

TRANSCRIPT APPENDIX 4

MR. HAEG: What I guess what I was getting at is - um - why uh and I you know I've been stewing about all this stuff because we in good faith flew Tony up here, took my kids out of school, had my - you know - my wife and I come up there get hotels all this stuff and it really gripes me that we didn't get to pursue what we had to pursue and is it I know you said that the only person we could bitch to is Leaders or Leaders boss. I mean I bit my tongue when the judge - when we were talking - I mean I was scared to death of course I wasn't thinking real straight but could it - is it - it doesn't do any good to bitch to the judge say, "hey we did all this on good faith with the State and then they just pulled the rug out from under us after we you know essentially spent another \$2000 dollars or \$3000 dollars just to have people come from Illinois and everything else and they just roop right out from under us". Is that the way the ...

MR. COLE: They didn't - I don't understand why you say that. We had 4 options on Monday night and we went through every one of the options.

MR. HAEG: Well we couldn't have - we didn't have...

MR. COLE: Two of them would have allowed you to go out and be sentenced on Tuesday.

MR. HAEG: Not with the agreement that we'd had for the last 2 weeks though. That's what I'm saying is that agreement was...

MR. COLE: I mean if you had gotten that agreement David ok lets assume you got it.

MR. HAEG: Yep

MR. COLE: What makes you think that it - things would be any better?

MR. HAEG: Well at one point you told me that yep the judge would probably agree to have a - a -very strong case for a very minimal sentence and you told me straight to my face that yep you had a very good chance at keeping your plane, and yep she would probably look at you voluntarily giving up all your stuff, and yep she would look at it like you weren't guiding or hunting, and yep you were out there all that and that's what I wanted and that was taken away from me.

MR. COLE: I just did not say that. I - I just - I never told you that.

MR. HAEG: Well that's why you said they wanted more...

MR. COLE: Maybe you - maybe you should get a different attorney if you think I told you that. Because I did not - I would not...

MR. HAEG: Well...

MR. COLE: I have always felt that you were goanna lose you plane. I've told you that from the very beginning.

MR. HAEG: I mean you don't remember telling me that uh - ok let me just think and put my words very - as clear as I can say - as I can - that this was all about the airplane and that...

MR. COLE: I said that - I remember saying that.

MR. HAEG: And that there was a very good chance I would get to keep my...

MR. COLE: I said they must have thought there was a chance. Cause they changed the rules.¹ ...

MR. HAEG: Didn't before we came up there didn't I say that I would like to go open sentencing?

MR. COLE: And I told you - you should think about.

MR. HAEG: And that's when you contacted Leaders and said you told him...

¹ Tr. 11/11/04 p. 5-6.

MR. COLE: You wanted to go open sentencing.

MR. HAEG: Yep and that's when everything got changed?

MR. COLE: And I - and I - and I was shaking my head at that time.

MR. HAEG: Well I understand...

MR. COLE: I don't believe that you would - I can't rationally...

MR. HAEG: I don't care what you think...

MR. COLE: And that's why I'm telling you...

MR. HAEG: At times it's my...

MR. COLE: ...you need to get a different attorney.

MR. HAEG: Well I'm not - I'm not blaming you for telling me what you think. That's what I'm paying you for. I - you - I think you're taking it that I'm attacking you I'm not. I want to somehow bring forth that in good faith I decided what I wanted to do with my family with your advice. Ok I take you advice sometimes - sometimes I don't and that's - that's my privilege.

MR. COLE: That's right.

MR. HAEG: ...that's my privilege.

MR. COLE: That's exactly right.

MR. HAEG: And in my perspective we had an agreement like for 2 weeks and I made all the arrangements to in good faith go to McGrath. You follow me so far?

MR. COLE: Yeah.

MR. HAEG: And after we had invested a lot of time, effort, and money, committed to that venture to settle it because my life is getting eaten up by worry among other things and I had great expectations to leave McGrath either without a license for 5 years, and no airplane, and going to jail for 6 months and a \$200,000 fine or something a little less. Um - no - nothing to do with you. I knew the judge was the one gonna be deciding that

but all that was taken away from me at the last minute that agreement. Do you agree with that? Or I mean not at the last minute but whatever it was - well beyond when we could have changed anything and saved all the money in hotel and airfares and etc., etc., etc.

