

16 A Yup, I'm sure I said that too.

17 Q Okay. And I say yup and you say it pisses me off, he has
18 no concept of what it has done to your and my
19 relationship.

20 A I -- I -- I said that.

21 Q And....

22 A Are you going to just -- I mean, that.....

23 Q Well, I just -- is that what was said?

24 A That thing speaks for itself.

25 Q Okay.

1 MR. PETERSON: And, Mr. Haeg, I believe you've already
2 admitted this transcript as an exhibit in the fee arb. If you
3 want to file the transcript with the court in -- or provide
4 the court with the tape, you're entitled to. I mean, asking
5 him about what he said years ago in '04 is.....

6 MR. HAEG: Well, yeah, the.....

7 MR. PETERSON: I mean, in a verbatim basis is a
8 little.....

9 MR. HAEG: Right..

10 Q Is it true that Leaders wanted to bring in the moose deal
11 so that the judge would give me (simultaneous speaking).

12 MR. PETERSON: That has been asked and answered
13 repeatedly.

14 A (Simultaneous speaking), David.....

15 Q Okay.

16 Atotally.

17 Q And I've blown through this one. At the time, did you
18 tell me -- or when you represented me, did you tell me
19 that under these circumstances, you're never going to
20 feel good about this thing regardless? Can you tell --
21 did you say that to me?

22 A What thing, feel good about what thing?

23 Q Under these circumstances and it was we were talking
24 about.....

25 A The transcript speaks for itself. I -- actually, the

1 recording speaks for itself.

2 Q Okay. And.....

3 A I don't know what the transcript says and who did it.

4 The recording speaks for itself.

5 Q Okay.

6 A I cannot remember that.

7 Q So you ca -- you.....

8 A I cannot.....

9 Q Do you remember a reason why I wouldn't feel good about
10 what happened?

11 A Because you violated the law, David. You put your whole
12 family's future at risk.....

13 Q Well, we're talking.....

14 Abecause you had to go out and kill wolves in an
15 airplane and you were never going to feel good about the
16 fact that you had been, you know, sleepless nights and
17 you were going to pay the penalties for everything that
18 you had done against the law over stupid wolves.....

19 Q Mm-hmm. And is the cert -- the -- I don't know, I'm just
20 reading through here. We were still talking about the
21 plea agreement stuff. So what you're saying is that your
22 response to me was over what I had done rather than what
23 had happened with the plea agreement?

24 MR. PETERSON: It.....

25 A I have no idea.

1 Q Okay.

2 A I don't have a transcript. I ne -- remember. I'd just
3 note I wouldn't have felt good about losing my whole
4 livelihood over shooting a stupid wolf.

5 Q I don't know. Do you think it was fair the state told me
6 I had to go shoot wolves for the good of the unit?

7 A You've al -- asked and answered. I'm not going to go
8 there anymore.

9 Q Did we ever get a tape, a full copy of the statement I
10 gave?

11 A I don't believe so.

12 Q Why not?

13 A I don't know, you have to ask the state. We requested it
14 on numerous occasions.

15 Q Okay. Why didn't you record it?

16 A Because that's not my job.

17 Q Oh. Not your job to record me making an immunized
18 statement. So since the tape recordings are gone or
19 missing or whatever, how can we prove what I actually
20 told the state and what I didn't?

21 A That was good for you.

22 Q How is it good for me when the state says that they've
23 got all this information and then I can't prove that I'm
24 the one that gave it to them?

25 A They had an obligation -- I -- I -- they were the ones

1 that were conducting the investigation. If they lost the
2 tape, that's bad on them. Then they've got to come in
3 and defend what they're doing.

4 Q How come they never were forced to do that?

5 A Because -- you hired me -- again, for the last time --
6 now, I'm not going to say it anymore. You didn't want to
7 go down that avenue. You wanted a negotiated deal,
8 period.

9 Q How come I ended up going to trial then, Mr. Cole?

10 A Because you fired me, Mr. Haeg. I had a deal sitting
11 right there. You said no.

12 Q And did I ever say that I was thinking about going to
13 trial when you and I.....

14 MR. PETERSON: This has been asked repeatedly.

15 A You've asked and answered this a hundred times.

16 Q Did you ever go over with me what takes place for a trial
17 to happen?

18 A I -- I can't remember. I never wanted a trial with you
19 in the first place. I knew you couldn't take it and I
20 knew what the result was going to be. That was the
21 furthest thing from my mind that you needed was a trial.

22 Q Okay. So you don't remember?

23 A I don't remember, no.

24 Q Okay. Oh, this one's in the middle of the same stuff. I
25 don't know, all this stuff just -- it relates so much

1 back to what we we've already been over but when you
2 represented me, did I ever specifically ask you what
3 rights could protect me?

