

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

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

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

DEPOSITION OF BRENT R. COLE

FEBRUARY 7, 2012

APPEARANCES:

FOR THE APPLICANT: DAVID S. HAEG
In propria persona

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

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

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

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

13 MR. HAEG: Yup.

14 MR. PETERSON: Okay.

15 BRENT R. COLE

16 called as a witness, testified as follows on:

17 EXAMINATION

18 BY MR. HAEG:

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

22 A A criminal case?

23 Q Yeah.

24 A Yes. Yes.

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

1 questions here too. Have you ever been arrested?

2 A What relevance is that?

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

5 A It's none of your business.

6 Q Okay. Ever been convicted?

7 A None of your business.

8 Q Okay.

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

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

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

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

19 MR. PETERSON: Yeah.

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

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

24 A I have no idea.

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

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

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

4 A No.

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

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

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

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

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

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

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

23 A For -- from who? From what?

24 Q The U. S. Department of Justice.

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

1 of Justice, David.

2 Q Okay.

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

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

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

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

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

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

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

14 MALE: Let's not get argumentative here.

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

16 Q Let's.....

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

19 Q And could you please answer them?

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

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

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

1 (simultaneous speaking)?

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

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

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

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

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

16 A It was supposed to be.

17 MR. PETERSON: Okay.

18 Q What happened.....

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

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

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

23 MR. HAEG: I.....

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

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

3 A Your opportunity is to grow your PCR.

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

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

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

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

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

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

15 A No, I'm not doing that.

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

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

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

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

23 MR. HAEG: Okay.

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

1 A I don't know.

2 Q Is it possible?

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

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

12 A I have no idea.

13 Q So you never made a statement like that?

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

15 Q You didn't represent you?

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

19 Q Didn't I.....

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

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

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

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

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

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

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

10 Q And what was the deal?

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

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

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

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

9 Q Really?

10 A Yeah.

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

12 A Are you sure?

13 Q Yup.

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

21 Q Eight years ago.

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

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

1 on, increase the severity of the charges?

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

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

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

20 Q Okay. Did you protest that?

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

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

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

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

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

9 A No, no, wait. No.

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

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

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

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

25 A I -- I thought we did.

1 Q Okay.

2 A That was my impression, yes.

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

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

1 and I told that to the investigator.

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

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

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

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

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

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

5 A No, I'm answering this.

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

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

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

10 A I may tell you.....

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

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

13 A You asked me.....

14 Q Okay.

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

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

3 A David wanted.....

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

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

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

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

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

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

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

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

22 A I'm not talking about fee arbitration.

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

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

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

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

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

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

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

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

14 MR. HAEG: Okay.

15 MR. PETERSON:is for your PCR.

16 Q Have you.....

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

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

20 A Yes.

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

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

25 Q Was he your witness?

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

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

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

8 Q Was it about my case?

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

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

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

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

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

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

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

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

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

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

1 that.

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

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

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

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

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

9 Qdid you.....

10 Aask questions about what I represented you, David.

11 Q Did you.....

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

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

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

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

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

19 MR. PETERSON: When he represented you.

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

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

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

25 Q I chose to make a statement?

1 A Yeah, that was a choice you made.

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

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

7 Q Did I have immunity for that statement?

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

10 Q And what did that immunity mean?

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

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

14 A That's right.

15 Q What law or rule says that?

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

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

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

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

23 A Transactional.....

24 Q Okay.

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

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

1 testifying?

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

3 Q Were you my attorney when information number one and

4 information number two were filed?

5 A Yeah.

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

7 informations?

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

9 the question. The question.....

10 Q Was that allowed?

11 A Yeah, I think it was.

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

13 justify the charges?

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

15 does it (simultaneous speaking).

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

17 difference.

18 A No, you didn't.

19 Q Yeah.

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

21 at your trial.

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

23 Scott Leaders.....

24 A Yes.

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

1 trial?

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

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

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

7 Q Why did they use it against me?

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

10 Q Okay.

11 A You fired me.

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

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

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

20 A No.

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

23 A Well, for what?

24 Q If you get the.....

25 A What -- for what?

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

2 A David.

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

4 themselves.

5 MR. HAEG: Okay.

6 A David, what would you want me to file the motion to

7 suppress for? What was the grounds?

8 Q Use of my immunized statement.

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

10 Q Could not?

11 A A motion to suppress is for a trial, what evidence gets

12 presented at trial. I could have filed a motion to

13 suppress your statement at trial but you fired me, number

14 one, so I didn't -- and you had that opportunity with Mr.

15 Robinson. He -- if anybody was going to file it because

16 you wanted a trial, it was Mr. Robinson. I could not

17 file a motion to suppress your statement because they

18 distributed it to the newspaper.

19 Q Okay. How did you exercise my rights?

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

21 exercise your.....

22 Q My right against self-incrimination.

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

24 2004.

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

1 right.....

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

3 Qwhile you represented me?

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

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

8 A No.

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

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

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

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

18 Q Because I.....

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

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

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

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

6 Q Okay. Did you ever object to the use of my statement?
7 A I represented you at one hearing. I didn't object at
8 that -- at that hearing, no.

9 Q Could you have asked for a different hearing or filed a
10 motion without a hearing to object to the statement?
11 A Yes, I could have.

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

20 Q Did I ever object to them using my statement to you --
21 did I ever object to you that they were using my
22 statement?
23 A I think you said something about it, yeah.

24 Q And why didn't you do anything when I objected?
25 A Because to me, they could -- okay. So -- so I object.

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

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

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

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

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

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

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

24 Q Why.....

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

1 speaking)?

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

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

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

5 A Okay.

6 Q Why did they use the map that you had me make against me

7 at trial?

8 A I don't know, you have to ask Scott Leaders and your

9 attorney, Chuck Robinson.

10 Q Why did they use the statement I made to justify the

11 charges against me while you were my attorney?

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

13 that decision.

14 Q Was it not your duty as my counsel that I hired for \$200

15 an hour to tell me my rights of what I could do?

16 A And I did.

17 Q Did you tell me that I could protest -- that you could do

18 something about the statement use against me?

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

20 I was looking at the forest.

21 Q I.....

22 A I -- I didn't see that as helping us or moving forward

23 your opportunity to get your guide license back on

24 July 1st, 2005. That was my focus. That's what you told

25 me was your -- that's what your wife told me, that's what

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

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

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

12 Q Tony Zellers.....

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

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

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

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

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

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

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

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

2 A I don't know.

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

5 A I don't know.

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

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

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

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

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

20 A For what pass?

21 Q No.

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

1 -- and to create the window of negotiation so that we
2 could get this down from a five-year license revocation
3 so that you could do your spring bear hunting. It was
4 our offer of good faith that you wanted to cooperate,
5 that you wanted to reach a deal which you did at that
6 time. You changed course, obviously, and that statement
7 was not to be used at trial. Now, you can call it
8 whatever you want. I don't think that's transactional.
9 Transactional means I give a statement and I get absolved
10 of all crimes and everything and that's not what it was.

11 Q If the law in the State of Alaska says the only immunity
12 that can be given is transactional immunity, are you
13 saying that everybody violated the law to prosecute me?

14 A You should have had Chuck Robinson file your motion. You
15 fired me. You could have had Chuck Robinson file that
16 motion.

17 Q Why has Chuck Robinson told me it was your duty to do it?

18 A Why me? I wasn't your attorney. You fired me. I
19 couldn't. Ask Chuck Robinson about that.

20 Q I have. He said it's your duty.

21 A No. Then you should have kept me as your attorney.

22 Q So are you testifying it was his duty to file the motion?

23 A Yes. He was the one -- he was the trial attorney.

24 Q Was it ineffective assistance of counsel for him not to
25 file a motion to suppress because of my statement use?

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

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

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

6 Q You just testified that I did.

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

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

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

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

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

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

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

1 get immunity.

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

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

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

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

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

13 A I have no idea.

14 Q Have you said that to me?

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

17 Q Do you believe that occurred?

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

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

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

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

4 A Absolutely not.

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

8 A Is that the question?

9 Q Yup.

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

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

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

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

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

1 Q Could you have?

2 A I might have.

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

4 A No.

5 Q Why not?

6 A Because I was your attorney. I advocated a deal that to

7 this day, you wish you would have taken. I was the one

8 attorney that helped you get in a position that would

9 have resolved this in 2005 and if you'd simply listened

10 to me instead of going off on this airplane, you'd be

11 guiding and you wouldn't be going through any of this.

12 Q So you're testifying that you expressed a concern about

13 pissing Leaders off and that there was also your concern

14 of what he would do with other clients of yours?

15 A I piss U -- district attorneys and U. S. attorneys off

16 all the time. Ask Trooper Shan -- Chastain here.

17 They're all pissed at me right now.

18 Q Because you're sitting here testifying?

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

20 Q Is it true that filing a motion against a prosecutor

21 makes an enemy out of the last person you'd want to make

22 an enemy of?

23 A I would agree with that. That would be you being you,

24 being the defendant, not me.

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

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

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

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

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

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

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

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

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

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

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

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

9 MALE: I don't understand your question.

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

14 A No.

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

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

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

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

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

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

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

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

8 A Suppress what?

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

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

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

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

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

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

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

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

1 viable motion so I don't know.

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

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

5 Q What did you say?

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

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

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

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

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

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

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

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

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

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

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

8 A Today I testified?

9 Q Yes.

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

12 Q How many warrants were issued in my case?

13 A I thought there were two.

14 Q Two?

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

16 Q Why don't you know?

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

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

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

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

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

3 Q And then did you go through the warrants?

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

5 Q And how many warrants were there then?

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

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

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

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

13 A I -- I guess it could have.

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

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

17 Q And why is that?

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

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

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

5 A Yeah, you told me that.

6 Q And what was your response to that?

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

8 Q So you.....

9 Aacknowledged what it was.

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

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

12 Q Okay.

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

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

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

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

13 Q Not a defense?

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

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

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

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

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

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

1 A What I said is my answer.

2 Q What evidence.....

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

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

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

19 Q That ain't the question I asked.

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

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

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

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

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

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

9 Q What was I charged with?

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

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

13 A As a guide.

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

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

20 Q How.....

21 A You are not a regular person.

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

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

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

5 A I have no idea.

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

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

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

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

13 Q So.....

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

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

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

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

24 A When would I have done that, David?

25 Q File a motion.

1 A When?

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

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

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

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

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

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

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

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

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

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

21 A (Simultaneous speaking).

22 MR. PETERSON: Hey, can we -- he need to change the tape.

23 MR. HAEG: Okay.

24 MALE: Okay.

25 MR. PETERSON: Why don't we take five or 10 minutes?

1 MALE: Okay.

2 MR. PETERSON: Ten?

3 MR. HAEG: Okay.

4 MR. PETERSON: That look -- that sounds good.

5 MALE: Thank you.

6 MALE: I'll wait.

7 MALE: Stop tapes.

8 (Off record conversation)

9 (Deposition recessed)

10 MALE: Okay. We can start any time you want.

11 MALE: Okay. Well, I guess we start. Roll tape. I

12 always wanted to say that. Got it going, Dave?

13 MALE: You're judge.

14 MR. HAEG: Just.....

15 MR. PETERSON: Any time you're ready.

16 MR. HAEG: Okay.

17 Q Is it true Leaders informed you he would not be honoring

18 my immunity?

19 A No, I don't remember that.

20 Q Is it possible that he told you that?

21 A No.

22 Q Okay. Leaders never told you he wouldn't be honoring it.

23 Is it true that a client and attorney should discuss the

24 materiality of anything that might be able to get

25 suppressed?

1 A I can't say yes or no. Depends.

2 Q Why didn't you discuss any of this with me?

3 A I don't know what you're talking about when you say any
4 of this stuff.

5 Q Why didn't you discuss the materiality of what might have
6 been able to be suppressed with me?

7 A I did discuss these things with you at certain points
8 along the line of my representation of you.

9 Q Okay. So you told me that we could -- you told me what
10 and -- what could possibly be suppressed and how to
11 suppress it?

12 A At what point, David? I represented you for six months.
13 At what point are you talking about?

14 Q From the day I hired you to the day I fired you.

15 A Did I talk about the things that could have been? Yes,
16 in that period of time, I absolutely did.

17 Q Okay. Is it true we didn't go to McGrath on
18 November 9th, 2004 because we had resolved the case?

19 A It's true we didn't go to McGrath. I believed we hadn't
20 -- that we had resolved the case, yes. Well, we still
21 had a few things to work out. We were still working on a
22 couple things. We needed the approval -- we wanted to
23 get the approval of the Occ -- Occupational Licensing.
24 We were still -- we were still banging on the issue of
25 exchanging the planes. I think we were still talking

1 about one other thing but I can't remember it. There may
2 have been some things that we were getting returned but
3 the essential elements of that deal I thought were
4 resolved on the night of the 8th and in effect on the
5 night of the 9th -- or the morning of the 9th.

6 Q Isn't the real truth that we didn't go because Leaders
7 had greatly increased the severity of the charges at the
8 last minute to get the plane also?

9 A No. No. You need to ask Leaders but that's not my
10 understanding.

11 Q You've never told me that he increased the level of
12 severity of the charges in order to get my airplane?

13 A No, it -- well, that's not the right way to characterize
14 it. You wanted the opportunity to go open sentencing on
15 AS 08.54.720(a)(8) which was only a one-year mandatory
16 minimum and he was unwilling to do that so he filed -- he
17 -- you know, I don't -- you have to ask him why he filed
18 it but I assume he filed it so that if you tried to go in
19 and plead guilty or if you had tried to plead guilty at
20 that time, that he would have been in the position where
21 you would have been facing a year minimum and the
22 possibility of getting your plane back and for them, that
23 was unacceptable to them, I guess. You need to talk to
24 him about that.

25 Q Okay. But you never told me the reason why he increased

1 the severity of the charges at the last minute was to get
2 the airplane.

3 A Well, again, it -- it comes down to this issue of you
4 wanted the opportunity to argue for the return of the
5 aircraft and you wanted the one-year license revocation
6 mandatory minimum. He was unwilling to do that. He --
7 it was either take the two years -- no, it wasn't, it was
8 -- it was take three years and argue about the plane or
9 take one year and don't argue about the plane.

10 Q Okay. Can you just answer this to a yes or no, did you
11 tell me that Leaders had greatly increased the severity
12 of the charges at the last minutes to get the airplane?
13 Did you tell me that or not?

14 A I -- I don't think it -- I put it in those terms, no.

15 Q Okay. And just after.....

16 A Besides, you already had the plane. They didn't have to
17 get it, you already had it.

18 Q Have you ever stated that prosecutor Leaders reneged on
19 the deal?

20 A He reneged on what he told me was acceptable initially,
21 yeah, at one point.

22 Q Did he do -- did he renege after we had placed
23 detrimental reliance on the -- what he had agreed upon?

24 A I -- I don't know. I don't think so.

25 Q So you don't agree that I flew Tony in from Illinois, I

1 flew Grue in from Silver Salmon and, well, I took my kids
2 out of school and my wife away from work and we drove up
3 to Anchorage in reliance on one agreement and then on
4 November 8th, the same day we got here, he reneged?
5 That's not your impression?

6 A No, you drove them all because we were going to have a
7 hearing at the sentencing. Originally, the idea was you
8 were going to get arraigned and you were going to get
9 sentenced on the same case but the -- the sentencing was
10 going to involve -- everything had been negotiated except
11 for whether you were going to get a one-year license
12 revocation or whether you were going to get a three-year
13 license revocation which Leaders intended to argue and
14 that was because the state, even to that day, contended
15 that you had -- you and Tony had been involved in same
16 day airborning in the fall of 2003 and they wanted to put
17 on evidence at the sentencing that day. And so you flew
18 them back and we were going to have a hearing on that
19 issue in and of itself and you were going to be
20 sentenced. And it was either going to be everything else
21 had been negotiated, your jail time, your -- your fine,
22 all those were under the mandatory mi -- the minimums and
23 then we were just going to have a legal argument, an
24 evidentiary hearing, on whether or not you two had been
25 involved in that unlawful guiding activity in 2003 and

1 our opinion was if we prevailed at that argument, the
2 judge was going to give you a one-year and if the state
3 prevailed and the judge found that he thought that you
4 had been involved in that, that you were going to get a
5 three-year and that was why everybody was flown in and
6 that's why we had done all the letters for your
7 sentencing and everything else.

8 Q Okay. It wasn't to -- you never told me that what
9 Leaders did was all about the airplane.

10 A I -- I -- that's not how I characterized it. I told you
11 why he did it. You have to ask him why he did it. I
12 told you why I suspected he did it. He's the only
13 one.....

14 Q And that was all about the airplane?

15 A It was to preclude you from coming in and pleading to a
16 -- counts, opening sentencing and having the opportunity
17 to argue to get your airplane back.

18 Q Okay. And is Leaders allowed to renegotiate the deal
19 after we'd relied on it by flying Tony in and all that?

20 A I -- I've already answered that question. No, I don't
21 agree with that.

22 Q You don't agree that he can do it or you agree that he
23 could do it?

24 A I don't agree with the premise that you relied upon it.
25 We were relying upon something totally different.

1 Q Oh.

2 A And whether he could do it is up to him. He's the
3 prosecutor. He -- he has an extreme amount of
4 prosecutorial discretion in the deal he allows people to
5 make.

6 Q Have you testified that while you were my attorney, I
7 told you I want to fight this, I want to fight this, I
8 want to fight this?

9 A I'm not going to test -- talk about what I've testified
10 before.

11 Q Have you -- have you -- did.....

12 A Ask me about questions about when I represented you.

13 Q Did I tell you while you were my attorney I want to fight
14 this, I want to fight this, I want to fight this?

15 A Periodically at times, you would say that. You would
16 also call me crying from under your table, crying on my
17 phone at -- every day on Saturday and Sunday. Your
18 mother-in-law called me, your wife talked to me. I heard
19 you say things that were totally opposite during this
20 whole time but, yes, on occasion, you would say that and
21 then we would talk about what would that mean and what
22 would the consequences be and the down side.

