

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  
Assistant Attorney General  
Office of Special Prosecutions  
Dep't of Law - Criminal Division  
310 K Street, Suite 308  
Anchorage, Alaska 99501-3450

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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.

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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 Mr.  
24 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 Q .....but 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 A .....and 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.

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 Q .....a 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 A .....and Dave's allegations and claims were that he used

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

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.

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           A     .....and 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          A     .....and 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 Q .....for 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 A .....prior 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.

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 Q .....but 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

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

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

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 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 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 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

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?

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 Q .....but under the evidence.....

17 A .....but 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.

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

1 and Givens that he was going to plea to certain  
2 charges.....

3 A Right.

4 Q .....and 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.

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

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

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      Q     .....a 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      Q     .....which was a trapping program.

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 Q .....like 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

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.

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 Q .....the 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 A .....he 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

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

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           A     .....but 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 Q .....classification 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 Q .....it'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.

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 Q .....so it's six years ago.

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 A .....other 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.

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 Q .....and 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

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 A .....and 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 Q .....probable cause statement from either the officer or  
7 the troop -- or the prosecutor.....

8 A Right.

9 Q .....may 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 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 Q Okay.

2 A .....when 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           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

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 Q .....put 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

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

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?

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 Q .....seek 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 about  
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 A .....but, 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 Q .....the 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.

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.

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

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.....

1 A Yeah, that's -- that's not true.

2 Q .....about this false claim by the state.....

3 A Right.

4 Q .....it'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 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 Q .....19-D east which is the.....

13 A Right.

14 Q .....predator 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 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 A .....because 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 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.....

1 Q .....when you filed his appeal, you.....

2 A Yes.

3 Q .....checked 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

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 Q .....claimed his immunized statement was used to

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 Q .....previously 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?

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.

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.

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

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

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.

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?

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

1 a PCR applicant seek a affidavit of prior counsel.....

2 A Right.

3 Q .....asking 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?

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           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 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 A .....other 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 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 A .....but 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?

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

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 A .....they 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

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

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 A .....and 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      A     .....and 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 Q .....and 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 Q .....and 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 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 Q .....and you delegated your investigator to help you with

1           that.....

2       A     Right.

3       Q     .....and 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 Cole.....

2 A Right.

3 Q .....that 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 Q .....to 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 Q .....whether 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 A .....that 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 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           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          Q     .....no 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          A     .....because 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 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.....

1 Q .....then 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 come 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.

1 Q .....bowed 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 Q .....and, 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 Q .....because 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.

1 Q .....and 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 Q .....after I got the files from you after I fired you, is

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 A .....from 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 Q .....his discussion with Brent Cole?

9 A .....he 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 A .....but he knew about the issue.....

15 Q Okay.

16 A .....of 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 Q .....this 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.....

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 Q .....Brent 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

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

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,

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 Q .....to possibly find out.....

18 A .....is 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 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 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 Q .....but it never came out.

11 A I believe that in your allocution.....

12 Q Okay.

13 A .....you 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 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.

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 A .....because.....

14 Q And I believe there was test.....

15 A .....because 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?

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 Q .....that if.....

12 A No, the.....

13 Q .....evidence 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

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 series

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 A .....that 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 A .....or 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 A .....on 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 Q .....you'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 A .....except 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

1           because the information was not sworn to.....

2       A     Right.

3       Q     .....it 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

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

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          A     .....it required a sworn affidavit of probable cause

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      Q     .....and 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          Q     .....and 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

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

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 Q .....are 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

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 Q .....your first time, you brought up the issue about the  
9 motion.....

10 A The statement.....

11 Q .....or 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.

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 Q .....why 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 A .....but 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 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 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           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 Q .....wouldn'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           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          A     .....their 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 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 A .....but 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 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 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 Q Okay.

2 A .....should 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 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.

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 Q .....statement?

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

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.....

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

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 A .....but 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 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 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 A .....and 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           wrongdoing that.....

2           A     That.....

3           Q     .....and 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.

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 Q .....and I didn't get it, there's nothing you could do

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 Q .....incentive would the state have.....

25 A Let me -- can I (simultaneous speaking).

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.

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 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 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 A .....without a hearing.....

5 Q Okay.

6 A .....ever 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 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.

1 A .....that is was an economic issue for you.....

2 Q Okay.

3 A .....from 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

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 Q .....and Prosecutor Leaders?

19 A You were very concerned that you thought that you had  
20 given, you know.....

21 Q And.....

22 A .....some 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

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?

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 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 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 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 Q .....it 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

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.....

1 Q Okay. And if.....

2 A .....but I do remember the Zeller part.....

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

4 A .....and 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 A .....also identified by Tony Zeller.

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

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 A .....these 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

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 Q .....if 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           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          A     .....the statement itself was concerned, what was -- you  
15          know.....

16          Q     Okay.  If.....

17          A     .....if 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           prosecute you no matter what you tell them.....

2       Q     Okay.  And.....

3       A     .....then you should have never been prosecuted.....

4       Q     Okay.  And.....

5       A     .....as 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       A     .....from 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       A     .....and 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 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.

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

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 A .....but 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

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 A .....but 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

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 A .....what 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 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 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 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 A .....that 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

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

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.

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

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 A .....where 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 .....all 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 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 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?

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 A .....and 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.

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.

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 A .....might 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 commandeer 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

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 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 A .....that.....

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 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 Q .....that on one hand she's deciding it's a factual issue

12 for the jury.....

13 A Right.

14 Q .....and 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 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 Q .....or was it submitted to the jury?

14 A .....we -- 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

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

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

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

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 A .....because 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 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 A .....but I can't at the moment put my.....

17 Q Okay.

18 A .....mind 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 or.....

2 Q Yeah, just.....

3 A Right.

4 Q .....you 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.

21 EXAMINATION

22 BY MR. PETERSON:

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

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 Q .....and 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

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 Q .....wasn't even determined if there was a plea  
25 agreement.

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

1 with respect to the defects in the probable cause  
2 statement.....

3 A Right.

4 Q .....and 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.

1 Q .....which 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           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 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 Q .....whether 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 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.

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 sSaxby?

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 Q .....that 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.

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,

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 \* \* \* \*

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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: \_\_\_\_\_