4 A Asked and answered.

5 Q Does a defendant have everything to gain and nothing to
6 lose by filing a motion to suppress?

7 MR. PETERSON: Calls for speculation.

8 A No, I don't agree with that. It depends on the
9 situation.

10 Q Did the state have a direct pecuniary interest in the
11 outcome of the property that was seized?

12 A I don't know.

13 Q In other words, if the property was seized.....

14 A I don't know what you're talking about.

15 Qcould they make money out of it?

16 A No, not necessarily.

17 Q Okay. They couldn't make money out of it.

18 A No, I said not necessarily. Don't put words in my mouth.

19 Q Okay. What do they normally do with airplanes that they
20 seize and forfeit?

21 A Sometimes they refurbish them, sometimes they give them
22 away, sometimes they cut them up and that's it.

23 Q Okay. But they generally utilize it somehow?

24 A No, I -- no, not necessarily. If they cut it up, it's
25 scrap.

1 Q How many do you know that they cut up out of.....
2 A I've heard of it happening. Yes, I have, actually,
3 when.....
4 Q So have you heard them cutting up mine?
5 A I don't know anything about your plane.
6 Q I know I ask this one again but I'm going to see how many
7 asked and answered I get. Was anyone involved in my
8 prosecution exposed to my immunized statement?
9 A I don't know.
10 Q So Scott Leaders, Brent Cole, Tony?
11 A I don't know what you're talking about.
12 Q Were they privy to my statement? Did they hear it? Did
13 they have -- did they handle it?
14 A What.....
15 Q Did they listen to it?
16 A I don't know.
17 Q Did they tape record it themselves?
18 A I don't know.
19 Q Okay. You don't know if.....
20 A I only remember the troopers' tape recorder being on the
21 table when you gave your statement.
22 Q Okay.
23 A That's the only one I remember.
24 Q Well, what did the.....
25 A I don't know if you had one or not. I can't even

1 remember that.

2 Q Is it true prosecutor Leaders and Brent Givens.....

3 A Brett Givens.

4 QBrett Givens were exposed to my immunized statement?

5 MR. PETERSON: Mr. Haeg, you are right, you have already
6 gone over this.....

7 A Yup.

8 MR. PETERSON:so let's move on.

9 MR. HAEG: Okay. Well, I'm flipping through stuff pretty
10 quick.

11 Q Have you ever heard of Alaska Statute 12.50.101 which --
12 or the case *State of Alaska versus Gonzalez* that hold
13 that in Alaska.....

14 MR. PETERSON: Mr. Haeg, this is a legal issue. I have no
15 idea how it relates to your PCR.

16 MR. HAEG: Okay.

17 Q I don't know, this has probably been asked before too but
18 was prosecutor Leaders required to justify why he
19 increased the severity of the charges?

20 MR. PETERSON: That's been asked and answered.

21 A Been asked and answered.

22 Q Okay. Well, I'm flipping through here, I just -- you
23 guys got better memory than me.

24 A I'll resist the temptation.

25 Q For the state to forfeit the plane as part of a plea

1 agreement, did the information or indictment, did it have
2 to include a forfeiture count?

3 A No, not if you agree to it. That's a federal case.

4 Q Not if you agree to it. Well, you know what case is?

5 A What are you talking about?

6 Q The -- that you said it was a federal case.

7 A In a federal case, they put in a criminal count when you
8 get charged by the feds in a game charge like a Lacy Act.
9 They put in a forfeiture count.....

10 Q Okay. But in this.....

11 Awhen it goes to the jury and the.....

12 Q Okay. And -- but in this state, you don't have to do
13 that so they don't ever have to give you notification
14 they're intending on forfeiting.....

15 A That's not what I said.

16 Q Okay. Do they have to give you notification they're
17 going to forfeit property?

18 A Yeah. Mm-hmm.

19 Q How do they do that?

20 A They do it at the sentencing, they do it initially.....

21 Q Do they have to do it in writing?

22 A I don't know the answer to that.

23 MR. PETERSON: I think the answer to that's in your
24 appellate court decision.

25 MR. HAEG: Well, I can prove that a lot of that stuff that

1 was done in there is illegal so.....

2 MR. PETERSON: No, I'm just saying that's where the answer
3 is.

4 MR. HAEG: Testifying.

5 (Whispered conversation)

6 MR. PETERSON: We got to start over.

7 MALE: No.

8 MR. PETERSON: It'll look like a foreign language film,
9 you use one of the tapes and your film there.

10 (Off record conversation)