23 Q How did you tell me I could fight the case?

24 A Very simple, go to trial.

25 Q Did you.....

1 A Plead guilty at open sentence, go to trial, file motions,
2 refuse to negotiate. There was a lot of ways you could
3 fight it and we talked about all of them.

4 Q Did you tell me that I could file motions to suppress,
5 that I could file the defense of entrapment to enforce a
6 plea agreement, that I could get the plane back,
7 et cetera, et cetera?

8 A Well, a coup -- you -- you've asked a compound question
9 so ask me one at a time.

10 Q Okay. Did you tell me you could file motions to
11 suppress?

12 A Yeah, we talked about it. That was always an option. At
13 some point, we talked about that, yes, from -- in the
14 six-month period.

15 Q Did you tell me we could file the defense of entrapment?

16 A I -- I think we talked about entrapment and I didn't see
17 that the state was compelling you to do anything. You
18 did it on your own volition. You got in the plane, you
19 flew out, you made a determination there were no wolves
20 in the area. Nobody was holding a gun to your head.
21 Nobody was threatening your family. There was none of
22 that, you just went out and did it.

23 Q Okay. But -- so did you or did you not tell me I could
24 file the defense of entrapment?

25 A I -- I think we talked about that and I told you that

1 that was an automatic loser and you would not win on
2 that.

3 Q Okay. You didn't say that it was a -- not a legal
4 defense?

5 A You are mixing up, David, what Ted Spraker said to you in
6 our conversations about whether that is a legal defense
7 and the defense of entrapment. The intent of -- in the
8 defense of entrapment has specific elements that have to
9 be met. What I was talking to -- there is a legal
10 defense of entrapment. What you are talking about is
11 when Mr. Spraker, the guy that was on the big game
12 commercial services board talked -- you said talked to
13 you and -- and authorized you to do this and I said I
14 don't think that's a legal defense.

15 Q Okay. Did you tell me that we could file motions -- or
16 bond the plane out?

17 A I -- I don't think I did initially because, as I told you
18 from the first day that you walked in, I believe, when
19 guides go out and commit violations of the hunting laws
20 in the State of Alaska with airplanes, the troopers
21 forfeit them and they forfeit them almost on every
22 occasion. So when you came in and told me that you guys
23 had violated the criminal laws with your airplane and big
24 -- and you were a guide, I had every degree of certainty
25 from that point on that that plane was going to be

1 forfeited no matter what. At certain times, I really
2 didn't focus on it because we were able to get through
3 the spring bear hunt and you had another plane there, a
4 Super Cub, which you used to service your clients that
5 spring and there were no problems. At some point later
6 on in the course of my representation, I think you might
7 have brought it up and I kept saying okay, again, David,
8 this is like what do you want to do. We're at -- we --
9 we've crossed the stream, do you want to negotiate or do
10 you want to fight this. If you file a motion to get your
11 airplane back, I can tell you what's going to happen,
12 you're going to be fighting this and that means you're
13 going to subject yourself and your wife and your family
14 and your employees to a five-year loss of license which I
15 understood was unacceptable to you from the beginning of
16 this case until the end.

17 Q Isn't it true at the time you said I couldn't legally get
18 it back, get the plane back?

19 A There was a statute in place that made it very difficult
20 to get back information on -- that is seized in the
21 course of search warrants. There is some case law out
22 there that says that if it's a indispensable part of your
23 business, you can get a bond on it or something like
24 that. I can't remember all our discussions at that time
25 but, again, it all comes down to did you want to fight

1 this and subject yourself to a five-year loss or
2 limitation or did you want to negotiate it down. You
3 chose to negotiate it down so we didn't go down that
4 route.

5 Q Is it because of your desire that I plea out -- is the --
6 your desire that I plea out why you never told me of
7 these defenses?

8 A No, I -- I disagree with that, no.

9 Q Did you repeatedly tell me to forget the plane because I
10 would never get it back?

11 A Yeah, pretty much. I think I repeatedly told you that
12 because that was my professional opinion. I've been
13 doing guiding cases both as a prosecutor and as a defense
14 attorney. I've seen what happens to guides and their
15 planes when they commit fish and game violations both at
16 the federal and state level, they get forfeited and the
17 judges forfeit them.

18 Q Okay. But isn't it true that, by law, I could have got
19 it back?

20 A There was a possibility that would be against your best
21 interest in the negotiations.

22 Q Why didn't you tell me of that when I asked how to get
23 the plane back?

24 A Because we explained again and again, David, if we go
25 down that route and if you file that motion, that means

1 we're not going to reach a negotiated plea which,
2 ultimately, is going to lead you to get into an opening
3 sentencing situation and you're going to lose your guide
4 license for five years, you're going to lose your plane
5 anyway.

6 Q Do you believe it was my right to know all my defenses
7 even if I wished to plea out?

8 A Yes.

9 Q So why didn't you tell me about them?

10 A I did.

11 Q Okay. You tol.....

12 A I don't know what ones I didn't tell you about.

13 Q Well, you test.....

14 A There's a difference between telling you about them and
15 doing them. We would talk about them over the whole
16 course of this time. At the end of the day, you made the
17 determination that you wanted to continue to negotiate
18 and you didn't want to go down that path because of the
19 consequences that were out there.

20 Q Is it reasonable or do you think maybe the reason why the
21 plea negotiations went on for so long is because I didn't
22 know I could fight the charges?

23 A Nope, you were told you could fight the charges from the
24 beginning.

25 Q Okay. And you told me how to fight the charges?

1 A Yeah.

2 Q Okay. And how did you do that?

3 A Well, at various stages, I said you're entitled to a
4 trial. We can stop negotiating with the state and I
5 expect within a short order, they will file an
6 information or a complaint or indict you for a felony for
7 evidence tampering and then we will be in trial and you
8 can fight it all you want. You can file motions to
9 suppress evidence. You can file motions to dismiss and
10 you can have a trial.....

11 Q Okay.

12 Aand at the end of the day, in my humble opinion, you
13 will be convicted and you will lose your guide license
14 for five years and you will lose your privileges and I
15 said I highly advise against that and at the beginning of
16 this case, you said I don't want to lose my guide
17 license, I don't want to lose my lodge, I don't want to
18 lose everything that I've worked for, I want to
19 negotiate.

20 Q Okay. Would being acquitted of the charges.....

21 A You weren't going to be acquitted, David.

22 Q I get to ask the questions. Would being acquitted of the
23 charges prevent me from losing my guide license and
24 airplane, et cetera, et cetera?

25 A No. No.

1 Q So even if I was innocent, they could take away my guide
2 license and airplane?

3 A Being acquitted is very different than being innocent.
4 Being acquitted means you're not guilty. That does not
5 mean you're innocent. The state -- as I explained to
6 you, even if you were acquitted, the state could bring
7 civil actions to forfeit your airplane. The state -- the
8 big game commercial service board, even if you're
9 acquitted, could take your guiding license. All of those
10 things could happen and that's -- I explained that to you
11 also.

12 Q Okay. Have you testified that two other cases of yours
13 were part of the reason that I need to get the DA on
14 board?

15 A I'm not going to talk about testimony. If you're asking
16 me in the course of our representation.....

17 Q Okay. In the course of you representing me, did you tell
18 me the reason I needed to get the DA on board was because
19 of two other cases of yours?

20 A I -- I'll tell you the two cases. One of them was a
21 guide who we were arguing -- I was in an argument with
22 the DA.

23 Q I know, I didn't ask.....

24 A Yes.

25 Qabout the cases, I asked have you -- did you tell

1 me.....

2 A Yeah, I related -- I related to you they were.....

3 Q That they were part of the reason (simultaneous
4 speaking).

5 MR. PETERSON: I'm going to ask for clarification. Would
6 you please ask what -- clarify what the reason is. You're --
7 I don't understand it.

8 A Just rephrase the question. I apologize. I started too
9 soon there.

10 Q While you were representing me, did you tell me that part
11 of the reason I needed to get the DA on board was because
12 of two of your other cases?

13 A No, absolutely not. What -- you want to know what I was
14 referring to, David, since you've misquoted me?

15 Q No. If I didn't get on board, would the DA have done
16 some -- something different with the other cases?

17 A No.

18 Q Okay. Was this your impression?

19 A You -- you're -- you're taking what I said out of context
20 and I'm not -- and I'm not going to agree to it, no.

21 Q Do you remember who these other two cases were, the guys'
22 names?

23 A I remember the two cases and what we were talking about,
24 David, and what you've taken out of context is I had two
25 cases where people had gone open sentencing, guides, and

1 they had both lost their guide license for five years and
2 I was telling you it's not a good deal to be a guide and
3 going in front of a judge open sentencing and here are
4 the two cases. So my advice to you is to strike deal
5 (simultaneous speaking).

6 Q Okay. The only thing I asked was their names.

7 A I don't remember their names right off the bat.

8 Q Okay.

9 A I can find them though.

10 Q During my immunized statement, did the state demand I
11 circle on a map where the wolves were killed?

12 MR. PETERSON: I'm going to.....

13 A During your.....

14 MR. PETERSON: Objection, just talk about your statement.
15 You're calling it an immunized statement. You've already had
16 that discussion.

17 A You're king for a day. We've already discussed that.....

18 Q Okay.

19 A and you were asked to provide a map -- I think -- I
20 thought -- for some reason I thought we faxed that. I
21 thought you signed it and we faxed it before the
22 statement and I think it may have been reconfirmed in the
23 -- in the interview but my recollection was they wanted
24 that information then.

25 Q So at my statement, did the state require me to take a

1 pen and draw on a map where the wolves were killed?

2 A I can't remember but it makes -- it -- I -- I believe
3 that happened.

4 Q Okay.

5 A I thought it hap -- like I said, I thought it happened
6 earlier than that. I thought we faxed it to them but
7 they may have gone over it again in the -- in the
8 statement.

9 Q And why would they want this map?

10 A You need to ask the state.

11 Q Were they allowed to use this map to find evidence
12 against me?

13 A You need to ask the state.

14 Q I'm asking you as my attorney that when you had me make a
15 map whether they could use it against me, whether they
16 could use -- yeah, use it against me, find evidence.

17 A I -- I don't -- it would have been my position if I was
18 your trial attorney that no, they could not, that it was
19 evidence.....

20 Q No?

21 Aat -- that was given pursuant to the immunity for a
22 day, king for the day and it could not be used at your
23 trial against you. That would have been my position at
24 the trial.

25 Q Okay.

1 Aif I had been your trial attorney. I wasn't so.....

2 Q Okay. Are you testifying that they could use it to

3 justify the charges in the informations against me while

4 you were still my attorney?

5 A See, if -- if I had concerns about it.....

6 Q Did -- okay. Did I ask -- did I protest to you that they

7 were using my statement against me?

8 A Yeah, I think you did.

9 Q Okay. Why didn't you do anything about that?

10 A Because we had a deal, David. On November 8th, we had a

11 deal. There was no reason. Before that, we had a deal

12 on (simultaneous speaking).

13 Q (Simultaneous speaking).

14 A No, listen to me.

15 Q Okay.

16 A I want to answer the question.

17 Q Okay.

18 A Before that, we had a deal on the parameters of the

19 sentencing that was going to be a one to three. On the

20 8th, we had a deal on what the parameters were going to

21 be. From that point on, there was no reason to do that.

22 Everything was going to be resolved. If you didn't want

23 to plead to any of that, it didn't -- you didn't have to

24 but at that time, there was no reason because we had a

25 deal. I would have been wasting your time and money

1 doing a lot of other things that were not necessary for
2 the completion of your case and getting your license back
3 in July 1st, 2005.

4 Q Could you have filed a motion protesting my statement use
5 and asking that all prosecution be ended because of
6 prosecutorial misconduct?

7 A Anybody can file a motion for anything.

8 Q Did you tell me that you could file that motion?

9 A I don't know that we ta -- I -- you may have asked me
10 about it and I said anybody can -- you can file any
11 motions you want. Defense attorneys file poor motions
12 all the time but where is that going to get you at the
13 end of the day is what I told you.....

14 Q Did you.....

15 Aand it -- and I said that's not a good idea because
16 it's not going to prevail.

17 Q Did you tell me while you were my attorney that you
18 didn't know what we could do about it?

19 A You're talking about the decision to re-amend the
20 complaint in that statement. Is that what -- what do --
21 in what context are you talking about, the dec.....

22 Q When the -- when they were using my statement against me
23 and it came out in the Anchorage Daily News and it came
24 out in all the informations, did I say how can they use
25 this against me?

1 A We ta -- I -- you said how can they publicize it and I
2 said I cannot control what the troopers put out as a
3 press release. I can't control what the state puts out
4 as its charging document. I can complain but at the end
5 of the day, we had a deal so it wasn't going to make any
6 difference anyway is how I looked at it and how I
7 explained it to you.

8 Q If we had a deal, how come I went to trial?

9 A Because you rejected the deal. You fired me.

10 Q I didn't.....

11 A You fired me. You said you wanted a trial. You hired
12 Chuck Robinson and went to trial. You rejected
13 everything that we had worked for and accomplished.

14 Q Deal or not, when the state violated my right against
15 self incrimination, was it your duty to defend me?

16 A That wasn't a violation of your right against self
17 incrimination.

18 Q Exactly what was it?

19 A It was a use of a statement that you'd given pursuant to
20 an agreement to disclose your wrongdoings in return for
21 leniency in the charging decision and the sentencing.

22 Q I thought you testified under oath I had immunity.

23 A You had king for a day, you had immunity. That's right,
24 they couldn't use that statement against you at your
25 trial.

1 Q And what law? Because I believe Mr. Cole here is
2 committing perjury. I think you're a law enforcement
3 officer, aren't you?

4 MR. PETERSON: Mr. Haeg, please direct your questions to
5 Mr. Cole.

6 MR. HAEG: Okay. He's committing -- I believe.....

7 A I'm not answering your questions. You -- you either ask
8 questions or do what you want.

9 Q Okay.

10 A I'm tired of that.

11 Q Okay. Anyway, you've testified that they can use my
12 statement against me, is that what you're.....

13 A You can't use the statement at trial, David.

14 Q But you can use it other places? Is that what you're
15 testifying?

16 A Other places outside the trial. Immunity is at trial.
17 That's where you get it. It's at trial. They can't
18 present evidence at trial. It doesn't have anything to
19 do with the charging decision although, as a practical
20 matter, you should -- they shouldn't have done that but
21 in the great scheme of things.....

22 Q Okay. If they shouldn't have done that, don't you think
23 that would matter to me what charges I actually went to
24 trial on?

25 A What trial? I wasn't involved in what charges you went

1 to trial on. I was involved with the negotiation of a
2 plea deal and that is all I cared about because up until
3 that point, we were never going to trial. Trial was the
4 last thing you needed and I told you that over and over
5 and over again and you agreed until you fired me and then
6 you went and got Chuck Robinson and went to trial and
7 exactly what I told you was going to happen happened.

8 Q Did the state use my statement to justify the charges
9 that they wanted me to plea to?

10 A The state put -- I -- I -- I -- I don't have the
11 information but my recollection is that in the
12 information that they filed, they said that you had
13 admitted to this, yes.

14 Q Why would you, as my attorney.....

15 A Listen, you've already asked me this 10 times.

16 Q No, not -- this is a new one. Allow the state to use my
17 statement to justify charges that they wanted me to plea
18 to during -- for a plea agreement?

19 A Because we've reached a negotiated deal. It didn't make
20 any difference. We weren't fighting the charges, David.

21 Q Was there a deal when I made the statement?

22 A No. No, you didn't have a deal. You don't get a deal.

23 Q So did they use my statement to make the deal?

24 A No. Well, they were looking at whether you were
25 truthful, whether you were cooperating. All these

1 factors went into whether or not they were going to reach
2 a negotiated disposition and what the terms were going to
3 be and we talked about all that.

4 Q So you allowed the state to get a statement they could
5 use against me before you even got a deal?

6 A They didn't use the statement against you, number one,
7 and, number two, you didn't have any leverage. You had
8 eight, five to 10 spring bear hunters coming in. The
9 state had seized your airplane. They were on the verge
10 of shutting your whole operation down and causing
11 catastrophic failure. We negotiated that you were able
12 to do the -- your whole spring bear hunt and we were
13 negotiating all the terms which did not include the five
14 years which I told you from the beginning you had a true
15 -- good chance of getting. So you got a lot from that
16 statement. You don't want to admit it and, ultimately,
17 you rejected it and you went to trial and it cost you
18 because of it.

19 Q Did you tell me the state wanted me to make a statement
20 -- or required me to make a statement quickly?

21 A That was one of the requirements and conditions of you
22 being able to keep your business going, yet.

23 Q And why did they want the statement quickly?

24 A Because they wanted to know whether you were going to
25 reach a deal with them or whether you were going to fight

1 it.

2 Q You never have told me that they wanted it quickly so
3 they could go find more evidence against me?

4 A I -- I don't believe that.

5 Q Okay. You never told me they wanted a statement quickly
6 so they could go get more evidence?

7 A No, I don't -- no.

8 Q Okay. No. You never.....

9 A I don't -- I don't ever reme -- I don't -- no, I just --
10 my -- my response is I don't remember saying that. That
11 is not something that I would have said. I don't
12 remember that.

13 Q Okay. Something you wouldn't have said. Is it true the
14 state knew why I was getting up a year of guiding before
15 I was ever convicted?

16 A Got to ask the state that.

17 Q Did you tell the state why I was giving up guiding before
18 I was convicted?

19 A I only dealt with you through the arraignment, David, so
20 I don't know anything that happened after you fired me.
21 I advised you and had negotiated a deal that was going to
22 get you your license back on July 1st, 2005, in part,
23 because you had voluntarily not guided in the fall of
24 2004 and you weren't going to guide in the spring of 2005
25 and that was going to get you your one-year license

1 revocation. So they were aware of that.

2 Q Okay.

3 A You ultimately did not choose to go that route.

4 Q Could the state after that, after you represented me,
5 claim under oath they had no idea why I gave up guiding?

6 A I don't know. You have to ask the state.

7 Q But you just testified you told them why I gave up
8 guiding.

9 A You have to ask the state.

10 Q Is it your opinion the state forgot or lied or did
11 something bad so that I wouldn't get credit for that year
12 of guiding?

13 A You -- you weren't going to get credit for it anyway,
14 David, when you refused to make the deal. The deal was
15 conditioned upon you accepting the deal. That's where
16 you were going to get credit.

17 Q Why would you.....

18 A After you deci -- because at the time, we were
19 negotiating to get your license back. When you said I'm
20 not getting -- I'm not taking any deals, I'm going to
21 trial, you lost. You lost giving up because the state
22 wasn't bound by that. It was going to be okay, open
23 sentencing on the time that you were convicted. That's
24 your fault. That's what your attorney should have
25 explained to you which I did explain to you was going to

1 happen.

2 Q Did you tell me that the judge was going to give me
3 credit for the guide year?

4 A If you agreed to a sentencing with us, we were going to
5 get -- that's what our argument was going to be, yes, and
6 I had been successful in making that argument in front of
7 other judges.

8 Q So you had talked to the judge and the judge had
9 said.....

10 A No, I'm not going to talk to the judge.

11 Q So why did you tell me that the judge was going to give
12 me credit for it?

13 A That was just my legal opinion. I thought when you went
14 to a sentencing, you would get credit for it and in the
15 end, we negotiated that very thing so the judge didn't
16 even have to give that because you were getting your
17 license back on July 1st, 2005 and that was retroactive.

18 Q Did you tell me that the number of charges initially
19 filed was, quote, kind of overwhelming?

20 A No, I said -- what I said was don't get carried away, I
21 know there's a lot of charges but in the end, we're not
22 very far apart, don't get overwhelmed. It was 11
23 charges.

24 Q And were those 11 charges a result of my statement?

25 A What they charge you with and what you get convicted of

1 are two different things and, yes, I believe that some of
2 those charges were the result of your statement.
3 However, they, in my opinion, were not going to be able
4 to convict you of any charges that were based on your
5 statement if they were going to use -- try to use your
6 statement at trial and, again, we're not even talking
7 about trial at this time.

8 Q Why would you let them use my statement to file charges
9 that they wanted for a plea agreement then?

10 A I can't -- I can't dictate what the state puts in its
11 information.

12 Q Okay. Was it your understanding that they would not use
13 my statement?

14 A At trial.

15 Q No. No, was it your understanding.....

16 A No.

17 Q So you.....

18 A I didn't know what they were going to do.

19 Q Okay. You had me give a statement without.....

20 A I didn't have you do anything.

21 Qme knowing that they could use it to justify the
22 plea agreement charges.

23 A I didn't have you do anything.

24 MR. PETERSON: Mr. Haeg, is there a question?

25 MR. HAEG: Huh?

1 MR. PETERSON: Is there a question here at this.....

2 MR. HAEG: Well, I -- maybe you can help me. You're
3 smart.

4 MR. PETERSON: I'm not going to help you with your
5 questions. Why don't you ask him a question or opine in your
6 pleadings?

7 Q Before I gave the statement, did you tell me they could
8 use them to file charges that they (simultaneous
9 speaking).....

10 A No. I don't think we talked about that.

11 Q Why didn't you?

12 A Because you can file all the charges you want. That's
13 not the problem. The problem is can they convict you of
14 them and if they can't take the evidence and use it at
15 trial, they can't convict you of them.

16 Q Is it likely that if they file 50 charges based mostly on
17 your statement, that they may get you to agree to plead
18 guilty on half of them?

19 A No.

20 Q Okay. Is it more likely for that to happen than if you
21 didn't give them a statement and they had evidence of
22 like three charges for them to then charge you with more
23 than three if they didn't have evidence?

24 A I -- I don't know what you're talking about. I can't --
25 I can't follow your hypothetical.

1 Q Did me giving a statement harm me during plea
2 negotiations?

3 A No, it helped you significantly. It was the.....

4 Q By what, increasing the number of charges?

5 A No, it helped you because you -- they didn't shut you
6 down, they didn't file charges immediately. They didn't
7 shut your (simultaneous speaking).

8 Q Did it increase the number of charges.....

9 A No.

10 Qthat they wanted me to plea to pursuant to a plea
11 agreement?

12 A We never talked about the need for.....

13 Q Answer the question, please.

14 A No. No.

15 Q No, it did not increase the number of charges that they
16 wanted me to plea to for a plea agreement?

17 A I don't think so.

18 Q Okay. That's.....

19 A That's up to them.

20 Q Okay. I got where I wanted there. Is it true the state
21 could bring in the moose issue to enhance my sentencing
22 -- or sentence and there was nothing you could do about
23 it?

24 A At what point?

25 Q At any point for -- during the plea agreement, did you

1 tell me the state could talk about the moose issue to
2 enhance my sentence?

3 A We talked about scenarios, one of which you could be
4 charged for that case, one of which they could use the
5 evidence at a sentencing of other charges to enhance it,
6 yes.

7 Q And that's legal for them to do?

8 A Yup.

9 Q And so because it's legal for them to do, you never
10 protested it?

11 A Ab -- absolutely I protested it all the time. We talked
12 about that too. We argued with them, I talked with them.
13 I told them they didn't have a case.

14 Q Did you file a motion with the court protesting the
15 state's desire to use uncharged and unproven allegations
16 to increase the sentence?

17 A No.

18 Q Why not?

19 A Well, because when you were originally going to be
20 sentenced, we were going to have you charged -- you were
21 going to be charged with the stuff from 2004 and then we
22 were going to have a sentencing hearing in McGrath and at
23 that sentencing hearing, the state was going to argue and
24 present evidence. The guides and the hunters who
25 testified that you and Tony Zellers same day airborne

1 that moose right in front of them and they were going to
2 use that evidence to argue that you deserved a three-year
3 license revocation because you were a habitual guide
4 violator. I felt comfortable at that hearing that you
5 wouldn't -- they were not going to be able to prove that
6 and that you would get a one-year loss of license.

7 Q But if they could prove it, they would then get my guide
8 license for three years rather than one?

9 A Yup, that was what we -- that's what we talked about and
10 I explained that to you.

11 Q Yup. And if that wasn't legal for them to do, why did
12 you let them do it?

13 A It was legal for them to do.

14 Q Okay. It is?

15 A Yeah.

16 Q Okay. The law allows them to use uncharged, unproven
17 allegations to enhance the sentence?

18 A Yup, if they put on the evidence and prove it, they can
19 do it.

20 Q Okay. And just put on the evidence and prove it and who
21 -- did they prove it to my jury?

22 A They don't have to prove it to the jury, it's to the
23 judge.

24 Q Okay. I -- okay. That's good. While you were
25 representing me, did I tell you I'm not a man of great

1 means, you know, they've taken away -- they've taken my
2 way of support away?

3 A They took your airplane and that's it. I think you might
4 have said things like that. You didn't want to lose your
5 lodge, you didn't want to lose all that you'd worked for.
6 You were concerned about all those things. Yeah.

7 Q Okay. After I told you that, why didn't you tell me how
8 I could get the plane back?

9 A Because it wasn't your only means, you had a Super Cub.
10 You serviced all your clients, your bear clients, in the
11 spring of 2004. You didn't have any problem servicing
12 any of those and so you would have had to have come in
13 and tried to bond out that aircraft and the minute you
14 did that, the troopers and the district attorney would
15 have been in a non-negotiating mode which would have then
16 resulted in you either pleading guilty to charges or
17 going to trial and I told you time and time again and you
18 agreed that was not a good idea.

19 Q Is it my right to determine what is important for my
20 livelihood or yours?

21 A It's -- for purpose of that motion?

22 Q Yeah.

23 A It's the judge who makes that determination.

24 Q When you're deciding whether we should file to get the
25 plane back, at that time without the judge, me and you,

1 me hiring you, whose opinion do we go on what's important
2 for my life, my opinion or your opinion, for my life?

3 A Your opinion is preeminent. However, when ex -- this was
4 explained to you again.....

5 Q Pre.....

6 Afiling -- filing that motion to get your plane back
7 would have terminated the negotiations which you were
8 unwilling to do. You wanted a negotiated deal.

9 Q Okay. I never told you I might want a trial?

10 A That's -- yeah, certain points, you always did. You'd
11 come in and you'd talk and we'd -- you came in with your
12 friend and you'd say you wanted to fight and you wanted
13 to do this and we'd sit and we'd talk and at the end of
14 the day, David, I don't know how many times I have to say
15 this, you said okay, that's not a good option. You're
16 right, I don't want to have a five-year loss of my
17 license, I'd rather have you negotiate something better
18 and we did.

19 Q So if it was my right -- if I was coming in telling you I
20 might want a trial, don't you think you should have told
21 me and I could get my airplane back?

22 A David, at various points of time, you would come in and
23 say things like what if I wanted a trial about -- because
24 of entrapment and we'd go through that and I'd go well, I
25 don't think that's a good idea because I think you're

1 going to lose for these reasons and if you end up losing,
2 this is where it's going to get you and then you'd come
3 in and you'd say well, what if I wanted my airplane back
4 and I'd go well, we could work on that but at the end of
5 the day, where is that going to get us. Where do we want
6 to be in six months? Do we want to be fighting this case
7 in trial and have the potential to lose big or do we want
8 to be guiding next year and you always said to me I'd
9 rather be guiding next year. So whenever you would come
10 up with these ideas that you wanted to fight or you
11 wanted to file motions or you wanted to file a motion to
12 dismiss, we discussed it, we talked about it and you
13 never demanded I want you to file that motion, I want you
14 to go to trial, I want you to terminate these things.
15 You never said that. At the end of the day, you would
16 say well, okay, I don't want to lose our negotiation.

17 Q I never told you that I wanted to get the airplane back
18 no matter what or for (simultaneous speaking).

19 A No, you never told me that.

20 Q Did I ever tell you that I wanted the plea agreement no
21 matter what that we had?

22 A No, I -- I thought you did. Yes, you did.

23 Q Okay.

24 A On the 8th when we were celebrating after we'd reached
25 the deal, we went out to dinner, we had beers, the next

1 day, I thought you were very happy because you were going
2 to be guiding. Yes, you were losing your aircraft but we
3 were still in the mix because we were talking to them
4 about exchanging the Super Cub for the PA-12.

5 Q While you were my attorney, did I ever agree to give up
6 the PA-12 airplane?

7 A You resisted that the whole time. I -- I -- I thought
8 until you resisted that -- that -- that concept the whole
9 time and I told you, you know, David, give it up because
10 we can spend a lot of time and money trying to get that
11 thing back but.....

12 Q Okay. If I resisted giving up the PA-12 the whole time,
13 how could there have been a plea agreement as you've said
14 there was?

15 A Because on the 8th, it was still in play whether or not
16 the state was going to accept your Super Cub in exchange
17 for the PA-12.

18 Q How come you said that there was an agreed to agreement
19 then?

20 A It was we were still working out the major components but
21 the essential terms were there. At the time, they still
22 demanded that your PA-12 be forfeited. At the time, you
23 kept insisting to me Brent, please try to get the PA-12
24 back, make -- se if they'll go for the Super Cub and I
25 was working on that and in mid-November, we got the word

1 they were not going to do that and that's -- shortly
2 thereafter, you fired me.

3 Q On November 8th, 2004, was I, quote, unhappy about the
4 position I was being put in?

5 A Initially, I think so, yeah.

6 Q Why?

7 A You -- you -- only you can answer that, David.

8 Q Did I tell you it was because Leaders had broke the deal
9 and wanted the airplane to boot?

10 A No.

11 Q Okay. You never agreed that it was all about the
12 airplane?

13 A I -- I am -- you -- you know, don't put words in my
14 mouth. What I said was that the decision to amend the
15 complaint I suspected was over your desire to try to get
16 that aircraft back and they were going to require you to
17 receive a three-year loss of license if you were going to
18 get the opportunity to get your aircraft back.....

19 Q And did they.....

20 A but that's purely supposition but that's what I
21 thought was going on.

22 Q And the first time we were informed of that was on
23 November 8th, is that correct?

24 A I -- I don't think -- I -- I know that that's when he
25 filed it. My recollection, as I testified earlier, was

1 that I called you and told you that they weren't going to
2 accept open sentencing on the one year. Now.....

3 Q Prior to November 8th?

4 A Yeah, at some point, I called you on the phone and told
5 you about that.

6 Q Okay. So before a -- November 8th, you notified us.

7 A I notified you. I didn't say us.

8 Q Okay. You notified me. Did you ever tell, actually,
9 quite a few of us here -- tell us the only thing you
10 could do to enforce the plea agreement was to, quote,
11 call Leaders' boss?

12 A No, that's not what I said, I said to en -- require him
13 to go back and file the amended -- the complaint the way
14 we had agreed was the -- and I can't remember exactly
15 what it was but it had to do with I could talk to their
16 -- his boss about it but there wasn't a lot we could do.

17 Q Okay. In other words, you told us there wasn't a whole
18 lot we could do and the one thing we could do was call
19 Leaders' boss?

20 A That was something that I could try to do to try to get
21 us back on track.

22 Q But.....

23 A That hap -- you know, and that was -- now, wait a minute,
24 that happened in the afternoon and later that night, we
25 negotiated the case. So after that, it made no

1 difference.

2 Q Okay. So after November 8th, it made no difference -- or
3 November 9th?

4 A I -- in my opinion, no, it didn't.

5 Q Okay. So there would have been no conversations after
6 that date at which I was bringing up had you ever called
7 Leaders' boss to complain about the plea agreement being
8 broken?

9 A No, I -- I wasn't doing that because the minute I call
10 Leaders' boss, now all of a sudden we're in that argument
11 with Leaders and we don't have the deal that we've
12 already agreed to that puts you back guiding on July 1st.
13 All that does is create the opportunity for them to say
14 no deal, you can plead open sentencing and put your faith
15 in the judge's decision.

16 Q Was it ineffective assistance of counsel if you told us
17 the only thing you could do to enforce the plea agreement
18 was to call Leaders' boss?

19 MR. PETERSON: I'm going to object. That calls for a
20 legal conclusion. It's not a question.....

21 MR. HAEG: He's a lawyer.

22 MR. PETERSON: He's -- that is a decision to ultimately be
23 made by a judge. So if you want to ask him about the.....

24 MR. HAEG: Okay.

25 Q Was it deficient performance.....

1 A No.

2 Qfor you to tell us the only thing we could do to
3 enforce the plea agreement was call Leaders' boss?

4 A We went through all of your options in the room that day
5 of what your legal options were and one of those was that
6 -- one of them there was a number of other options on the
7 table. Ultimately, we resolved the case that evening.

8 Q So when I asked you how to get the plea agreement we had
9 and you told me the only thing that you could do was call
10 Leaders' boss, that that's all you needed, that.....

11 A I -- I don't think we had a plea agreement.

12 Q That's.....

13 A You keep referring to this plea agreement. You wanted
14 the deal. We did not have a plea agreement in place.

15 Q That.....

16 A The plea agreement that was in place was the one and
17 three with the evidentiary hearing out in McGrath over
18 the moose. That's the only thing that was in place.

19 Q Okay.

20 A There were other option -- listen. I want to.....

21 Q Okay.

22 A There were other options out on the table but -- and --
23 and you still had that option. We could have gone out
24 there the next day but, ultimately, we reached a deal on
25 all the essential elements. There was no reason for the

1 -- to go out for the arraignment the next day. We
2 canceled that. We did everything telephonically. You
3 had the choice.

4 Q Was I happy with what Leaders had done on the day of like
5 November 8th, November 9th?

6 A I think he'd done it on the 7th -- I -- I -- I mean, on
7 the Friday before is when he filed it or Thursday. I --
8 I -- you know, I can't speak for you. You were nev --
9 you weren't happy.....

10 Q Okay.

11 Aunless you had your airplane back is what I
12 remember. That's the only thing that I think would have
13 made you happy because everything else I negotiated in
14 light of what you did was unbelievable.

15 Q Were you happy with what Leaders did on November 8th?

16 A I -- I -- I -- I -- I wasn't happy about it, no.

17 Q Okay. If you and I were not happy about what Leaders had
18 done on November 8th, why did you tell me the only person
19 we could complain to was Leaders' boss?

20 A I didn't tell you the only thing we could do, the -- the
21 fact of the matter is we got the state to come down to
22 one year at that point. We were going out to do a
23 hearing where you could get up to three years and that
24 night, I negotiated it down to 12 months and a -- I think
25 it was at that time September 1st.

1 Q You're not answering the question.

2 A Yes, I am.

3 Q No, he's not.

4 A Yes, I am. Yes, I am.

5 Q No, you're not.

6 A And you don't want to listen. That's your fault. You

7 don't want to listen. You had that opportunity and you

8 -- you could have had all those choices. You could have

9 done a lot of things. Ultimately, Scott Leaders called

10 us up that night and we negotiated things down and you

11 were agreeable and happy with the decision at that time

12 and agreed to it.

13 Q I was happy with the.....

14 A You were happy with where -- you were going to be back in

15 business on September 1st is my recollection in 2005

16 after being out and thinking you were going to be out of

17 business for five years. Yes, you were very happy about

18 that issue.

19 Q Okay. Since you've testified both you and I were unhappy

20 about what Leaders had done, why didn't you tell me or on

21 your own file a motion with the court protesting what

22 Leaders had done?

23 A What, in the three hours that we were in the room before

24 we had negotiated this thing, I should have told you that

25 and that makes a difference? Is that what you're telling

1 me?

2 Q No, in the weeks and weeks afterwards.

3 A No, no. No, no. We found out.....

4 Q Up until the time that I fired you, why did you tell me
5 that the only thing.....

6 A Because we negotiated the deal. You were happy with it.
7 Why worry about it if we've already negotiated the terms
8 of the deal?