11 Q While you represented me, were you sympathetic to the
12 state's case?

13 A No.

14 Q Did you believe that my case may jeopardize the wolf
15 control program?

16 A I expressed a concern about that to you at the beginning,
17 yeah.

18 Q Okay. So you're concerned about.....

19 MR. PETERSON: Leading.

20 A ~~My answer is my answer. Don't try to rephrase it or turn~~
21 it into something I didn't say.

22 Q Okay. Well, I have a problem with that.

23 A I know you do.

24 Q Tell me what you -- tell me.....

25 A I said what I said. I answered it.

1 MR. PETERSON: Why don't you ask him what he means by
2 that?

3 MR. HAEG: Okay.

4 Q What do you mean by that?

5 A The state, under Tony Knowles, had done away with wolf
6 control and I thought he was a bleeding heart liberal and
7 I didn't like it because I'm a long-time Alaskan, a
8 hunter and everything else and on a personal level, I was
9 happy that Murkowski brought in predator control. I
10 thought it was the right thing for the management of the
11 game which is required by the state under the
12 Constitution and I thought that it was most important for
13 the rural areas because the rural people need game.
14 Particularly, they need moose and they need caribou and I
15 saw the predator control on a personal level as an
16 effective measure in enhancing the stock and the
17 wildlife. So when a big game guide and his assistant
18 guide intentionally go outside their area and shoot
19 wolves in violation of their permit and of the law and of
20 their responsibilities as guides and assistant guides,
21 there was some concern that I had on a personal level
22 apart from my representation of you that your actions
23 would, yes, endanger the wolf control problem and I think
24 that attitude was shared by people across the street --
25 across the state. You did endanger the wolf control

1 problem because you subjected the state to negative
2 criticism from outside sources by your actions. That was
3 all personal. My job as an attorney was to set those
4 aside which I did and get you the best deal that you
5 could which I did.

6 Q Okay. And did you believe that if I was treated
7 severely, it would help the wolf control program survive
8 what I'd done?

9 A I had no idea how -- what the impact was going to be. I
10 -- I was concerned that you would be made an example of.
11 I -- and I told you that.

12 Q Okay. But you said you were also concerned that the
13 program -- on a personal level, you were concerned that
14 the program may take a hit.

15 A It -- it didn't, obviously. It's still going.

16 Q And is anything I could have used as a defense, could it
17 have affected the wolf control program like testifying
18 the state told me?

19 A You say the state. You -- it is an individual who was on
20 the board of game.

21 Q (Simultaneous speaking).

22 A You don't know what his capacity was when he was talking
23 to you or what hat -- hat he was wearing and, no, I don't
24 think so.

25 Q Okay. So if it came out that a sitting board of game

1 member had told me to do exactly what I was then charged
2 with doing, that might not have -- basically,
3 fraudulently running the wolf control program, that
4 couldn't have an effect on the program?

5 A The effect on the program has nothing to do with your PCR
6 so, you know, you can ask me all the questions but I'm
7 not going there anymore.

8 Q It absolutely has.....

9 A What -- what -- what does it have and I'll -- and I'll
10 listen. What.....

11 Q If I was precluded from a defense of entrapment
12 because.....

13 MR. PETERSON: Mr. Haeg, you called Mr. Spraker to testify
14 at your trial. He was there. Your lawyer at trial, not Mr.
15 Cole, chose not to ask that question. Your lawyer when you
16 deposed him testified he specifically chose not to ask that
17 question because it was going to make you look like you were
18 grasping at straws. It wasn't a relevant defense. That was a
19 choice for Mr. Robinson, not for Mr. Cole.

20 MR. HAEG: No, it isn't because I told him I specifically
21 wanted to have this done and he -- and Robinson also told me
22 it wasn't a legal defense and so when my attorneys testify to
23 me about something that's not legal.....

24 MR. PETERSON: Then if your question.....

25 MR. HAEG:when it actually is legal, then I have a

1 right in PCR.....

2 MR. PETERSON: If your question is about a defense, ask
3 him about the defense, don't a -- and you've already done
4 that.

5 MR. HAEG: We've already gone there and.....

6 MR. PETERSON: Ask him a new question about a defense you
7 haven't already asked.

8 MR. HAEG: Well, part of the reason why we're having these
9 problems is I didn't go to law school and you guys have and I
10 hired people I thought were going to defend me and now I find
11 out they didn't.

12 MR. PETERSON: I'm attempting to assist you here. If you
13 have a question about a defense that has not already been
14 asked.....

15 MR. HAEG: Well.....

16 MR. PETERSON:then ask the question about the
17 defense, not about the individual.

18 A We've already talked about the entrapment issue on
19 several occasions.

20 Q Okay. Well, we got into it -- I believe it's, you know
21 -- well, you know, it -- just as I go along here, we plow
22 a little bit of new ground and I was just seeing if there
23 was any more there but apparently not.

24 (Pause)

25 MALE: You want to go off the record for a second, David,

1 or you want to just keep the tapes rolling?

2 MR. HAEG: Sure, we can.

3 MALE: Stop so then no record.

4 (Deposition recessed)

5 Q For a hearing that was supposed to take place on
6 November 9th, 2011, did I send you a letter that I had
7 wrote that I wanted given to the judge for her
8 consideration?