9 Q If I was happy with the deal, why were we having
10 conversations about how upset we were with Leaders?

11 A We -- we did have that at the beginning and then we -- we
12 were happy because he came down to a year.

13 Q Okay.

14 A He came down. We were.....

15 Q So after November 9th, we were all happy with what
16 Leaders had done? Is that what you're testifying?

17 A I thought you were.

18 Q Okay.

19 A I was -- I thought -- I was ecstatic.

20 Q That made you happy? You were ecstatic? Okay.

21 A I thought it was a great deal.....

22 Q Ecstatic with Leaders (simultaneous speaking).
23 Athat we had negotiated. We'd avoided a sentencing
24 hearing, we'd avoided all those costs.

25 Q After.....

1 A We had -- we had gotten the charges down to five counts.
2 We had reduced the probation. We had gotten only the
3 trapping restriction. There was only a one-year.....
4 Q Okay.
5 Alicense revocation. It was effective September 1st
6 but we were working on that and at that time, it was a
7 great deal compared to what we had been dealing with for
8 the past six months and, I might add, compared to what
9 you ended up getting.
10 Q Did you say on November 9th, 2004 come on, Scott, give me
11 a bone?
12 A There's a transcript out there. What I said is on the
13 transcript. I can't remember exactly.
14 Q Okay. Why would -- on November 9th, why would you say
15 come on, Scott -- and this is Scott Leaders -- give me a
16 bone?
17 A Well, he was requiring you to enter a plea on A-15 and
18 since we already had a deal, it just didn't seem that it
19 was necessary to do that and I thought at that point
20 well, as a gesture of good faith, Scott, why don't you do
21 that. That's what my thoughts were.
22 Q Okay. And why didn't you inform the court of your
23 concerns over what he was doing?
24 A I -- I didn't have any concerns because I knew that at
25 the end of the day when you got sentenced, the plea

1 agreement required only a one-year loss of license. So
2 he was going to have to amend the information and reduce
3 the charges to A-8 on the day that you got sentenced. So
4 I was not worried about it at all. You were going to get
5 the amend -- you were going to get the benefit of it at
6 the time of your sentencing because we negotiated
7 everything. He had to reduce them because A-15 required
8 a mandatory three-year license revocation so that charge
9 could not be brought under our plea agreement. I knew
10 that amended information -- and that happens all the time
11 -- was going to get filed on the date that you did your
12 change of plea sentencing.

13 Q Isn't it true the reason you said that is because we had
14 agreed with everything he required for the lesser charges
15 and then at the last minute, he increased the severity of
16 the charges to also force me to give him the airplane?

17 A No.

18 Q Okay. Is it my duty to find major mist -- when I hired
19 you, was it my duty to find mistakes in the search
20 warrants or was it your duty?

21 A We've already gone over this.

22 MR. PETERSON: Hey David, why don't you hold on for --
23 while he's changing the tape.....

24 MR. HAEG: Okay.

25 MR. PETERSON:and let's just do two-minute break --

1 or one. I just want to use the bathroom. If you guys need
2 more.....

3 MR. HAEG: Okay. Ooh.

4 (Deposition recessed)

5 A I'm obligated for six hours under the rules. You're at
6 10:07 and we started shortly thereafter. I'll be -- if
7 we don't take a lunch break, I'm done at 4:07. Okay? If
8 we take a lunch break for half an hour, I'll stay until
9 4:30. If you don't agree with that, you can call the
10 judge and I'll explain my situation and you can explain
11 yours but.....

12 Q No.

13 Athat's where I'm going and that's -- I'm leaving at
14 -- if we don't take a lunch, I'm leaving at 4:07.

15 Q Okay. Well, we're up here and I think we should just
16 breeze through it because (simultaneous speaking) at home
17 so.....

18 A Whatever you want to do. It's up to you.

19 MR. HAEG: Everybody ready?

20 Q Is it true you never discussed a motion to suppress with
21 me because you never felt that it was a good option?

22 A I -- no.

23 MR. PETERSON: That's a compound. Why don't you break
24 that into two parts so we know what he's saying no to?

25 Q I don't actually know how to do that. Is the reason you

1 never discussed a motion to suppress with me because you
2 didn't feel it was a good option?

3 A No.

4 Q Okay. Why did you never discuss a motion to suppress
5 with me?

6 A I did discuss it.

7 Q Okay. You did. Did discuss with me. I forgot maybe if
8 you answered this and you may have is if -- what evidence
9 could have been suppressed because of the false evidence
10 location?

11 A We already talked about this.

12 Q Okay. And did we discuss what would have been left, what
13 evidence would have been left? I don't think we did
14 discuss that.

15 A You'll have to pull out the search warrant. I don't have
16 it in front of me. I can't remember that.

17 Q Okay. But it's possible we could have suppressed the
18 evidence that was obtained with the search warrants, is
19 that correct? I'm not saying it would have absolutely
20 but it's possible.

21 A The -- anything is possible. You could -- if you file a
22 motion on a search warrant after the charges are brought,
23 you could -- it could result in the suppression of all or
24 part of evidence seized pursuant to that search warrant.

25 Q Okay. And is it possible that the evidence seized out in

1 the field could have been suppressed also because the
2 state had claimed it was -- had falsely claimed it was
3 found somewhere other than where it was?

4 A We already talked about this.

5 Q Okay. And did we talk about had those two things been
6 suppressed, what evidence would have been left?

7 A I did -- I -- in my opinion -- like I said, I don't have
8 the search warrant in front of me. I think we talked
9 about the fact that I -- I -- I don't know a theory -- I
10 didn't rem -- I don't recall -- I don't recall a theory
11 that would have resulted in the suppression of
12 everything. You -- if you had -- as I told you then and
13 at -- every time, if you find that an -- a -- a law
14 enforcement officer has intentionally misrepresented
15 material facts, then that can be the basis for
16 suppressing the evidence. If you don't find that they
17 acted intentionally, all that it results in happening is
18 you take that section of the affidavit or the sworn
19 testimony out of consideration and you make a
20 determination of whether there was probable cause to
21 search based on the information that has not been
22 excluded.

23 Q Okay. At the statement I made, did I inform Leaders and
24 Givens and yourself because you were there that the
25 evidence had been falsified, the evidence locations had

1 been falsified?

2 A I -- I don't remember that, no.

3 Q Okay. If I had informed you and them, did anybody have

4 -- including the state, did anybody have an obligation to

5 look into it?

6 A You'll -- you're asking the wrong person.

7 Q Okay. And I -- you know.....

8 A I don't remember that happening. The trooper was right

9 there in the office who'd given it. If you had told him

10 you falsified that, I think that would have been

11 something I remembered. I just don't remember that.

12 Q Okay. So you don't remember me saying hey, these

13 evidence locations are false and Trooper Givens going

14 well, I'll have to go re-check that and.....

15 A I don't remember that, no.

16 Q Okay. Don't remember. And you don't -- if -- and this

17 is where I -- you know, I guess I'll just ask it and

18 people jump up and whatever but if the state continued to

19 falsify the evidence locations at trial and they were

20 found out and had to admit it was wrong, would that have

21 proved that back at the search warrant time, that they

22 knew the evidence was false then?

23 A No.

24 Q So you're saying that if later on the state is proved to

25 be knowingly testifying falsely about the evidence

1 locations, you can't claim that it's more likely than not
2 that they were -- knew it was false back at the
3 beginning?

4 A That's not what you asked me before.

5 Q Okay. But what I just asked you -- I mean, does it --
6 well, put it this way, did the state -- when I brought it
7 up or if I brought it up since you don't remember, if I
8 brought up that the evidence locations were false at my
9 statement -- during my statement, did the state and the
10 trooper -- or did the prosecutor and trooper have a duty
11 to fix it?

12 A The state. Fix what?

13 Q The false statements on the affidavits and on the
14 warrants.

15 MR. PETERSON: What is the false statement you're
16 referring to? Let's make sure we all understand exactly what
17 you're referring to.

18 Q Okay. The location of where the evidence was found, if
19 that was.....

20 A You mean whether it was in -- within your guide unit?

21 Q Correct. Yeah.

22 A I can't speak for the trooper.

23 Q Okay.

24 A I'm not a trooper. I don't work in law enforcement so I
25 don't know how to answer that as far as the trooper's

1 informed.

2 Q But if it were.....

3 A Just listen to me.

4 Q Okay.

5 A I need to -- I want to answer my question, please. And
6 with regard to the prosecutor, I mean, if a prosecutor
7 knows that something is intentionally false, he has a
8 duty, I believe, to -- under our ethical rules to take
9 some steps to correct that.

10 Q Okay.

11 A I don't know anything more than that. I mean, that's
12 just the general obligations that I'm aware of. I can't
13 speak for the troopers.

14 Q Okay. And if I'd hired counsel to represent me, should
15 they have been making sure the prosecutor corrected the
16 false information?

17 A If you were hiring counsel to go to trial and -- and
18 challenge all the charges against you and take the risk
19 of going to trial, yes.

20 Q Okay.

21 A You ultimately made the decision not to do that and --
22 and you wanted to avoid being put in the position of
23 being in open sentencing.

24 Q Okay. So Robinson had an obligation to make the state
25 correct their mistake?

1 A I -- I can't speak for Mr. Robinson. He may have had a
2 lot of reasons for doing one thing or the other. You
3 have to ask Mr. Robinson.

4 Q Okay. But you're saying that even though you knew.....

5 A I -- no, I'm not saying I knew. I told you I don't
6 remember that.

7 Q Okay.

8 A Don't put words in my mouth, David.

9 Q Okay. If I have the -- a tape recording proving that
10 that occurred, did you have a duty to say hey, Leaders
11 and Givens, you might want to clean up your mess here?

12 A When was this? When -- when is this tape recording, what
13 date?

14 Q I don't know but it was the day I gave a statement in
15 your office with Scott Leaders, Trooper Brett Givens and
16 Tom Stepnosky.

17 A I -- at that point, we were talking about negotiating the
18 case and resolving it so that they wouldn't stop you from
19 guiding, they wouldn't shut down your operation and take
20 your business away for five years. So at that point, I
21 was not concerned about crossing the I's and dotting the
22 T's because, ultimately, in my mind, you were going to
23 lose on that. You had admitted to me that you and Tony
24 had killed these wolves outside the area. That's -- the
25 defense was not there and so, ultimately, it was damage

1 control and we were trying to stay focused on negotiating
2 the case, not challenging the state.

3 Q So you're telling me that the state moving the
4 evidence.....

5 A Moving the evidence? What are you talking about?

6 Q Or claiming it was found somewhere other than it was.
7 Okay?

8 A Moving the evidence. I -- this is the first time I've
9 heard that the evidence was moved.

10 Q Okay.

11 A That's a serious allegation.

12 Q Okay. Is claiming it was found somewhere it wasn't just
13 as serious?

14 A People make errors all the time on guide back -- guide
15 use -- or guide unit areas.

16 Q Okay.

17 A They make -- they make errors all the time on that. I
18 have clients that have failed or put in the wrong one.
19 So that's a lot different than falsifying.

20 Q Okay. But when that's put on a affidavit that a trooper
21 swore to and it was on the search warrant application and
22 they had my guide area in there all is the same when it
23 wasn't the same in truth and everyone was notified about
24 it including yourself, tell me exactly why no one,
25 including yourself, did a thing about it.

1 A Well, I can't speak for the other people but I've.....

2 Q Okay.

3 Aalready given you the answer on why I didn't on the
4 other case.

5 Q Okay. And do you believe that if you would have forced
6 them to clean up their error, they would have held that
7 against you and refused to plea -- refused to negotiate
8 with me because I -- we made them correct an error, a
9 material error? Is that what you're saying?

10 A I didn't -- I didn't see what the -- what the benefit,
11 what -- so they correct it, so what did -- where does
12 that get us? I -- I couldn't understand what the benefit
13 was. They still had the evidence. They still were going
14 to bring charges. You were still a guide and it's.....

15 Q Don't you believe that when they said the reason for
16 charging me as a guide was because I was doing it to
17 benefit my guide area, that maybe I should have been
18 doing it in the guide area but I wasn't and they
19 falsified it?

20 A No, I believe that they did it because you were a guide.
21 You were a registered guide. That's why you got charged.
22 It.....

23 Q So no matter where I took the wolves, I'd be charged as a
24 guide?

25 A I think you would have, yeah. Absolutely I think you

1 would have. I have no doubt in my mind.

2 Q Even inside the open area for the wolf control program?

3 A Yeah. If you were in your permit, you were okay but.....

4 Q But anywhere else, I'd be charged as a guide, is that

5 what you're saying?

6 A Yup. Yup, that's the way I interpreted it.

7 Q Okay. Even though there were donut holes inside the open

8 areas, I went into one of those donut holes, big game

9 guide charge, is that what you're saying?

10 A If you did not comply with the terms of the permit, you

11 were then a big game guide who were either violat.....

12 Q Okay.

13 A Listen. Violating the law under AS 08.54 or you knew of

14 a violation and didn't turn it in and those were your

15 obligations when you signed up to be a big game guide.

16 You didn't like those obligations. You weren't a regular

17 person and I told you that from the beginning. A big

18 game guide had extraordinary responsibilities to the

19 public and you abandoned those because you didn't like

20 the way things were going.

21 Q And I never told you that the state told me I had to do

22 that to make the program a success?

23 A That -- you told me that and I told you just what we've

24 already talked about. I didn't think that was a legal

25 defense and it certainly wasn't entrapment.

1 Q Have you stated that the reason I was made an example of
2 is because of the harm I caused the state wolf hunting
3 program?

4 A If you're talking about my testimony at the hearing, I'm
5 not going to go into that. If you -- if you're talking
6 about some other time, identify it.

7 Q While you were representing me, did you ever tell me the
8 reason they were coming after me and going to make an
9 example of me is because of the harm I caused to the
10 state wolf hunting program?

11 A I -- I told you at the very beginning that was a concern
12 of mine, yes, and that this was a very serious matter and
13 I expected that you were going to be made an example of
14 unless you made a deal, you're right.

15 Q And how exactly do they make an example of somebody that
16 they want to.....

17 A They make them -- they don't give them a deal is what
18 they do. They just say no deal. Okay. You're going to
19 -- we're going to charge you with this, you'll get -- you
20 can go in and plead guilty and we'll let the judge make
21 the decision or you can go to trial but no deals. That's
22 how they make an -- an example of you and then they come
23 into your sentencing and they bring in every person that
24 they can bring and they tell the judge this person cannot
25 be a guide ever again, you should take their privileges

1 away because they don't deserve it anymore.

2 Q Okay.

3 A And I expected that that was a possibility with you.

4 Q Could they have falsified the evidence locations to help
5 them make an example of me?

6 A I -- that -- that's a very serious accusation and until
7 today, this is the first I've heard about moving
8 anything. I -- I just -- I don't know what to tell you
9 about that. I -- I.....

10 Q But it could be -- in other words, what you're testifying
11 is that could be a possibility?

12 A What could be a possibility?

13 Q That they falsified the evidence location to help make an
14 example of me.

15 A No, I -- I -- I -- I -- when you say falsified the
16 location, are you saying that they mis-identified the
17 location? In other words, they put the wrong game
18 management unit or that they took it out of one area and
19 put it in your unit?

20 Q I'm telling -- I'm asking you that is it possible they
21 intentionally falsified the location of where the
22 evidence was found.

23 A When you say intentionally falsified, what do you mean?
24 Do you mean they.....

25 Q I mean, knowing that it was found in game management unit

1 19-D, they on all the warrants and on everything re --
2 given to the judge and my jury put no, it's all found in
3 19-C where Dave Haeg guides and has a guide lodge.
4 That's what I'm saying.

5 A Did -- is it a possibility?

6 Q Yes.

7 A It's -- I guess it's a possibility.

8 Q Okay. If that's a possibility, why didn't you protest
9 it?

10 A David, how many times do we got to go over this? How
11 many times do I have to explain?

12 Q Until we get to the truth, Mr. Cole.

13 A No, you know what, it's -- it's -- it's about what you
14 want to hear, not what I'm telling you. You want to hear
15 something that's other than what I'm telling you. We
16 didn't go down that path.....

17 Q Did I ever.....

18 A Listen, we didn't go down that path because you couldn't
19 stand the possibility you were going to lost your guide
20 license for five years. You were in tears. You were an
21 emotional wreck and you laugh about it now, David, but I
22 heard you and I know that you were underneath the table
23 when you called me and you were crying. I understand all
24 that. I told you look, these are your options, if you
25 want to fight this, we can but you better put up a lot

1 more money and -- number one and number two, you better
2 figure out that you're willing to accept the consequences
3 and you weren't.

4 Q Okay. So you told me that to fight, I had to put up more
5 money, is that correct?

6 A I told you it was going to be a lot more expensive to
7 fight this than the \$2,000 I charged you.

8 Q While you were representing me, you told me that I had to
9 put up more money.....

10 A At some point -- no, I didn't say that.

11 Qto fight it.

12 A No, I said it -- know what I said? You -- you take words
13 out of my mouth. I said if you want to fight it, it's
14 going to cost you more money and, ultimately, you would
15 owe it because there's the motions, there's the trial. I
16 had done a number of trials. I've probably done more
17 trials for guides than anybody in this state. I know
18 exactly what it was going to cost and I told you look,
19 David, you don't want a trial, we want to get out of the
20 situation.

21 Q Okay. Is it possible that the state told me to take
22 wolves wherever I had to but claimed they were in the
23 wolf control program area?

24 MR. PETERSON: I'm going to object, calls on speculation.

25 Ask him if he knows. If he doesn't know, move on.

1 MR. HAEG: Okay.

2 MR. PETERSON: You can depose.....

3 Q Is it a possibility.....

4 MR. PETERSON:Mr. Spraker or you can
5 (indiscernible).

6 MR. HAEG: Okay.

7 A I wasn't at the -- I wasn't at the meeting.

8 MR. PETERSON: Depose Mr. Spraker.

9 Q Would that have been a pretty potent defense if that was
10 true?

11 A I -- we've already talked about this. No.

12 MR. HAEG: I always forget then where we've already been.

13 Q Was -- after I'd been given immunity for a statement, was
14 prosecutor Leaders and Trooper Givens allowed to the ones
15 that took the statement and be the ones that prosecuted
16 me at trial?

17 A I don't know why not. Okay?

18 (Whispered conversation)

19 Q Do you think that after prosecutor Leaders and Trooper
20 Givens took my statement, they knew where to go find more
21 evidence?

22 A Can't speak for them.

23 Q Okay. Do you believe that they would have -- is it your
24 opinion they would have had a better idea on how to
25 conduct the prosecution?

1 A Can't speak for them.

2 Q So you don't think that having somebody come in and
3 confess will allow you to have a better -- or a more
4 effective prosecution?

5 A That's not what I've said. That's not what I said.

6 Q Okay. In your opinion, if you have someone come in and
7 confess, do you have a better chance for a successful
8 prosecution?

9 A If that's your goal, yeah. Yeah, I think that's right.

10 Q Yeah? Okay. And so.....

11 A If you can -- if you could use the statement at trial, it
12 would help but if you can't use the statement at trial,
13 it doesn't help you at all.

14 Q So they couldn't use my map where I drew where it fly --
15 find evidence and then present that evidence against me
16 at trial?

17 A In -- in my opinion, they couldn't.

18 Q They couldn't tell Tony say and say hey, Dave gave a
19 statement implicating you and go to him and try to get
20 him to cooperate?

21 A That's -- that's not what happened.

22 Q There's been no testimony, sworn testimony, to the
23 opposite?

24 A There's been testimony on both sides of that, David.

25 Q Okay.

1 A I know what Tony said.

2 Q So you.....

3 A I'm in disagreement on that.

4 Q And didn't Mr. Fitzgerald have file the same thing?

5 A But at the end of the day -- but at the end of -- but at
6 the end of the day, David, you guys wanted your
7 opportunity to bear hunt. You wanted the opportunity to
8 keep your lodge. You wanted the opportunity to negotiate
9 with the state and so you gave up your right to go to
10 trial -- I shouldn't say that. That's not a good term.
11 You -- you made the decision that that's the avenue that
12 you wanted to go. Okay? That's all it was. You had the
13 choice to fight it and you had the choice to try to make
14 a dea -- a deal and do damage control and you chose to do
15 damage control and Tony had the same deal, could have
16 done the same thing and, in fact, Tony went behind your
17 back after this and made even a better deal and then went
18 in and testified against you.

19 Q You don't think that Tony -- the reason Tony did that is
20 I'd testified -- or I had implicated him with a statement
21 that they could use to prosecute him?

22 A I -- you have to ask Tony about that. I can't give you
23 any -- I can't testify.

24 Q Okay.

25 A I just know that at the end of the day, he went behind

1 your back, made a deal that even improved his situation
2 and then testified against you.

3 Q You're saying the second deal improved upon what the
4 first deal Tony had was?

5 A Yup. I think that the.....

6 Q Okay.

7 A Tony got a better deal. That was my understanding.

8 Q Good deal. Tony got a better deal. Were you ever
9 subpoenaed to my sentencing?

10 A Yes.

11 Q And were you given an airline ticket also?

12 A Yes.

13 Q Why didn't you show up?

14 A Because Mr. Robinson told me I would not be necessary. I
15 stood by on the phone. I told him I would testify over
16 the phone if he wanted me but he didn't -- I didn't get
17 called.

18 Q Is Robinson allowed to tell me that he's going to call
19 you but tell you that you're not necessary?

20 A Can't speak to Mr. Robinson.

21 Q Okay. Is it true Robinson never told you what he
22 proposed to ask you at my sentencing?

23 A I don't know -- I -- my recollection is it had to do with
24 whether you'd get credit for not using -- not being a big
25 game guide is what there was some question about me

1 testifying, that you had -- you'd not guided in the fall
2 of 2004 and you should get credit for that at -- at your
3 sentencing. That's what I -- that's what my recollection
4 is.

5 Q Okay. And so Robinson went over that with you?

6 A I -- I -- I can't remember what he -- we talked about, I
7 just have this recollection that that was an issue that
8 you wanted me to talk about.

9 Q Do you think that would have been advantageous to the
10 sentence I received?

11 A I -- I don't think the judge had anything to do with it.
12 It didn't make any difference, David, because when you
13 got more than five days in jail, it wasn't up to the
14 judge how long you were going to lose your license. It
15 then became over to the Department of Occupational
16 Licensing and they had to take your license for five
17 years from that date. There was no ifs, ands or buts.
18 It was inevitable.

19 Q So even though you testified the state should give me
20 credit for a year we didn't guide, the state could just
21 tromp right over that?

22 A You didn't -- you didn't take the deal. The -- the only
23 reason you got that.....

24 Q Okay.

25 A you were going to -- we were going to be able to

1 make that argument was if you took the deal and you chose
2 not to.....

3 Q You don't.....

4 Aand so, no, you didn't get it. You went to trial
5 and it -- the judge had nothing to do with it. Mr.
6 Robinson had nothing to do with it. It was going to
7 happen automatically by law. Once you got convicted and
8 the sentence was for more than five days or for more than
9 a thousand dollar fine on any count, AS 08.54.605 says
10 from that date forward, you cannot apply for five years.
11 The judge had nothing to do with it.

12 Q Irregardless of what the statute says, is it fair for me
13 not to have got credit for a year I did not guide?

14 A I can't talk in terms of fairness. That was what the law
15 was. You knew it going into it. It's your fault. We
16 told -- if they didn't tell you, that was your fault.
17 That would be something to talk about.

18 Q Would it be.....

19 A I don't know. I told you that that -- I -- I told you
20 and went over the issue of what -- the implications of
21 AS 08.54.605. You're a smart man. You could have read
22 that statute. You could have gone over and talked to the
23 Department of -- big game commercial services. At that
24 time, I don't know what it -- what was the name of it but
25 you could have gone and talked to them, what are the

1 implications if I go to trial and I get convicted, when
2 does this go into place. You could have done all of
3 that. You're smart. You were always smarter than me.
4 You always told me that, David. Don't you remember?
5 Q Why did I hire you then, Mr. Cole?
6 A You always told me that. You always told me how smart
7 you were.
8 Q Why did I hire you for your advice, Mr. Cole?
9 A I don't know, you -- only you can answer that.
10 Q Okay. Did you ever tell me I could lose credit for the
11 year that I'd given up?
12 A It never came up because I always had a deal negotiated
13 that was going to allow you to gain it.
14 Q Did I ever tell you that I was thinking of going to
15 trial?
16 A And I would always tell you that's a real poor decision,
17 David.
18 Q Okay. And at that point, did you ever tell me if you're
19 thinking of going to trial, you're going to lose credit
20 for the year you've given up?
21 A I think we discussed that.
22 Q Discussed.....
23 A That's why I always said don't go get open sentencing.
24 Q Okay. So we discussed that.
25 A At some point, yes.

1 Q And the reason why we discussed it is you'd be -- as my
2 counsel, you'd be telling me my rights and my -- what
3 might happen to me with different choices that I'm
4 making, correct?

5 A Scenarios that you were bringing up almost whenever we
6 talked, different scenarios. It was like you would go
7 back, you would talk with your friends, you'd come up
8 with new ideas and you'd come and you'd say we want to
9 fight it. We'd talk about it again and you'd -- so no, I
10 don't want to do that. We'd not talk about it for awhile
11 and you'd come back, well, I want to fight it with a new
12 idea.

13 Q Have you told me that the recordings -- in the recordings
14 I made of you while you were still my attorney, that you
15 told me do you want to file this?

16 A Say that question again?

17 Q Okay.

18 A I didn't (simultaneous speaking).

19 Q Have you ever told me that in the recordings, the
20 transcripts that I made.....

21 MR. PETERSON: Why don't you just ask him in general if
22 he's ever told you whatever the question is irrespective of
23 what's in the transcript?

24 Q Okay. Have you ever told me do you want to file this in
25 regard to a motion to enforce the plea agreement?

1 A I -- I -- it's been eight years. I can't remember. I --
2 I -- I can't.....

3 Q Okay.

4 Aliterally can't remember. I -- I -- it would be
5 something that I would say, yes. I can't remember
6 verbatim all the conversations we had.

7 Q Is it true that on November 8th and 9th, everybody was
8 happy with the state of my case?

9 MR. PETERSON: Mr. Haeg, this has been asked and answered
10 several times.

11 MR. HAEG: Well, I'm going.....

12 A It's been asked and answered. Move on.

13 Q In fact, isn't it true that after November 9th, even you
14 were so angry, quote, you were burning?

15 MR. PETERSON: Can you specify angry with respect to what?

16 Q Isn't it true that because of what Leaders did on
17 November 8th and 9th, that weeks afterward, you were
18 burning about it?

19 A I was burning about how I had been treated
20 professionally. I was really happy about the deal I had
21 negotiated for you. I thought he treated me
22 unprofessionally.

23 Q Okay. And can you explain exactly what he did that made
24 you think he treated you unprofessionally?

25 A One more time, we had a deal where you were going to get

1 a hearing on -- through AS 08.54.6 -- let's see,
2 720(a)(8) which was going to allow there to be a hearing
3 on a sentencing. Those were the charges. There was
4 going to be a hearing about whether you got between one
5 and three years and everything else was negotiated on
6 your license revocation and we were going to go to this
7 hearing and it was going to be on the moose thing. At
8 some point, you asked me what about if I just go open
9 sentencing on the misdemeanors, AS 08.54.720(a)(8), and I
10 said David, why would you do that and you said I want the
11 opportunity -- I -- I want to think about the opportunity
12 of getting my plane back and I said you're not going to
13 get it back but I said I'll ask. So I did ask Scott
14 Leaders is my recollection about that and, initially, he
15 agreed to that which I would have done if I was a
16 prosecutor. I mean, if you think that a big game guide
17 has used an aircraft illegally as a prosecutor, you got
18 to have every confidence in the world that in an open
19 sentencing situation, a judge is going to forfeit that
20 aircraft, whether it's as a stipulation or whether the
21 parties are asking you to make that decision. So
22 originally, he said yes but later on, he said no and I
23 was really -- I felt that he had not treated me with the
24 professional courtesy that I would have treated him.
25 That's all.

1 Q Okay. And.....

2 A That's why I was unhappy.

3 Q And because of that same actions that made you burn
4 because he treated you unprofessionally, was it -- was
5 that why I became unwilling to make any more deals?

6 A No. I mean, it made me work harder to get you a good
7 deal which I ultimately did. It made me work that much
8 harder. That's what you don't understand.

9 Q And.....

10 A I then was able to negotiate no exposure on a three-year
11 license revocation, no exposure on a two-year license
12 revocation. I got you a one-year deal that was starting
13 you on July 1st. I was extremely happy with that and I
14 -- and we had avoided all the problems. All we needed to
15 do is get signed off by the Division of Occupational
16 Licensing and clear up a couple of the little small
17 issues. I was extremely happy with that deal.

18 Q Okay. Did I ever -- after what Leaders did of changing
19 -- you know, agreeing and then reneging, did I ever tell
20 you or ask you if Leaders can get me to do this and break
21 the deal, why wouldn't he make a new deal and break that
22 one also?

23 A I -- I think you did ask that and I said I'm not that
24 worried about that. I mean, we had a solid -- yeah, I
25 think you did ask me about that.

1 Q If he did that a second time, would you be paying the
2 consequences or would it be me paying the consequences?
3 A Well, he didn't do that so it's a hypothetical that
4 doesn't mean anything.
5 Q But did he do it the first time?
6 A No.
7 Q Who paid the consequences for him reneging on the first
8 deal, you or I?
9 A That -- that reneging and not agreeing had nothing to do
10 with the consequences that you suffered, David. The
11 consequences you suffered is because you chose not to
12 accept a deal that you later did and you went to trial.
13 You ended the negotiation and went to trial in the face
14 of everybody telling you that's a really poor idea. You
15 had to prove a point and, of course, you did. You proved
16 that you should have listened to your attorney's advice.
17 Q From our discussions at that time, did I tell you because
18 of what Leaders did on November 8th and November 9th, I
19 no longer trusted him?
20 A You may have said that at some point, I don't know.
21 Q Okay. After what Leaders did on November 8th and 9th,
22 did you trust him?
23 A Well, I was -- I -- I trusted him because we made the
24 deal on the 9th and I was very happy with that deal and I
25 did -- had no expectation that that deal was not going to

1 be honored and we had it nailed down and I had no
2 problems with it. Was I going to make sure that in my
3 dealings with Scott Leaders in the future that I was a
4 little more careful? Obviously. Yeah.

5 Q Okay. And if that is making you change your actions in
6 the future, why couldn't you have done something to help
7 me or protect my rights in the present at that time?

8 A I did. I made a great deal for you that you ultimately
9 rejected.

10 Q Did you -- okay.

11 A It was -- if -- if I had done anything other than that,
12 David, you would have been right where you're at right
13 now which is in trial convicted and five years later in
14 litigation.

15 Q Well, it's eight years later.

16 A Well, eight years, sorry.

17 Q Anyway, let's see, have you ever -- at the time in
18 question.....

19 MR. PETERSON: What time?

20 MR. HAEG: Well, while he represented me.

21 A It's six months now.

22 Q Did you tell me that you never knew -- or never believed
23 I wanted open sentencing?

24 A What I told you is open sentencing would never be in your
25 best interest. Did you express an interest at some point

1 of wanting to go at -- open sentencing? Yes, you did
2 because that's why I asked Leaders for it. All that time
3 I was saying -- what I asked him was is this a
4 possibility of this happening in full expectation that
5 that would be the single poorest decision that could
6 occur but at least respecting and -- your decision to at
7 least make the inquiry, I did it.

8 Q Have you told me that at the time you represented me, I
9 never told you I wanted my plane back or the plane back?

10 A Clarification, when have I told you this?

11 Q Well, while you represented me, did you never te -- or
12 did I never tell you that I wanted the plane back?

13 A It's like a double negative but I think what you're
14 saying is yes, you did tell me you wanted the plane back
15 if you could get it back and we talked about an exchange,
16 yes, and you might have even brought up getting it back
17 and bonding it out at some point and I always told you
18 that's a bad idea.

19 Q Did you ever tell me that it could be bonded out?

20 A I don't know if I did or -- that or not. I don't
21 remember that.

22 Q Should you have?

23 A No, because we were negotiating a deal. That was not in
24 line with negotiating a deal. That was contrary -- that
25 would be giving you advice contrary to negotiating a

1 deal.

2 Q Is it true that one of the central negotiations, maybe
3 the main one, as things turned out -- or as it
4 progressed, was getting the airplane back?

5 A That was never the central one until you made it. You
6 and Leaders made it more one than I did because I told
7 you from the beginning you were going to lose that plane.

8 Q Okay. And once it was made a central issue while you
9 were still representing me, wasn't it your duty to tell
10 me I could bond it out?

11 A No.

12 Q Okay.

13 A I was negotiating for you.

14 Q Okay. Is it true that I thought my plane was important
15 for my livelihood but you didn't think so?

16 A I can't speak for you.

17 Q I did.....

18 A You had another -- you had another plane.

19 Q Then.....

20 A I know you think it was a real special plane and it was
21 all these modifications and you were so proud of it and I
22 understand all that but the truth -- truth of the matter
23 is 95 percent of the guides in this state use a Super Cub
24 and they're very successful and they do it just fine with
25 a Super Cub and you had a Super Cub and you had used your

1 PA-12 to illegally kill wolves and so that plane, in my
2 opinion -- and I expressed it from the beginning -- you
3 were never going to get back. I never saw a situation
4 where the troopers were going to allow you to get that
5 plane back.

6 Q Did I tell you that the plane was important for my
7 livelihood?

8 A Oh, you told me how important the plane was to you
9 personally.

10 Q So yeah.....

11 A I don't know if you told me (simultaneous speaking).

12 Q Is that a yes or a no?

13 A No, I -- I don't know if you did or not. Maybe you did
14 but it was inconsistent with what I knew.

15 Q Okay. If I told you it was important for my livelihood,
16 were -- did you have a duty to tell me that I could bond
17 it out?

18 A No, because we were negotiating the case. You weren't
19 going to get the plane out. It nev -- no -- none of the
20 negotiations.....

21 Q Was.....

22 Aenvisioned you getting your plane back and so I.....

23 Q Did there come a point when I asked -- I told you I was
24 thinking of going to trial while you represented me?

25 A You said that -- you said that a number of times.....

1 Q Okay.

2 Aat different occasions and we always talked it
3 through and at the end of the conversation, you agreed
4 that wasn't a good idea.

5 Q And if I was telling you I was thinking of going to
6 trial, at that time, would it be your duty to tell me I
7 could bond the plane out?

8 A No. Your emotions were going up and down, up and down
9 and so I was never sure what you were going to say, what
10 your impressions were, what you wanted but every time you
11 came in and said I want to go to trial, we would talk it
12 over and you would realize that was a real poor decision
13 because you had no defenses. You and Tony had violated
14 the law and there was no getting around it.

15 Q Is it true that you have testified I had no right to a
16 prompt post-seizure hearing?

17 MR. PETERSON: We've already established he's not going to
18 talk about.....

19 MR. HAEG: I'm not talking about my prior testimony.

20 MR. PETERSON:prior testimony. Ask him.....

21 Q Okay.

22 MR. PETERSON:during your representation.

23 Q Is it true that while you represented me, you never told
24 me I had a right to a prompt post-seizure hearing?

25 A It never came up because the issue was are we going to do

1 damage control or are we going to fight this case. If
2 you wanted to fight it, you should have said we want to
3 fight it. Then we would have talked about going and
4 doing a post-seizure hearing but you didn't want that and
5 you were able to do your guiding that spring and you were
6 able to get significant concessions for the good things
7 that you'd done up to that point so it never came up.

8 Q Because the plane -- because I informed you the plane was
9 important even though we were negotiating, didn't you
10 have an obligation to tell me there was a required post-
11 seizure hearing?