9 A I believe so.

10 Q Okay. And did you send that letter to the judge?

11 A I can't remember. I -- I thought we did. I don't know,
12 I don't remember the specific.....

13 Q Okay. And would this -- can you read this and just see
14 if this would have been the cover letter that you would
15 have used to do that?

16 A That's my signature, that's something that I would have
17 -- would file. I don't know what exhibit 10 is. I don't
18 know what that is.

19 Q Okay. But you remembered that I was concerned about
20 getting out to McGrath and the judge not having time to
21 digest my side of the story before she sentenced me and
22 so I had wrote up a document, a pretty extensive document
23 that I wanted her to read before we actually got there
24 and my -- do you remember my concern was is that if we ---
25 just showed up and, you know, boom, slam, bam, thank you,

1 ma'am, she would not have a good opportunity to consider
2 what went on before I was sentenced?

3 A I don't remember that specifically but it makes sense.

4 Q Okay. Anyway, and.....

5 MR. PETERSON: And, just so we're clear, there hasn't been
6 an exhibit identified, correct?

7 MR. HAEG: No.

8 MR. PETERSON: He didn't -- he did not recognize it so I
9 just want to make sure if you're going to be.....

10 MR. HAEG: No.

11 Q Now, and I guess could you look at this e-mail that --
12 you know, it says it was from you. It came, I believe,
13 in the discovery that you provided and just read this and
14 see if this confirms that I wrote some testimony and you
15 look at the front, see if it looks like, you know, it
16 came from your office or whatever or it went to you or
17 whatever but it was e-mail documentation that further
18 documents that I made -- you know, sent you some
19 testimony about you that was going to be used at this
20 hearing or if we went out to McGrath.

21 A Well, this was after. This is in November 19th. This is
22 after the arraignment.

23 Q But it.....

24 ~~A This is after the arraignment, David. This is 10 days~~
25 later.

1 Q Yeah, I understand but, I mean, in that note, it
2 basically says that you would have had something in your
3 possession, my testimony, and here's another one. I
4 don't know what -- here's one November.....

5 A Just a minute..

6 Q12th. Here's another one there.

7 A This -- you sent it to me on the 12th and I think I
8 responded on the 19th. That's what this says.

9 Q But what I'm saying.....

10 A Just -- listen, let me read it. Hold on.

11 Q Okay.

12 A These are both from you. This isn't -- neither of these
13 are written by me.

14 Q Well, what I'm saying is this is something I wrote and
15 sent to you -- e-mailed to you. I mean, doesn't it.....

16 A I -- I -- I assume that it is. That's my -- that's my e-
17 mail address but, I mean, I -- I don't remember it but I
18 just.....

19 Q Okay. And there's another one November 12th and,
20 basically, I guess look at it and look at the last line
21 there also and just see if that, you know, looks familiar
22 to you or you remember that I sent you.....

23 MR. PETERSON: Mr. Haeg, I'm going to ask if there's a
24 point here. I mean, you don't appear to be admitting any of
25 these exhibits into the record so you're not going to be.....

1 MR. HAEG: Well, they're already -- well, I thought they
2 were admitted because you.....

3 MR. PETERSON: You're not id -- just because they've been
4 provided in discovery, you're not identifying them, you're not
5 admitting them into the record.

6 MR. HAEG: Okay.

7 MR. PETERSON: So they can't be referred to.

8 MR. HAEG: Okay. I'm sorry, didn't know (simultaneous
9 speaking).

10 A This isn't -- isn't this the same letter that you just
11 gave me?

12 Q This is -- that's -- that could be. It's possible that
13 we sent it to you twice.

14 A This says message sent on November 12th, 2004.....

15 Q Well, it's probably a.....

16 Amessage sent on 2012 [sic] and it's the same.....

17 Q But we probably sent it again up here. You know,
18 probably we.....

19 A You sent -- you may have copied it onto this.

20 Q Copied it, yeah. And, anyway, I guess for the -- could
21 you read into the record what they are?

22 A What -- what -- what are?

23 MR. PETERSON: Why don't you identify them as exhibit 1
24 and 2 and.....

25 MR. HAEG: Well.....

1 A One of them is a -- an.....

2 MR. PETERSON: I'll.....

3 A Let me see a piece of paper and a pencil. What exhibit

4 is this?

5 Q I don't know.

6 A A-1? What are you guys using?

7 MR. PETERSON: Go ahead and use A.

8 Q I'm not onto this.

9 A Exhibit A is an e-mail that.....

10 MR. HAEG: Here, you -- oh. Yeah.

11 A It says it was sent from Mr. Haeg. I recognize that. It

12 was sent on Friday, November 12, 2004, while I was still

13 representing him. It's sent to my e-mail address and it

14 lists a number of questions in response to it looks like

15 a sentencing and he asked me to look at the last one.

16 Also, as I discussed, I could limp through my testimony

17 and see what would not be appropriate to tell the media,

18 I would appreciate it, and what we were talking about is

19 you had a right to give an allocution even if we had

20 reached a plea agreement, I suspect, and that you wanted

21 to know what would be the appropriate things to say to a

22 judge if we -- if you were sentenced because you have an

23 individual right at your sentencing. Even if all the

24 terms are agreed to, you still have a right to give an

25 allocution and I -- as I understood it, is my

1 recollection -- I can't -- I -- I mean, I -- this is --
2 I'm just -- this is a long time ago but my recollection
3 is you wrote that because you wanted to know -- the judge
4 to know about you and what had happened.

5 Q Mm-hmm.

6 MR. PETERSON: And, Mr. Haeg, I'm going to object to this
7 document because you have then writing all over this document
8 that -- there's no indication it's part of the e-mail.
9 There's no indication as to when it was written, that Mr.
10 Cole's ever seen it so.....

11 MR. HAEG: Well, I'll.....

12 MR. PETERSON:the writing that's here has no bearing
13 on what he's testifying to.

14 MR. HAEG: Okay. Well, I -- like I said, I get stuff --
15 you know, I'm not an attorney. You know, I see what you're
16 saying I should have maybe kept the original made a copy,
17 whatever, didn't do it and I don't.....

18 Q So, anyway, is it true your tactic for me was falling on
19 my sword?

20 A That was your decision.

21 MR. PETERSON: Can -- Mr. Haeg, this goes right back to
22 the decision for the.....

23 A We've already talked about this.

24 MR. PETERSON:why you made the plea or why you made
25 this statement to.....

1 MR. HAEG: Well, I wanted about this -- I wanted him to
2 explain to me the tactic of falling on our -- we were falling
3 on our sword (simultaneous speaking).

4 MR. PETERSON: He's explained that repeatedly without
5 using that phrase.

6 MR. HAEG: Well, I want to know what that phrase means.

7 A It means you admit your guilt in order for leniency from
8 the state, you fall on your sword.

9 Q How come you never told me I was doing that?

10 A I did. You knew it from the beginning. We've gone over
11 this multiple times, David.

12 Q Really? And so there was no immunity then?

13 A It's -- it's asked and answered, move on.

14 MR. PETERSON: It's back to asked and answered. We've
15 talked about the agree -- the agreement.

16 Q So let me just get this clear, tell me exactly what the
17 term of your -- the description you gave for my tactic of
18 we were falling on our sword. Just tell me that again.

19 A I already did.

20 Q One more time, please.

21 A No, I already did. I'm not repeating things.

22 Q Okay. But I still don't understand it but -- is
23 obtaining post-conviction relief before a -- must I
24 obtain post-conviction relief before I can pursue an
25 action for legal malpractice against an attorney?

1 MR. PETERSON: This is a legal conclusion and it has
2 nothing to do with his representation of you during the six
3 months.

4 MR. HAEG: Well, I beg to differ but.....

5 Q Were you surprised I didn't file motions to suppress
6 evidence at my trial?

7 MR. PETERSON: Calls for speculation.

8 A I -- I -- I have no comment about what you did or didn't
9 do because I really don't know what you did or didn't do
10 at your trial.

11 Q Well, it is true that you were surprised?

12 A No. I -- I don't know what you did. How could I be
13 surprised? I don't know what you did.

14 Q Well, I have a.....

15 A I didn't -- I wasn't at your trial, I didn't look at your
16 motions. I don't know what you did. I have no idea what
17 you did after you left me.

18 Q Okay. So you never wrote anything that said that you
19 were surprised that I didn't file motions to suppress
20 evidence at my trial?

21 A I don't know whether I did that or not. Can you show me
22 something?

23 Q Kind of right by the pink.

24 A I'm still surprised did not file (indiscernible -
25 whispering). I guess I was at that time.

1 MR. PETERSON: Can we identify the date and time of the
2 letter -- or the date of the letter?

3 MR. HAEG: It's a March 30, 2007.....

4 A That is a confidential letter that shouldn't be part of
5 this but, apparently, you have it but, anyway.....

6 MR. PETERSON: March what?

7 MR. HAEG: March 30th, 2007.

8 A This was a letter in response to Louise Driscoll in
9 response to a barter events (ph) that David filed against
10 me.

11 MR. PETERSON: And could I.....

12 A It's okay but.....

13 MR. PETERSON: Yeah, let me -- can I see the letter? If
14 you're going to show him exhibits, you got to pass them
15 around. So are you making this part of the record?