12 MR. PETERSON: This has been asked and answered multiple
13 times, Mr. Haeg.

14 A Asked and answered.

15 MR. HAEG: Well, I'm going through and, like I said, I'm
16 not a good -- don't have secretaries to help so (simultaneous
17 speaking).

18 MR. PETERSON: But when you say the same question two or
19 three times, skip it.

20 Q Is it true that the state could not legally keep the
21 plane without providing me a prompt post-seizure hearing?

22 A Calls for a legal conclusion. I -- I -- I don't even
23 know how to answer that.

24 Q Okay.

25 A It depends on what your strategy is, David. It all comes

1 down to what is your strategy as a defendant. You had
2 given me no options as far as defenses. You had -- you
3 admitted to being in the airplane and shooting the
4 wolves, totally shot them. There was no question about
5 that. So the only question is what were we going to do
6 to diminish the damages.

7 Q Okay. You just testi -- is it true -- or.....

8 A I said what I said.

9 Qyou just testified that I gave you no options for
10 defenses.

11 A No, at the time, I had no belief that you had any.....

12 MR. HAEG: Can we play the tape back, please?

13 MR. PETERSON: I tell you what, why don't we take a five-
14 minute break here?

15 (Whispered conversation)

16 (Deposition recessed)

17 MR. HAEG: Well, we have to wait for the trooper or not?

18 MR. PETERSON: Go right ahead.

19 MR. HAEG: Okay?

20 MALE: Right.

21 MR. HAEG: Yeah.

22 Q Is it true that the reason you didn't tell me I could get
23 the plane back was that I was almost comatose because I
24 was so depressed about the state walking in and taking
25 all this stuff?

1 A No.

2 Q Did you ever state -- so you never stated that?

3 A That's not what I said. I just answered no to your
4 question.

5 Q Okay. Did you ever state that the reason why you didn't
6 tell me about the airplane is because I was almost
7 comatose because we were so depressed about the state
8 walking in and taking this stuff?

9 A At the beginning, that's one of the reasons why I didn't
10 worry about it. Yes, I said that.

11 Q And if I was so comatose about them taking my stuff,
12 wouldn't it be a good idea to tell me how to get it back?

13 A No.

14 Q Why not?

15 MR. PETERSON: This has been asked and answered repeatedly
16 why he chose that strategy.

17 A It -- it comes down to strategy, as I've told you again
18 and again. The strategy is do you fight or you do -- you
19 make a deal. (Simultaneous speaking).

20 Q And you were not (simultaneous speaking) though.

21 A No -- yes, it is.

22 Q Okay.

23 A You want to know why I didn't and I'm telling you. The
24 reason we didn't is because you made the decision that
25 you wanted to cut your losses and mitigate your damages

1 so that you didn't lose your guide license for five
2 years. That was unacceptable particularly at the
3 beginning of the case and so no, that wasn't an option
4 that we went into detail or even discussed at that time
5 because at that time, you were so shell shocked that what
6 you thought you were doing was right ultimately could
7 cost you your guide business. It was -- it was
8 unfathomab -- unfathomable to you. So no, we didn't talk
9 about it at that time because of everything else that was
10 going on.

11 Q Is it unreasonable for you not to tell me how to get the
12 plane back irregardless of plea negotiations.....

13 A No.

14 Qif -- if I was depressed because the state walked in
15 and took all this stuff?

16 A No.

17 Q Okay. So it's more important for you to negotiate out
18 rather than to give me back my property that I was
19 depressed and comatose about?

20 A Don't put words in my mouth, David. That's not what I
21 said and you know that. I didn't.....

22 Q Okay. What did you say?

23 A I said that you picked -- you were given the option and
24 you decided that -- that.....

25 Q I was given the option.

1 Ait was better to mitigate the damages, reach a deal
2 with the state, try to negotiate a -- a sentence that
3 would not cause you to lose your license for five years,
4 that fighting, that going about trying to get your
5 airplane back which was never even assured, would only
6 result in you losing the opportunity to negotiate. We
7 talked about it on numerous occasions and in numerous
8 different fact scenarios.

9 Q Okay. How exactly and what did you say were my options
10 when -- if I decided to fight?

11 A Your options were to not cooperate with the government
12 and not give them a statement and want a trial and plead
13 not guilty and fight and file all your motions.

14 Q Okay. And you told me all that?

15 A We discussed that at the beginning, the po -- but I told
16 you.....

17 Q Okay.

18 Aone of the concerns I had at the beginning.....

19 Q You told me.

20 Ais that the search warrant had indicated they were
21 going to -- that they were looking into felony charges
22 for evidence tampering and I kept telling you I really
23 don't think we want to get indicted for felony charges
24 and then lose your right to have firearms for the rest of
25 your life and you agreed with that and I said we really

1 don't want to get in a situation where the state is
2 coming in and taking over any of your other planes or
3 shutting down your business and you said I can't have
4 that. You demanded that I negotiate that and we did and
5 that's what you got in return.

6 Q And we did that after you told me I could file motions to
7 suppress and get the plane back to go.....

8 A I didn't -- we didn't really go into that, David, because
9 the option.....

10 Qabout the statement used, all these things that I
11 was concerned about, you told me all about it?

12 A We -- no. No, I didn't -- I told you that those things
13 happened throughout the course of your representation.
14 At the beginning, the -- the bottom line is what are we
15 going to do, are we going to fight this thing or are we
16 going to try to negotiate and I told you, in my opinion,
17 you should negotiate and you ultimately made that
18 decision and that's where we were.

19 Q Okay. And what you just said about doing all this for
20 me, that means to you you represented me zealously, is
21 that correct?

22 A Throughout -- I -- I did the best I could and I think the
23 results reflect that. If you'd just done what I had said
24 and followed my advice, you wouldn't be in the mess
25 you're in right now.

1 MALE: Hey, we're getting into this one.

2 A So what time is it right now? I just want to -- the
3 record to reflect what time it is.

4 MALE: 1:30.

5 MALE: 1:34.

6 A So we spent 3-1/2 hours going through this statement that
7 you've already had on me.

8 Q Why did you tell me the state could use my immunized
9 statement against me?

10 MR. PETERSON: You've asked and answered this repeatedly.

11 A Asked and answered and I didn't tell you that.

12 Q Okay. Didn't tell me that.

13 MR. HAEG: And I thought I get to ask whatever I want. I
14 don't think that you guys can have an objection.

15 MR. PETERSON: You don't get to ask it over and over and
16 over.

17 MR. HAEG: Well, like I said, I'm a pro se defendant and
18 I'm (simultaneous speaking) so.....

19 MR. PETERSON: The defendant, right, and that's why we're
20 telling you but it's not six hours of the same question
21 rephrased hundreds of times.

22 MR. HAEG: Well, it's -- most of the stuff I've been over.

23 Q Did you ever tell me -- while you represented me, did you
24 ever tell me that the state changed the rules?

25 A I can't remember. I might have.

1 Q Okay. And why would you have told me that?

2 A I told you I can't remember.

3 Q Okay. Well, I guess that's -- if you didn't remember
4 that you said it, I thought you might have remembered why
5 you might have said it.

6 A No.

7 Q Is the state allowed to change the rules?

8 A In what context?

9 MR. PETERSON: Vague and ambiguous. Would you -- yeah,
10 describe what kind of context. How are you referring to the
11 rules being changed?

12 MR. HAEG: Looking through it, I think it was they.....

13 A Are you asking a question -- is there a question on the
14 table?

15 Q Well, I'm just look.....

16 A What are you doing?

17 Q No, I'm just looking at my notes here.

18 MALE: I think he was responding to Mr. Peterson.

19 A Oh, I'm sorry. Maybe you're right. Apologize.

20 MR. PETERSON: I just don't know rule change you're
21 referring to so I don't even know.....

22 MR. HAEG: Well, I -- it was his words so I don't really
23 know either but I assume it was can Leaders agree to something
24 and we all show up to finalize it and then he changed the
25 charges that we'd expected to -- and I know it was about the

1 plane because it says this is all about the airplane -- change
2 the charges to force us to give up the airplane. I guess
3 that's.....

4 A It's not what happened.

5 Q Okay.

6 A We've already talked about that numerous times.

7 Q Did you -- while you represented me, did you tell me that
8 it's ethical for them to change the charges, demand we
9 give them the plane and then, quote, you can have your
10 day in front of the judge?

11 A I don't remember that. I could have. If I did, it was
12 in the context that, you -- you know, you have a right to
13 an open sentencing if you want. The state makes the
14 charging decisions.

15 Q But if we rely on.....

16 A We didn't rely on that, David. I -- I didn't -- we never
17 -- that was never the deal on the table. We've gone over
18 that.

19 Q Why -- okay.

20 A We've already gone over the whole thing, David, on
21 numerous occasions.

22 Q Well, it just -- it's important, I mean, so.....

23 A I understand it's important that I'm not answering the
24 way you want it but that's not how I recollect it so we
25 have a different recollection, move on.

1 Q What charges were in place when I flew Tony in and we
2 drove up to Anchorage on November 8th?

3 MR. PETERSON: That's a matter of record. It's already in
4 the file. I mean.....

5 A And it's already been discussed. We already talked about
6 it.

7 Q Okay. And it's -- is it true you told me it's ethical
8 and legal for the state to change the charges after we
9 all drove up?

10 MR. PETERSON: He just answered the question.

11 A We already talked about that.

12 Q Is that true? Okay. Man. Did you ever get in touch
13 with Leaders' boss?

14 A No.

15 MR. PETERSON: And you've already asked him about that
16 repeatedly.

17 MR. HAEG: Okay. Hey, thought I'd try again.

18 Q Who did you complain to about Leaders?

19 A No one.

20 Q Did you ever tell me -- while you represented me, did you
21 ever tell me.....

22 A No.

23 Q While you were representing me, when I asked what we
24 could do to enforce the plea agreement, did you tell me
25 you know I got to deal with these people and I guess did

1 you ever say that?

2 A I -- I don't remember.

3 Q Is it true that you have to deal with those people?

4 A I deal with prosecutors, U. S. attorneys, troopers around
5 the state. I deal with everyone who is a prosecutor and
6 does fish and game stuff almost around the state, every
7 one of them I do some dealings with them.

8 Q Okay. And if you tried to enforce a plea agreement
9 against one of them, would they be unwilling to make
10 deals with you after that?

11 A No.

12 MR. PETERSON: Mr. Haeg, that was asked and answered
13 previously. Mr. Cole has repeatedly said the you referred to,
14 it would be against your best interest, not his. He went over
15 that quite extensively in the beginning of the day.

16 MR. HAEG: Well, what I get confused about is at the time,
17 the recorders that have a time, he didn't say it was my best
18 interest, he says I got to deal with these people.

19 Q So is that true that when you were talking to me, you
20 weren't talking about my interest, you were talking about
21 your interest?

22 A Is this in a taped -- one of the taped statements that I
23 had with you?

24 Q Yup.

25 A I -- I think I probably did say that and I have to

1 professionally deal with every one of these guys all the
2 time.

3 Q And so it's not that.....

4 A But it's not going to interfere with my job for you or my
5 -- I -- I disagree with the prosecutors on a daily basis.
6 I do trials against them.

7 Q And so.....

8 A It's a professional thing. (Simultaneous speaking).

9 Q So when I wanted to enforce.....

10 MR. PETERSON: Let him finish his.....

11 Qthe agreement I thought I had, why did you say I got
12 to deal with these people?

13 A Because it was not in your best interest. I kept telling
14 you that. And you had every opportunity to enforce that
15 when you went to trial when -- when you hired Mr.
16 Robinson. Your investigator called me up. I told you
17 these are the options. I don't think you're going to win
18 on this. Even if you do, we're not going to have a deal
19 and you're going to be in an open sentencing situation.
20 It's -- it's throughout that statement.

21 MR. PETERSON: You want to stop for a second?

22 MALE: Yeah, could you stop one -- just one moment,
23 please.

24 MR. HAEG: Okay.

25 (Whispered conversation)

1 MALE: Whenever you're ready.

2 Q While you represented me, did you let me believe the
3 state could use my immunized statement to prosecute me?
4 MR. PETERSON: You asked this repeatedly.

5 A We've gone over this.

6 Q Well, gosh, I can't find any new ones.

7 A Maybe are we done?

8 Q Well.....

9 MALE: We still got a couple hours.

10 Q Okay. Well, we got through that one quick. While you
11 were representing me, did you tell me that you agreed the
12 state was overcharging me?

13 A I might have.

14 Q And why did you say that?

15 A I don't know, I can't remember. I said I -- I might
16 have.

17 Q Okay. And if you thought that was the case, is there
18 anything you could have done about it?

19 A The charging decisions are the district attorney's
20 office.

21 Q Okay. So you couldn't file a motion that they are
22 doing.....

23 A Three-quarter -- 90 percent of the cases are overcharged
24 that come into the courthouse at the beginning. That's
25 pretty routine.

1 Q And what happens then?

2 A Well, if you are in the mood to fight which you weren't,
3 you were in the mood to negotiate but if you're in the
4 mood to fight, then you go to trial and you make the
5 state prove its case against you beyond a reasonable
6 doubt which you ultimately did and they did. So that's
7 what happens. If you're not in the mood to fight, you
8 try to reach a resolution that winnows that down and
9 comes to an agreement on what charges you're going to
10 accept, what deal you're going to make and that's what we
11 did.

12 Q There's some questions I just wanted to ask him but I
13 think it's already been asked and answered. So, I don't
14 know, might be able to ask this one, could prosecutor
15 Leaders at my sentencing honestly claim I broke the plea
16 agreement?

17 A I can't speak for him.

18 Q Was it your impression I broke the plea agreement?

19 A You want my -- you really want that answer?

20 Q Yeah, I do.

21 A Yeah, I really do. I think you did, David. We had a
22 deal and all you had to do is accept the deal that we had
23 that was 36 months with 24 months suspended. It was a
24 one-year license. You had it all right there in your
25 hand. You weren't going to lose your plane, you're

1 right, but we'd negotiated everything. You had it there
2 and it was within your grasp and you decided that you
3 didn't want it. You didn't want it. You just were not
4 willing to accept that deal when you weren't going to get
5 your PA-12 back and after that, you fired me and you went
6 to trial. I felt bad about it.

7 Q Okay.

8 A I -- I -- I mean, I.....

9 Q So you're sworn -- okay.

10 A I -- I don't know whether you call that.....

11 Q Okay.

12 A I -- I -- I understood that opportunity was there and you
13 turned it down. Now, you can characterize that however
14 you want it but you had it right there and you decided
15 you didn't want to go forward.

16 Q You said that -- you testified it's your impression I
17 broke the plea agreement deal.

18 A Well, it was -- it was an offer that was out there for
19 you to accept as soon as we had finished up getting the
20 approval from DMV. You know, was there anything signed?
21 No, but it was right there for you to do. That's what I
22 hurt so bad about. I just couldn't believe it.

23 Q And why wasn't anything ever placed in writing?

24 A There was no need to. We were working alone. In
25 retrospect, I sure wish I had. You're right but it

1 wasn't.

2 Q Okay.

3 MR. PETERSON: Let me -- can I clarify something? The
4 deal would have been to reduce char -- although there was
5 amended information, right?

6 A It would have been to reduce the charges, absolutely.
7 That.....

8 MR. PETERSON: The charges would have been reduced to what
9 was in the original information, is that correct?

10 A Yup. Yup, to 08 or A-8 which would have allowed for a
11 one-year license revocation.

12 Q Before you guys get all frisky tailed about that, I got
13 tape recordings proving that that's all perjury right now
14 so.....

15 A Okay.

16 Q I wouldn't get too frisky about it. And we -- I
17 don't want to roll that.

18 (Whispered conversation)

19 MALE: I think you need to get him a digital recorder for
20 Christmas.

21 FEMALE: He's got one.

22 MALE: I don't like them.

23 FEMALE: Just like all the other things.

24 MALE: I don't know how to put it on the computer.

25 FEMALE: Well, you just plug it in.

1 MALE: Push the cord in.

2 MALE: Yes.

3 MR. HAEG: Okay. Okay. Going?

4 MALE: Mm-hmm.

5 MALE: Oh, yeah, we're going.

6 Q While you were my attorney, did I ever ask you why didn't

7 Leaders let us go out to McGrath when there was 11 counts

8 and let the judge decide that and you respond I don't

9 know why he didn't do that, that pisses me off, he just

10 caused me to sit here and explain this to you 25 times,

11 he did it because he wanted to be a dick and it pisses me

12 off?

13 A I -- sure I said that.

14 Q Did you also say it caused me so much problems in my

15 dealing with you and I as much told him?

16 A Yup, I'm sure I said that too.

17 Q Okay. And I say yup and you say it pisses me off, he has

18 no concept of what it has done to your and my

19 relationship.

20 A I -- I -- I said that.

21 Q And....

22 A Are you going to just -- I mean, that.....

23 Q Well, I just -- is that what was said?

24 A That thing speaks for itself.

25 Q Okay.

1 MR. PETERSON: And, Mr. Haeg, I believe you've already
2 admitted this transcript as an exhibit in the fee arb. If you
3 want to file the transcript with the court in -- or provide
4 the court with the tape, you're entitled to. I mean, asking
5 him about what he said years ago in '04 is.....

6 MR. HAEG: Well, yeah, the.....

7 MR. PETERSON: I mean, in a verbatim basis is a
8 little.....

9 MR. HAEG: Right.

10 Q Is it true that Leaders wanted to bring in the moose deal
11 so that the judge would give me (simultaneous speaking).

12 MR. PETERSON: That has been asked and answered
13 repeatedly.

14 A (Simultaneous speaking), David.....

15 Q Okay.

16 Atotally.

17 Q And I've blown through this one. At the time, did you
18 tell me -- or when you represented me, did you tell me
19 that under these circumstances, you're never going to
20 feel good about this thing regardless? Can you tell --
21 did you say that to me?