16 MR. HAEG: No, I ask him if he ever thought that and
17 that's what I asked him.

18 MR. PETERSON: I mean, you got to be -- if you're going to
19 start utilizing stuff like this.....

20 MR. HAEG: Well, I use this to jog me to -- for me to
21 remember what.....

22 MR. PETERSON: Okay. But this -- then you make it part of
23 the public record.

24 A I -- I don't want it to be a part of the public record
25 so.....

1 MR. HAEG: I got to use something to remember all this
2 stuff.

3 Q Let's see, down to the last things. You know, I don't
4 know, I guess I'm just going to spit this out, this last
5 thing I got. Before I was convicted and sentenced after
6 trial, do you think the court should have been told that
7 the state told me it was for the greater good to do
8 exactly as they charged me?

9 A I -- I have no comment on that. It was after my
10 representation and we've talked about all this so move
11 on.

12 Q Okay. Is it your -- but let me just ask this.....

13 A Move on. I'm not going to talk about.....

14 Qis it your opinion that at some point, that should
15 have happened if I went to trial?

16 A No, I don't -- I don't take an opinion on it at all.

17 Q Okay. Before I was convicted and sentenced after a
18 trial, do you think that the court should have been told
19 the state had falsified all evidence locations to my
20 guide area.....

21 MR. PETERSON: He just said he's not going to.....

22 Qand then used the false locations as a justification
23 for guide charges on.....

24 MR. PETERSON: He just said he's not going to specul -- or
25 testi.....

1 MR. HAEG: I'm not.....

2 MR. PETERSON:talk about what happened after his
3 representation.. That was Mr. Robinson's deal, not Mr. Cole's.

4 A I'm not passing judgment on that at all. Take it up with
5 him.

6 Q Well, I did and the problem is is he blames it all on
7 you. He's like I couldn't do anything that -- if.....

8 A Well.....

9 Qbecause all this happened at Cole's.....

10 MR. PETERSON: Mr. Haeg, ask Brent the question, please.

11 Qrepresentation.

12 A Okay. About my representation.

13 Q Is it.....

14 A I'm not going to go into.....

15 Q Is it true that Robinson can blame you for not doing all
16 the motions?

17 A No.

18 Q Why not?

19 A Because I represented you for 20 days after you were
20 arraigned. He had three months to file motions before
21 your trial.

22 Q Why didn't he?

23 A I -- you got to ask him.

24 Q I know but it just -- it -- what drives -- I just want
25 everybody here to know what drives me nuts is when I ask

1 Robinson if he blames Cole.....

2 A This is not -- ask a question.

3 Qand when I ask Cole, he blames Robinson.

4 MR. PETERSON: Please ask him a question. This is his
5 deposition, it's not a time for you to express your
6 frustration.

7 Q Okay. Are -- if a defendant has two attorneys such as I
8 did, one before trial and one at trial, is it ethical and
9 legal and appropriate for them to blame each other for
10 motions that were never filed?

11 A I don't know.

12 Q You don't know? Okay.

13 A I can't answer that question.

14 Q Do you see how the defendant.....

15 A Under the facts you've given me, I cannot answer that
16 question.

17 Q Okay. Can you see -- can you appreciate -- or.....

18 MR. PETERSON: Mr. Haeg, please try to -- I understand
19 your emotions and your concerns here but please try to focus
20 on his legal representation of you while he was your lawyer.
21 That's what the PCR focuses on. Once he -- once you fire him,
22 there's no PCR claims or allegations to ineffective assistance
23 following your termination of your attorney/client
24 relationship. So try to focus on that period.

25 MR. HAEG: I understand but I've also found beaucoup case

1 law that if you fire an attorney and subsequent things occur
2 where he was involved where things get covered up, let's say,
3 it's totally appropriate to dig into those things and part of
4 it is Brent Cole was.....

5 MR. PETERSON: Then ask if he was involved and establish
6 an involvement first.

7 MR. HAEG: He was like at my sentencing and what not and
8 he never showed up but.....

9 MR. PETERSON: Okay.

10 MR. HAEG:anyway, I -- you know, most of these other
11 questions I believe basically go back to the same thing of my
12 desire to know why.....

13 Q Did you ever discuss my case with Robinson?

14 A The only call I can remember -- I -- I -- I discussed
15 your -- you on what I can remember to be two occasions
16 and I discussed with his investigator you on one
17 occasion. The first occasion, he called me after he'd
18 hired you about sending the letter to Scott Leaders which
19 I did and I -- and I did that at his request. The second
20 time was when I talked to his investigator and that's
21 recorded and you have that and the third time I can
22 remember is when I got the subpoena and I called him up
23 and I said that it wouldn't be a good idea for me to be
24 testifying on your behalf and that that was a poor
25 decision but that I would stand by if he needed to call

1 me and he said we don't need you.