22 A What thing, feel good about what thing?

23 Q Under these circumstances and it was we were talking
24 about.....

25 A The transcript speaks for itself. I -- actually, the

1 recording speaks for itself.

2 Q Okay. And.....

3 A I don't know what the transcript says and who did it.

4 The recording speaks for itself.

5 Q Okay.

6 A I cannot remember that.

7 Q So you ca -- you.....

8 A I cannot.....

9 Q Do you remember a reason why I wouldn't feel good about

10 what happened?

11 A Because you violated the law, David. You put your whole

12 family's future at risk.....

13 Q Well, we're talking.....

14 Abecause you had to go out and kill wolves in an

15 airplane and you were never going to feel good about the

16 fact that you had been, you know, sleepless nights and

17 you were going to pay the penalties for everything that

18 you had done against the law over stupid wolves.

19 Q Mm-hmm. And is the cert -- the -- I don't know, I'm just

20 reading through here. We were still talking about the

21 plea agreement stuff. So what you're saying is that your

22 response to me was over what I had done rather than what

23 had happened with the plea agreement?

24 MR. PETERSON: It.....

25 A I have no idea.

1 Q Okay.

2 A I don't have a transcript. I ne -- remember. I'd just
3 note I wouldn't have felt good about losing my whole
4 livelihood over shooting a stupid wolf.

5 Q I don't know. Do you think it was fair the state told me
6 I had to go shoot wolves for the good of the unit?

7 A You've al -- asked and answered. I'm not going to go
8 there anymore.

9 Q Did we ever get a tape, a full copy of the statement I
10 gave?

11 A I don't believe so.

12 Q Why not?

13 A I don't know, you have to ask the state. We requested it
14 on numerous occasions.

15 Q Okay. Why didn't you record it?

16 A Because that's not my job.

17 Q Oh. Not your job to record me making an immunized
18 statement. So since the tape recordings are gone or
19 missing or whatever, how can we prove what I actually
20 told the state and what I didn't?

21 A That was good for you.

22 Q How is it good for me when the state says that they've
23 got all this information and then I can't prove that I'm
24 the one that gave it to them?

25 A They had an obligation -- I -- I -- they were the ones

1 that were conducting the investigation. If they lost the
2 tape, that's bad on them. Then they've got to come in
3 and defend what they're doing.

4 Q How come they never were forced to do that?

5 A Because -- you hired me -- again, for the last time --
6 now, I'm not going to say it anymore. You didn't want to
7 go down that avenue. You wanted a negotiated deal,
8 period.

9 Q How come I ended up going to trial then, Mr. Cole?

10 A Because you fired me, Mr. Haeg. I had a deal sitting
11 right there. You said no.

12 Q And did I ever say that I was thinking about going to
13 trial when you and I.....

14 MR. PETERSON: This has been asked repeatedly.

15 A You've asked and answered this a hundred times.

16 Q Did you ever go over with me what takes place for a trial
17 to happen?

18 A I -- I can't remember. I never wanted a trial with you
19 in the first place. I knew you couldn't take it and I
20 knew what the result was going to be. That was the
21 furthest thing from my mind that you needed was a trial.

22 Q Okay. So you don't remember?

23 A I don't remember, no.

24 Q Okay. Oh, this one's in the middle of the same stuff. I
25 don't know, all this stuff just -- it relates so much

1 back to what we we've already been over but when you
2 represented me, did I ever specifically ask you what
3 rights could protect me?

4 A Asked and answered.

5 Q Does a defendant have everything to gain and nothing to
6 lose by filing a motion to suppress?

7 MR. PETERSON: Calls for speculation.

8 A No, I don't agree with that. It depends on the
9 situation.

10 Q Did the state have a direct pecuniary interest in the
11 outcome of the property that was seized?

12 A I don't know.

13 Q In other words, if the property was seized.....

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

15 Qcould they make money out of it?

16 A No, not necessarily.

17 Q Okay. They couldn't make money out of it.

18 A No, I said not necessarily. Don't put words in my mouth.

19 Q Okay. What do they normally do with airplanes that they
20 seize and forfeit?

21 A Sometimes they refurbish them, sometimes they give them
22 away, sometimes they cut them up and that's it.

23 Q Okay. But they generally utilize it somehow?

24 A No, I -- no, not necessarily. If they cut it up, it's
25 scrap.

1 Q How many do you know that they cut up out of.....

2 A I've heard of it happening. Yes, I have, actually,

3 when.....

4 Q So have you heard them cutting up mine?

5 A I don't know anything about your plane.

6 Q I know I ask this one again but I'm going to see how many

7 asked and answered I get. Was anyone involved in my

8 prosecution exposed to my immunized statement?

9 A I don't know.

10 Q So Scott Leaders, Brent Cole, Tony?

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

12 Q Were they privy to my statement? Did they hear it? Did

13 they have -- did they handle it?

14 A What.....

15 Q Did they listen to it?

16 A I don't know.

17 Q Did they tape record it themselves?

18 A I don't know.

19 Q Okay. You don't know if.....

20 A I only remember the troopers' tape recorder being on the

21 table when you gave your statement.

22 Q Okay.

23 A That's the only one I remember.

24 Q Well, what did the.....

25 A I don't know if you had one or not. I can't even

1 remember that.

2 Q Is it true prosecutor Leaders and Brent Givens.....

3 A Brett Givens.

4 QBrett Givens were exposed to my immunized statement?

5 MR. PETERSON: Mr. Haeg, you are right, you have already
6 gone over this.....

7 A Yup.

8 MR. PETERSON:so let's move on.

9 MR. HAEG: Okay. Well, I'm flipping through stuff pretty
10 quick.

11 Q Have you ever heard of Alaska Statute 12.50.101 which --
12 or the case *State of Alaska versus Gonzalez* that hold
13 that in Alaska.....

14 MR. PETERSON: Mr. Haeg, this is a legal issue. I have no
15 idea how it relates to your PCR.

16 MR. HAEG: Okay.

17 Q I don't know, this has probably been asked before too but
18 was prosecutor Leaders required to justify why he
19 increased the severity of the charges?

20 MR. PETERSON: That's been asked and answered.

21 A Been asked and answered.

22 Q Okay. Well, I'm flipping through here, I just -- you
23 guys got better memory than me.

24 A I'll resist the temptation.

25 Q For the state to forfeit the plane as part of a plea

1 agreement, did the information or indictment, did it have
2 to include a forfeiture count?

3 A No, not if you agree to it. That's a federal case.

4 Q Not if you agree to it. Well, you know what case is?

5 A What are you talking about?

6 Q The -- that you said it was a federal case.

7 A In a federal case, they put in a criminal count when you
8 get charged by the feds in a game charge like a Lacy Act.
9 They put in a forfeiture count.....

10 Q Okay. But in this.....

11 Awhen it goes to the jury and the.....

12 Q Okay. And -- but in this state, you don't have to do
13 that so they don't ever have to give you notification
14 they're intending on forfeiting.....

15 A That's not what I said.

16 Q Okay. Do they have to give you notification they're
17 going to forfeit property?

18 A Yeah. Mm-hmm.

19 Q How do they do that?

20 A They do it at the sentencing, they do it initially.....

21 Q Do they have to do it in writing?

22 A I don't know the answer to that.

23 MR. PETERSON: I think the answer to that's in your
24 appellate court decision.

25 MR. HAEG: Well, I can prove that a lot of that stuff that

1 was done in there is illegal so.....

2 MR. PETERSON: No, I'm just saying that's where the answer
3 is.

4 MR. HAEG: Testifying.

5 (Whispered conversation)

6 MR. PETERSON: We got to start over.

7 MALE: No.

8 MR. PETERSON: It'll look like a foreign language film,
9 you use one of the tapes and your film there.

10 (Off record conversation)

11 Q While you represented me, were you sympathetic to the
12 state's case?

13 A No.

14 Q Did you believe that my case may jeopardize the wolf
15 control program?

16 A I expressed a concern about that to you at the beginning,
17 yeah.

18 Q Okay. So you're concerned about.....

19 MR. PETERSON: Leading.

20 A My answer is my answer. Don't try to rephrase it or turn
21 it into something I didn't say.

22 Q Okay. Well, I have a problem with that.

23 A I know you do.

24 Q Tell me what you -- tell me.....

25 A I said what I said. I answered it.

1 MR. PETERSON: Why don't you ask him what he means by
2 that?

3 MR. HAEG: Okay.

4 Q What do you mean by that?

5 A The state, under Tony Knowles, had done away with wolf
6 control and I thought he was a bleeding heart liberal and
7 I didn't like it because I'm a long-time Alaskan, a
8 hunter and everything else and on a personal level, I was
9 happy that Murkowski brought in predator control. I
10 thought it was the right thing for the management of the
11 game which is required by the state under the
12 Constitution and I thought that it was most important for
13 the rural areas because the rural people need game.
14 Particularly, they need moose and they need caribou and I
15 saw the predator control on a personal level as an
16 effective measure in enhancing the stock and the
17 wildlife. So when a big game guide and his assistant
18 guide intentionally go outside their area and shoot
19 wolves in violation of their permit and of the law and of
20 their responsibilities as guides and assistant guides,
21 there was some concern that I had on a personal level
22 apart from my representation of you that your actions
23 would, yes, endanger the wolf control problem and I think
24 that attitude was shared by people across the street --
25 across the state. You did endanger the wolf control

1 problem because you subjected the state to negative
2 criticism from outside sources by your actions. That was
3 all personal. My job as an attorney was to set those
4 aside which I did and get you the best deal that you
5 could which I did.

6 Q Okay. And did you believe that if I was treated
7 severely, it would help the wolf control program survive
8 what I'd done?

9 A I had no idea how -- what the impact was going to be. I
10 -- I was concerned that you would be made an example of.
11 I -- and I told you that.

12 Q Okay. But you said you were also concerned that the
13 program -- on a personal level, you were concerned that
14 the program may take a hit.

15 A It -- it didn't, obviously. It's still going.

16 Q And is anything I could have used as a defense, could it
17 have affected the wolf control program like testifying
18 the state told me?

19 A You say the state. You -- it is an individual who was on
20 the board of game.

21 Q (Simultaneous speaking).

22 A You don't know what his capacity was when he was talking
23 to you or what hat -- hat he was wearing and, no, I don't
24 think so.

25 Q Okay. So if it came out that a sitting board of game

1 member had told me to do exactly what I was then charged
2 with doing, that might not have -- basically,
3 fraudulently running the wolf control program, that
4 couldn't have an effect on the program?

5 A The effect on the program has nothing to do with your PCR
6 so, you know, you can ask me all the questions but I'm
7 not going there anymore.

8 Q It absolutely has.....

9 A What -- what -- what does it have and I'll -- and I'll
10 listen. What.....

11 Q If I was precluded from a defense of entrapment
12 because.....

13 MR. PETERSON: Mr. Haeg, you called Mr. Spraker to testify
14 at your trial. He was there. Your lawyer at trial, not Mr.
15 Cole, chose not to ask that question. Your lawyer when you
16 deposed him testified he specifically chose not to ask that
17 question because it was going to make you look like you were
18 grasping at straws. It wasn't a relevant defense. That was a
19 choice for Mr. Robinson, not for Mr. Cole.

20 MR. HAEG: No, it isn't because I told him I specifically
21 wanted to have this done and he -- and Robinson also told me
22 it wasn't a legal defense and so when my attorneys testify to
23 me about something that's not legal.....

24 MR. PETERSON: Then if your question.....

25 MR. HAEG:when it actually is legal, then I have a

1 right in PCR.....

2 MR. PETERSON: If your question is about a defense, ask
3 him about the defense, don't a -- and you've already done
4 that.

5 MR. HAEG: We've already gone there and.....

6 MR. PETERSON: Ask him a new question about a defense you
7 haven't already asked.

8 MR. HAEG: Well, part of the reason why we're having these
9 problems is I didn't go to law school and you guys have and I
10 hired people I thought were going to defend me and now I find
11 out they didn't.

12 MR. PETERSON: I'm attempting to assist you here. If you
13 have a question about a defense that has not already been
14 asked.....

15 MR. HAEG: Well.....

16 MR. PETERSON:then ask the question about the
17 defense, not about the individual.

18 A We've already talked about the entrapment issue on
19 several occasions.

20 Q Okay. Well, we got into it -- I believe it's, you know
21 -- well, you know, it -- just as I go along here, we plow
22 a little bit of new ground and I was just seeing if there
23 was any more there but apparently not.

24 (Pause)

25 MALE: You want to go off the record for a second, David,

1 or you want to just keep the tapes rolling?

2 MR. HAEG: Sure, we can.

3 MALE: Stop so then no record.

4 (Deposition recessed)

5 Q For a hearing that was supposed to take place on
6 November 9th, 2011, did I send you a letter that I had
7 wrote that I wanted given to the judge for her
8 consideration?

9 A I believe so.

10 Q Okay. And did you send that letter to the judge?

11 A I can't remember. I -- I thought we did. I don't know,
12 I don't remember the specific.....

13 Q Okay. And would this -- can you read this and just see
14 if this would have been the cover letter that you would
15 have used to do that?

16 A That's my signature, that's something that I would have
17 -- would file. I don't know what exhibit 10 is. I don't
18 know what that is.

19 Q Okay. But you remembered that I was concerned about
20 getting out to McGrath and the judge not having time to
21 digest my side of the story before she sentenced me and
22 so I had wrote up a document, a pretty extensive document
23 that I wanted her to read before we actually got there
24 and my -- do you remember my concern was is that if we
25 just showed up and, you know, boom, slam, bam, thank you,

1 ma'am, she would not have a good opportunity to consider
2 what went on before I was sentenced?

3 A I don't remember that specifically but it makes sense.

4 Q Okay. Anyway, and.....

5 MR. PETERSON: And, just so we're clear, there hasn't been
6 an exhibit identified, correct?

7 MR. HAEG: No.

8 MR. PETERSON: He didn't -- he did not recognize it so I
9 just want to make sure if you're going to be.....

10 MR. HAEG: No.

11 Q Now, and I guess could you look at this e-mail that --
12 you know, it says it was from you. It came, I believe,
13 in the discovery that you provided and just read this and
14 see if this confirms that I wrote some testimony and you
15 look at the front, see if it looks like, you know, it
16 came from your office or whatever or it went to you or
17 whatever but it was e-mail documentation that further
18 documents that I made -- you know, sent you some
19 testimony about you that was going to be used at this
20 hearing or if we went out to McGrath.

21 A Well, this was after. This is in November 19th. This is
22 after the arraignment.

23 Q But it.....

24 A This is after the arraignment, David. This is 10 days
25 later.

1 Q Yeah, I understand but, I mean, in that note, it
2 basically says that you would have had something in your
3 possession, my testimony, and here's another one. I
4 don't know what -- here's one November.....

5 A Just a minute.

6 Q12th. Here's another one there.

7 A This -- you sent it to me on the 12th and I think I
8 responded on the 19th. That's what this says.

9 Q But what I'm saying.....

10 A Just -- listen, let me read it. Hold on.

11 Q Okay.

12 A These are both from you. This isn't -- neither of these
13 are written by me.

14 Q Well, what I'm saying is this is something I wrote and
15 sent to you -- e-mailed to you. I mean, doesn't it.....

16 A I -- I -- I assume that it is. That's my -- that's my e-
17 mail address but, I mean, I -- I don't remember it but I
18 just.....

19 Q Okay. And there's another one November 12th and,
20 basically, I guess look at it and look at the last line
21 there also and just see if that, you know, looks familiar
22 to you or you remember that I sent you.....

23 MR. PETERSON: Mr. Haeg, I'm going to ask if there's a
24 point here. I mean, you don't appear to be admitting any of
25 these exhibits into the record so you're not going to be.....

1 MR. HAEG: Well, they're already -- well, I thought they
2 were admitted because you.....

3 MR. PETERSON: You're not id -- just because they've been
4 provided in discovery, you're not identifying them, you're not
5 admitting them into the record.

6 MR. HAEG: Okay.

7 MR. PETERSON: So they can't be referred to.

8 MR. HAEG: Okay. I'm sorry, didn't know (simultaneous
9 speaking).

10 A This isn't -- isn't this the same letter that you just
11 gave me?

12 Q This is -- that's -- that could be. It's possible that
13 we sent it to you twice.

14 A This says message sent on November 12th, 2004.....

15 Q Well, it's probably a.....

16 Amessage sent on 2012 [sic] and it's the same.....

17 Q But we probably sent it again up here. You know,
18 probably we.....

19 A You sent -- you may have copied it onto this.

20 Q Copied it, yeah. And, anyway, I guess for the -- could
21 you read into the record what they are?

22 A What -- what -- what are?

23 MR. PETERSON: Why don't you identify them as exhibit 1
24 and 2 and.....

25 MR. HAEG: Well.....

1 A One of them is a -- an.....

2 MR. PETERSON: I'll.....

3 A Let me see a piece of paper and a pencil. What exhibit

4 is this?

5 Q I don't know.

6 A A-1? What are you guys using?

7 MR. PETERSON: Go ahead and use A.

8 Q I'm not onto this.

9 A Exhibit A is an e-mail that.....

10 MR. HAEG: Here, you -- oh. Yeah.

11 A It says it was sent from Mr. Haeg. I recognize that. It

12 was sent on Friday, November 12, 2004, while I was still

13 representing him. It's sent to my e-mail address and it

14 lists a number of questions in response to it looks like

15 a sentencing and he asked me to look at the last one.

16 Also, as I discussed, I could limp through my testimony

17 and see what would not be appropriate to tell the media,

18 I would appreciate it, and what we were talking about is

19 you had a right to give an allocution even if we had

20 reached a plea agreement, I suspect, and that you wanted

21 to know what would be the appropriate things to say to a

22 judge if we -- if you were sentenced because you have an

23 individual right at your sentencing. Even if all the

24 terms are agreed to, you still have a right to give an

25 allocution and I -- as I understood it, is my

1 recollection -- I can't -- I -- I mean, I -- this is --
2 I'm just -- this is a long time ago but my recollection
3 is you wrote that because you wanted to know -- the judge
4 to know about you and what had happened.