2 Q Okay.

3 MR. HAEG: Well, unless anybody can think of anything
4 else.....

5 MR. PETERSON: Well, I have a few questions so if you're
6 done?

7 MR. HAEG: Yup.

8 MALE: If you think you'd be over 14 minutes, I'll change
9 this tape.

10 MR. PETERSON: I don't think I'm going to be over 14
11 minutes. I just need to kind of look through here.

12 MALE: I'm just sorry about it.

13 MR. PETERSON: Not a problem.

14 (Whispered conversation)

15 EXAMINATION

16 BY MR. PETERSON:

17 Q So, Mr. Cole, this is Andrew Peterson. Just a couple
18 quick questions. With respect to the debrief by Mr.
19 Haeg, is it fair to say that if Mr. Haeg were to take the
20 stand and testify, that that statement, any inconsistency
21 between his debrief and what he says on the stand could
22 be used to impeach him?

23 A I -- I -- I'm not going to go there. I don't know the
24 answer to that. That would have had to have been fleshed
25 out. I -- I'm not sure I would agree with you on that.

1 Q Okay. That would be an issue for Mr. Robinson to raise
2 though?

3 A Yeah, that would have been an issue for Mr. Robinson to
4 raise.

5 Q And I just want to try and flesh out the plea deal issues
6 so I'm clear on that. You -- you've already testified
7 about what you thought Scott may have been doing by
8 filing the amended information. Do you recall at the
9 arraignment Mr. Leaders indicating that there was still a
10 deal in the works?

11 A I remember words to that effect.

12 Q And you'd previously testified that if the deal was --
13 the deal would ultimately involve a plea to lesser
14 charges from the amended information, correct?

15 A It had to.....

16 Q Okay.

17 Abecause as it was charged at that point, if he had
18 pled guilty to an A-15 violation which I -- I mean, I'm
19 -- this is like eight years ago. I cannot remember
20 exactly but whatever it was, it was charged in such a way
21 that if he'd pled guilty to it, he had to lose his
22 license for three years and that was not the deal.

23 Q And the deal called for one year?

24 A One year so it would have had to have been amended which
25 was very common practice and I do it on a regular basis

1 all the time.

2 Q And, in fact, if he pled subsequent to his arraignment
3 since he was going to get his license back in July 1st,
4 it would have been partially retroactive and partially
5 going forward, right?

6 A It would have been both, yeah, because we were already in
7 November.

8 Q Right. And so I'm clear, the -- then after the -- I
9 guess on November 8th when you realized it was a
10 different deal going -- or the amended information was
11 being filed and.....

12 A It was filed like the Friday before.

13 Q Friday before? So -- but the deal went from --
14 originally, it was going to be partially open one to
15 three years?

16 A Right.

17 Q And then that was sealed to a one-year revocation?

18 A It was reduced -- it was going to be reduced to a -- a --
19 a total of one year, 36 months with like 24 months
20 suspended.

21 Q And all the terms were at that point negotiated down the
22 line?

23 A Every term was negotiated. The -- the only thing that --
24 I had not -- I don't remember that I had done a deal like
25 this where we had suspended part of the license

1 revocation. So we were all kind of like let's make sure
2 we get through -- get Occupational Licensing to buy off
3 on that. Occupational Licensing was a big deal because
4 it was independent and we wanted to make sure that we got
5 them to buy off on it. I had a problem many years ago
6 with another client that -- where we didn't and I had to
7 -- it was a long, drawn-out case so I wanted to make sure
8 they were on board.

9 (Whispered conversation)

10 MR. PETERSON: Okay? Okay.

11 Q And, again, the risk for not having Occupational
12 Licensing bite off would be that you could get a court-
13 approved Rule 11 agreement and then they could take
14 subsequent action was the concern?

15 A It was a little bit of concern. I -- there's a provision
16 in AS 08.54.720, I believe, that limits what they can do
17 but because of the nature of this, I wanted to make sure
18 that we didn't have more complications and so it was more
19 out of an abundance of caution. I felt that their hands
20 were bound but I wanted to make sure of that.

21 Q Okay.

22 (Pause)

23 A Why don't we go off record so you don't, -- or change the
24 tape just so that you.....

25 MALE: Oh, I'll just turn it off for a second.

1 MR. PETERSON: Okay.

2 MALE: And just start talking.

3 MR. PETERSON: That's all right. I'll give you a heads-
4 up. I just want to check on a couple things here and then
5 we'll.....

6 MR. HAEG: This lawyering shit's hard work.

7 (Off record conversation)

8 (Pause)

9 MR. PETERSON: Okay.

10 MALE: Ready, break?

11 MR. PETERSON: Yup.

12 MALE: Okay.

13 Q Okay. Just a couple quick questions. I just want to
14 flesh this issue out. We've talked about the immunity
15 and the statement. I mean, you've indicated that's not
16 immunity from prosecution, it's immunity from using the
17 statement against him at trial in his ca -- in the
18 state's case in chief, correct?