5 Q Mm-hmm.

6 MR. PETERSON: And, Mr. Haeg, I'm going to object to this
7 document because you have then writing all over this document
8 that -- there's no indication it's part of the e-mail.
9 There's no indication as to when it was written, that Mr.
10 Cole's ever seen it so.....

11 MR. HAEG: Well, I'll.....

12 MR. PETERSON:the writing that's here has no bearing
13 on what he's testifying to.

14 MR. HAEG: Okay. Well, I -- like I said, I get stuff --
15 you know, I'm not an attorney. You know, I see what you're
16 saying I should have maybe kept the original made a copy,
17 whatever, didn't do it and I don't.....

18 Q So, anyway, is it true your tactic for me was falling on
19 my sword?

20 A That was your decision.

21 MR. PETERSON: Can -- Mr. Haeg, this goes right back to
22 the decision for the.....

23 A We've already talked about this.

24 MR. PETERSON:why you made the plea or why you made
25 this statement to.....

1 MR. HAEG: Well, I wanted about this -- I wanted him to
2 explain to me the tactic of falling on our -- we were falling
3 on our sword (simultaneous speaking).

4 MR. PETERSON: He's explained that repeatedly without
5 using that phrase.

6 MR. HAEG: Well, I want to know what that phrase means.

7 A It means you admit your guilt in order for leniency from
8 the state, you fall on your sword.

9 Q How come you never told me I was doing that?

10 A I did. You knew it from the beginning. We've gone over
11 this multiple times, David.

12 Q Really? And so there was no immunity then?

13 A It's -- it's asked and answered, move on.

14 MR. PETERSON: It's back to asked and answered. We've
15 talked about the agree -- the agreement.

16 Q So let me just get this clear, tell me exactly what the
17 term of your -- the description you gave for my tactic of
18 we were falling on our sword. Just tell me that again.

19 A I already did.

20 Q One more time, please.

21 A No, I already did. I'm not repeating things.

22 Q Okay. But I still don't understand it but -- is
23 obtaining post-conviction relief before a -- must I
24 obtain post-conviction relief before I can pursue an
25 action for legal malpractice against an attorney?

1 MR. PETERSON: This is a legal conclusion and it has
2 nothing to do with his representation of you during the six
3 months.

4 MR. HAEG: Well, I beg to differ but.....

5 Q Were you surprised I didn't file motions to suppress
6 evidence at my trial?

7 MR. PETERSON: Calls for speculation.

8 A I -- I -- I have no comment about what you did or didn't
9 do because I really don't know what you did or didn't do
10 at your trial.

11 Q Well, it is true that you were surprised?

12 A No. I -- I don't know what you did. How could I be
13 surprised? I don't know what you did.

14 Q Well, I have a.....

15 A I didn't -- I wasn't at your trial, I didn't look at your
16 motions. I don't know what you did. I have no idea what
17 you did after you left me.

18 Q Okay. So you never wrote anything that said that you
19 were surprised that I didn't file motions to suppress
20 evidence at my trial?

21 A I don't know whether I did that or not. Can you show me
22 something?

23 Q Kind of right by the pink.

24 A I'm still surprised did not file (indiscernible -
25 whispering). I guess I was at that time.

1 MR. PETERSON: Can we identify the date and time of the
2 letter -- or the date of the letter?

3 MR. HAEG: It's a March 30, 2007.....

4 A That is a confidential letter that shouldn't be part of
5 this but, apparently, you have it but, anyway.....

6 MR. PETERSON: March what?

7 MR. HAEG: March 30th, 2007.

8 A This was a letter in response to Louise Driscoll in
9 response to a barter events (ph) that David filed against
10 me.

11 MR. PETERSON: And could I.....

12 A It's okay but.....

13 MR. PETERSON: Yeah, let me -- can I see the letter? If
14 you're going to show him exhibits, you got to pass them
15 around. So are you making this part of the record?

16 MR. HAEG: No, I ask him if he ever thought that and
17 that's what I asked him.

18 MR. PETERSON: I mean, you got to be -- if you're going to
19 start utilizing stuff like this.....

20 MR. HAEG: Well, I use this to jog me to -- for me to
21 remember what.....

22 MR. PETERSON: Okay. But this -- then you make it part of
23 the public record.

24 A I -- I don't want it to be a part of the public record
25 so.....

1 MR. HAEG: I got to use something to remember all this
2 stuff.

3 Q Let's see, down to the last things. You know, I don't
4 know, I guess I'm just going to spit this out, this last
5 thing I got. Before I was convicted and sentenced after
6 trial, do you think the court should have been told that
7 the state told me it was for the greater good to do
8 exactly as they charged me?

9 A I -- I have no comment on that. It was after my
10 representation and we've talked about all this so move
11 on.

12 Q Okay. Is it your -- but let me just ask this.....

13 A Move on. I'm not going to talk about.....

14 Qis it your opinion that at some point, that should
15 have happened if I went to trial?

16 A No, I don't -- I don't take an opinion on it at all.

17 Q Okay. Before I was convicted and sentenced after a
18 trial, do you think that the court should have been told
19 the state had falsified all evidence locations to my
20 guide area.....

21 MR. PETERSON: He just said he's not going to.....

22 Qand then used the false locations as a justification
23 for guide charges on.....

24 MR. PETERSON: He just said he's not going to specul -- or
25 testi.....

1 MR. HAEG: I'm not.....

2 MR. PETERSON:talk about what happened after his

3 representation. That was Mr. Robinson's deal, not Mr. Cole's.

4 A I'm not passing judgment on that at all. Take it up with

5 him.

6 Q Well, I did and the problem is is he blames it all on

7 you. He's like I couldn't do anything that -- if.....

8 A Well.....

9 Qbecause all this happened at Cole's.....

10 MR. PETERSON: Mr. Haeg, ask Brent the question, please.

11 Qrepresentation.

12 A Okay. About my representation.

13 Q Is it.....

14 A I'm not going to go into.....

15 Q Is it true that Robinson can blame you for not doing all

16 the motions?

17 A No.

18 Q Why not?

19 A Because I represented you for 20 days after you were

20 arraigned. He had three months to file motions before

21 your trial.

22 Q Why didn't he?

23 A I -- you got to ask him.

24 Q I know but it just -- it -- what drives -- I just want

25 everybody here to know what drives me nuts is when I ask

1 Robinson if he blames Cole.....

2 A This is not -- ask a question.

3 Qand when I ask Cole, he blames Robinson.

4 MR. PETERSON: Please ask him a question. This is his
5 deposition, it's not a time for you to express your
6 frustration.

7 Q Okay. Are -- if a defendant has two attorneys such as I
8 did, one before trial and one at trial, is it ethical and
9 legal and appropriate for them to blame each other for
10 motions that were never filed?

11 A I don't know.

12 Q You don't know? Okay.

13 A I can't answer that question.

14 Q Do you see how the defendant.....

15 A Under the facts you've given me, I cannot answer that
16 question.

17 Q Okay. Can you see -- can you appre -- or.....

18 MR. PETERSON: Mr. Haeg, please try to -- I understand
19 your emotions and your concerns here but please try to focus
20 on his legal representation of you while he was your lawyer.
21 That's what the PCR focuses on. Once he -- once you fire him,
22 there's no PCR claims or allegations to ineffective assistance
23 following your termination of your attorney/client
24 relationship. So try to focus on that period.

25 MR. HAEG: I understand but I've also found beaucoup case

1 law that if you fire an attorney and subsequent things occur
2 where he was involved where things get covered up, let's say,
3 it's totally appropriate to dig into those things and part of
4 it is Brent Cole was.....

5 MR. PETERSON: Then ask if he was involved and establish
6 an involvement first.

7 MR. HAEG: He was like at my sentencing and what not and
8 he never showed up but.....

9 MR. PETERSON: Okay.

10 MR. HAEG:anyway, I -- you know, most of these other
11 questions I believe basically go back to the same thing of my
12 desire to know why.....

13 Q Did you ever discuss my case with Robinson?

14 A The only call I can remember -- I -- I -- I discussed
15 your -- you on what I can remember to be two occasions
16 and I discussed with his investigator you on one
17 occasion. The first occasion, he called me after he'd
18 hired you about sending the letter to Scott Leaders which
19 I did and I -- and I did that at his request. The second
20 time was when I talked to his investigator and that's
21 recorded and you have that and the third time I can
22 remember is when I got the subpoena and I called him up
23 and I said that it wouldn't be a good idea for me to be
24 testifying on your behalf and that that was a poor
25 decision but that I would stand by if he needed to call

1 me and he said we don't need you.

2 Q Okay.

3 MR. HAEG: Well, unless anybody can think of anything
4 else.....

5 MR. PETERSON: Well, I have a few questions so if you're
6 done?

7 MR. HAEG: Yup.

8 MALE: If you think you'd be over 14 minutes, I'll change
9 this tape.

10 MR. PETERSON: I don't think I'm going to be over 14
11 minutes. I just need to kind of look through here.

12 MALE: I'm just sorry about it.

13 MR. PETERSON: Not a problem.

14 (Whispered conversation)

15 EXAMINATION

16 BY MR. PETERSON:

17 Q So, Mr. Cole, this is Andrew Peterson. Just a couple
18 quick questions. With respect to the debrief by Mr.
19 Haeg, is it fair to say that if Mr. Haeg were to take the
20 stand and testify, that that statement, any inconsistency
21 between his debrief and what he says on the stand could
22 be used to impeach him?

23 A I -- I -- I'm not going to go there. I don't know the
24 answer to that. That would have had to have been fleshed
25 out. I -- I'm not sure I would agree with you on that.

1 Q Okay. That would be an issue for Mr. Robinson to raise
2 though?

3 A Yeah, that would have been an issue for Mr. Robinson to
4 raise.

5 Q And I just want to try and flesh out the plea deal issues
6 so I'm clear on that. You -- you've already testified
7 about what you thought Scott may have been doing by
8 filing the amended information. Do you recall at the
9 arraignment Mr. Leaders indicating that there was still a
10 deal in the works?

11 A I remember words to that effect.

12 Q And you'd previously testified that if the deal was --
13 the deal would ultimately involve a plea to lesser
14 charges from the amended information, correct?

15 A It had to.....

16 Q Okay.

17 Abecause as it was charged at that point, if he had
18 pled guilty to an A-15 violation which I -- I mean, I'm
19 -- this is like eight years ago. I cannot remember
20 exactly but whatever it was, it was charged in such a way
21 that if he'd pled guilty to it, he had to lose his
22 license for three years and that was not the deal.

23 Q And the deal called for one year?

24 A One year so it would have had to have been amended which
25 was very common practice and I do it on a regular basis

1 all the time.

2 Q And, in fact, if he pled subsequent to his arraignment
3 since he was going to get his license back in July 1st,
4 it would have been partially retroactive and partially
5 going forward, right?

6 A It would have been both, yeah, because we were already in
7 November.

8 Q Right. And so I'm clear, the -- then after the -- I
9 guess on November 8th when you realized it was a
10 different deal going -- or the amended information was
11 being filed and.....

12 A It was filed like the Friday before.

13 Q Friday before? So -- but the deal went from --
14 originally, it was going to be partially open one to
15 three years?

16 A Right.

17 Q And then that was sealed to a one-year revocation?

18 A It was reduced -- it was going to be reduced to a -- a --
19 a total of one year, 36 months with like 24 months
20 suspended.

21 Q And all the terms were at that point negotiated down the
22 line?

23 A Every term was negotiated. The -- the only thing that --
24 I had not -- I don't remember that I had done a deal like
25 this where we had suspended part of the license

1 revocation. So we were all kind of like let's make sure
2 we get through -- get Occupational Licensing to buy off
3 on that. Occupational Licensing was a big deal because
4 it was independent and we wanted to make sure that we got
5 them to buy off on it. I had a problem many years ago
6 with another client that -- where we didn't and I had to
7 -- it was a long, drawn-out case so I wanted to make sure
8 they were on board.

9 (Whispered conversation)

10 MR. PETERSON: Okay? Okay.

11 Q And, again, the risk for not having Occupational
12 Licensing bite off would be that you could get a court-
13 approved Rule 11 agreement and then they could take
14 subsequent action was the concern?

15 A It was a little bit of concern. I -- there's a provision
16 in AS 08.54.720, I believe, that limits what they can do
17 but because of the nature of this, I wanted to make sure
18 that we didn't have more complications and so it was more
19 out of an abundance of caution. I felt that their hands
20 were bound but I wanted to make sure of that.

21 Q Okay.

22 (Pause)

23 A Why don't we go off record so you don't -- or change the
24 tape just so that you.....

25 MALE: Oh, I'll just turn it off for a second.

1 MR. PETERSON: Okay.

2 MALE: And just start talking.

3 MR. PETERSON: That's all right. I'll give you a heads-
4 up. I just want to check on a couple things here and then
5 we'll.....

6 MR. HAEG: This lawyering shit's hard work.

7 (Off record conversation)

8 (Pause)

9 MR. PETERSON: Okay.

10 MALE: Ready, break?

11 MR. PETERSON: Yup.

12 MALE: Okay.

13 Q Okay. Just a couple quick questions. I just want to
14 flesh this issue out. We've talked about the immunity
15 and the statement. I mean, you've indicated that's not
16 immunity from prosecution, it's immunity from using the
17 statement against him at trial in his ca -- in the
18 state's case in chief, correct?

19 A Yup.

20 Q The last.....

21 A Yeah, and -- and, arguably, more. I mean, in my opinion,
22 the state erred by not putting it out there. I -- my --
23 my opinion was it was for use immunity and it couldn't be
24 used against him at trial, period, but, I mean, would a
25 judge have determined that? I don't know.

1 Q But, obviously, if some -- if Mr. Haeg chose to take the
2 stand and testify.....

3 A I think generally.....

4 Qit -- it's irrelevant.

5 A It's irrelevant then.

6 Q Did you in any way handle this case to protect the
7 predator control program.....

8 A No.

9 Qas opposed to defending the interests of your
10 client?

11 A No.

12 MR. PETERSON: I don't have any additional questions.

13 MR. HAEG: Do I get to re-cross, double cross?

14 A It's not cross, it's redirect.

15 MR. HAEG: Redirect?

16 A On the issues that we just were talking about.

17 MR. HAEG: Okay.

18 (Off record conversation)

19 EXAMINATION

20 BY MR. HAEG:

21 Q On the deal that everything was negotiated that you had
22 -- or that Andrew just talked to you about, did I ever
23 agree to that?

24 A I thought you did, yes.

25 Q Okay. You thought I.....

1 A I thought you were in agreement with the terms of that
2 deal.

3 Q I agreed to a plea agreement with all the terms
4 negotiated?

5 A With -- yes, that's what I thought.

6 Q Including giving up the airplane?

7 A Yup, that's what I thought.

8 Q Okay. I agreed to a (indiscernible - whispering).

9 A There were a couple things to be worked out but.....

10 Q But that was just about whether Occ Licensing was going
11 to do something?

12 A Well, it was that. There were some issue -- again, there
13 were some issues about forfeiture and there was an --
14 issues, I think, about the timing of the revocation and
15 whether it was going to get moved back from September 1st
16 and there were some issues about whether the state would
17 switch planes and let you get your PA-12 back.

18 Q Okay. And you just testified that the immunity I had may
19 not have even protected my statement being brought up at
20 trial?

21 A I thought it did.

22 Q I thought you just testified that.....

23 A No, that's not what I said.

24 Q Okay.

25 A I thought -- I thought it did. It could -- there's an

1 argument both ways.....

2 Q Okay. And.....

3 Abut I didn't think it could be used -- I knew that
4 it couldn't be used against you in the state's case.
5 There was no doubt in my mind about that and I would have
6 argued that they couldn't use it against you in cross
7 examination. I don't know how successful that would have
8 been but that would have been monitored, sure.

9 Q Okay. But you're now testifying that they could use my
10 statement to.....

11 A I'd -- that's not what I said, David.

12 Q Well, they could -- you could use it for everything
13 except the case in chief. I thought that's what was just
14 established.

15 A I -- no, I said that I didn't believe they could use the
16 statement against you at your trial in their case in
17 chief. Andrew asked me about well, what about in his
18 case if he testified. That's an open question and I'm
19 not sure the answer was because we never got to that
20 point. I never expected it to come up. That might have
21 come up. I'm -- I'd -- I'd have to go take a look at my
22 letter but I didn't -- I -- if I was an advocate for
23 David Haeg at your trial, I'd say you can't use it at all
24 but I wasn't so I don't know.

25 Q Okay. But you're testifying that it could -- the

1 statement could have been used prior to trial?

2 A Yeah, because that's not -- that's not the time when your
3 guilt or innocence is proved. I don't know how I could
4 have stopped that.

5 Q Okay. That's -- okay. And whether they used my
6 statement or not was rendered irrelevant because I
7 testified?

8 A I think that's -- I think that's generally right but I --
9 but I -- again I'm not sure about that.....

10 Q Okay.

11 Abecause I haven't looked at it.

12 Q If -- and this is a hypothetical. If Robinson told me I
13 had to testify because they were using my statement
14 against me.....

15 A Again, it's.....

16 Qdoes it then render my -- does my testimony render
17 the statement, you know, null and void?

18 A I -- I can't answer that question.

19 Q Okay. I -- think of anything else? Okay. I think
20 that's it.

21 A Okay.

22 MR. HAEG: Again, we got in under the wire.

23 MR. PETERSON: Thanks very much.

24 MR. HAEG: Thanks for coming up.

25 MR. PETERSON: Off tape, 10:50. All right.

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(Off record)

* * * * END OF PROCEEDINGS * * * *

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S I G N A T U R E

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

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

BRENT R. COLE

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2012, before me appeared BRENT R. COLE, to me known and known to be the person named in and who executed the foregoing instrument and acknowledged, voluntarily signing and sealing the same.

NOTARY PUBLIC in and for Alaska
My Commission Expires: _____