19 A Yup.

20 Q The last.....

21 A Yeah, and -- and, arguably, more. I mean, in my opinion,
22 the state erred by not putting it out there. I -- my --
23 my opinion was it was for use immunity and it couldn't be
24 used against him at trial, period, but, I mean, would a
25 judge have determined that? I don't know.

1 Q But, obviously, if some -- if Mr. Haeg chose to take the
2 stand and testify.....

3 A I think generally.....

4 Qit -- it's irrelevant.

5 A It's irrelevant then.

6 Q Did you in any way handle this case to protect the
7 predator control program.....

8 A No.

9 Qas opposed to defending the interests of your
10 client?

11 A No.

12 MR. PETERSON: I don't have any additional questions.

13 MR. HAEG: Do I get to re-cross, double cross?

14 A It's not cross, it's redirect.

15 MR. HAEG: Redirect?

16 A On the issues that we just were talking about.

17 MR. HAEG: Okay.

18 (Off record conversation)

19 EXAMINATION

20 BY MR. HAEG:

21 Q On the deal that everything was negotiated that you had
22 -- or that Andrew just talked to you about, did I ever
23 agree to that?

24 A I thought you did, yes.

25 Q Okay. You thought I.....

1 A I thought you were in agreement with the terms of that
2 deal.

3 Q I agreed to a plea agreement with all the terms
4 negotiated?

5 A With -- yes, that's what I thought.

6 Q Including giving up the airplane?

7 A Yup, that's what I thought.

8 Q Okay. I agreed to a (indiscernible - whispering).

9 A There were a couple things to be worked out but.....

10 Q But that was just about whether Occ Licensing was going
11 to do something?

12 A Well, it was that. There were some issue -- again, there
13 were some issues about forfeiture and there was an --
14 issues, I think, about the timing of the revocation and
15 whether it was going to get moved back from September 1st
16 and there were some issues about whether the state would
17 switch planes and let you get your PA-12 back.

18 Q Okay. And you just testified that the immunity I had may
19 not have even protected my statement being brought up at
20 trial?

21 A I thought it did.

22 Q I thought you just testified that.....

23 A No, that's not what I said.

24 Q Okay.

25 A I thought -- I thought it did. It could -- there's an

1 argument both ways.....

2 Q Okay. And.....

3 Abut I didn't think it could be used -- I knew that
4 it couldn't be used against you in the state's case.
5 There was no doubt in my mind about that and I would have
6 argued that they couldn't use it against you in cross
7 examination. I don't know how successful that would have
8 been but that would have been monitored, sure.

9 Q Okay. But you're now testifying that they could use my
10 statement to.....

11 A I'd -- that's not what I said, David.

12 Q Well, they could -- you could use it for everything
13 except the case in chief. I thought that's what was just
14 established.

15 A I -- no, I said that I didn't believe they could use the
16 statement against you at your trial in their case in
17 chief. Andrew asked me about well, what about in his
18 case if he testified. That's an open question and I'm
19 not sure the answer was because we never got to that
20 point. I never expected it to come up. That might have
21 come up. I'm -- I'd -- I'd have to go take a look at my
22 letter but I didn't -- I -- if I was an advocate for
23 David Haeg at your trial, I'd say you can't use it at all
24 but I wasn't so I don't know.

25 Q Okay. But you're testifying that it could -- the

1 statement could have been used prior to trial?

2 A Yeah, because that's not -- that's not the time when your
3 guilt or innocence is proved. I don't know how I could
4 have stopped that.

5 Q Okay. That's -- okay. And whether they used my
6 statement or not was rendered irrelevant because I
7 testified?

8 A I think that's -- I think that's generally right but I --
9 but I -- again I'm not sure about that.....

10 Q Okay.

11 Abecause I haven't looked at it.

12 Q If -- and this is a hypothetical. If Robinson told me I
13 had to testify because they were using my statement
14 against me.....

15 A Again, it's.....

16 Qdoes it then render my -- does my testimony render
17 the statement, you know, null and void?

18 A I -- I can't answer that question.

19 Q Okay. I -- think of anything else? Okay. I think
20 that's it.

21 A Okay.

22 MR. HAEG: Again, we got in under the wire.

23 MR. PETERSON: Thanks very much.

24 MR. HAEG: Thanks for coming up.

25 MR. PETERSON: Off tape, 10:50. All right.

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(Off record)

* * * * END OF PROCEEDINGS * * * *

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S I G N A T U R E

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, BRENT R. COLE, have read the foregoing deposition and have made corrections thereto. Any and all changes, explanations, deletions and/or additions to my testimony may be found on the correction sheet(s) enclosed with this transcript.

BRENT R. COLE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2012, before me appeared BRENT R. COLE, to me known and known to be the person named in and who executed the foregoing instrument and acknowledged, voluntarily signing and sealing the same.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____