MR. COLE: The thing that was taken away was the option to go open sentencing total. There were other options that were available that would've allow us to go out to McGrath. But to go totally open sentencing...

MR. HAEG: Well to me they weren't viable options.

MR. COLE: The only thing that was different was the loss of the plane.

MR. HAEG: Yep and - and is that - is that ethical for them to do say, "yep you give us the plane and you can - you can have your day in front of the judge". Is that how the game is played all the time?

MR. COLE: Yep.

MR. HAEG: Um legal way to do it?

MR. COLE: They have discretion, yep.

MR. HAEG: Ok um let me just go through my little deals here. Um - like I said when Magistrate Murphy was on the phone would it have been appropriate or could I have - could I have said, "hey judge before you leave could I put in my 2 cents worth that I came with the understanding this was the deal and then they pulled that rug out from underneath my feet". Could I have done that at that time?

MR. COLE: - Um - she would have - if it would be - she would have cautioned you and told you before you say anything you're represented by an attorney anything you say can, will be used against you, you should speak with your attorneys advice.

If you continued to insist she probably would have listened and that would have been the end of it.

MR. HAEG: Ok is that something that you feel you should do - or we should do - and you should - I mean I just ...

MR. COLE: I fully intend to bring it up, at your sentencing. Let you talk about it all you want at your sentencing.

MR. HAEG: Ok and if and when we go to sentencing and anymore I don't know. I guess it's still up in the air. We still plead not guilty we could still go to jury trial.

MR. COLE: That's right.

MR. HAEG: And...

MR. COLE: January 7th...

MR. HAEG: Uh well that wouldn't be the trial then. I mean it'd get plead and then they'd whatever - it's just goanna get drug out. And you know - it - you know it also seems to me like the State enjoys the fact that I voluntarily gave up guiding because now the longer they drag it out it's just like I'm voluntarily shooting myself in the foot.² ...

MR. HAEG: Um - if - if I wanted to - uh - to complain - or you complain I mean - did you ever contact Leaders boss or ever get in touch with her?

MR. COLE: I left a message. I haven't been in touch.

MR. HAEG: And ...

MR. COLE: I mean how much - how much do you want me to push it? Is that what you want? Is that really what you want me to do David?

MR. HAEG: Well.

MR. COLE: I mean I - you know I've got to deal with these people but if you tell me, "that's the deal I want and I'm not

² Tr. 11/11/04 p. 7-9.

stopping until I get it", I'm goanna send you a letter saying this is absolutely in my mind crazy but I will do it if you tell me.

MR. HAEG: Well I'm not happy that they took away my opportunity that I thought we had set away from me.

MR. COLE: Ok tell me right now is that what you want me to do? Do you want to go back and take the risk when now you've got things in place?

MR. HAEG: You mean go back to the original agreement where it's one year...

MR. COLE: Yes - a minimum 1 year.

MR. HAEG: Minimum 1 year - the plane is up for...

MR. COLE: yes

MR. HAEG: ...the judge to decide. **That is what I wanted at the time and that is still what I want. Because I feel that they mal...**

MR. COLE: **Ok.**

MR. HAEG: **I personally feel that they maliciously took that away from me.**

MR. COLE: **Ok.**³ ...

MR. HAEG: Well - um - alls it was is you had said once to me that hey we can't totally go bonkers because I have to live with these guys you know after you're gone and blown away, and out guiding again hopefully, or retired in Mexico I'm still here dealing with these guys on a daily basis and...

MR. COLE: Well I deal on my word - you're right.

MR. HAEG: And you know and I appreciate that - because if you have a good relationship with them you can get probably more stuff done than if you don't have a good relationship but what I feel when they pulled the rug out from under us when we all

³ Tr. 11/11/04 p. 10.

showed up in your office and you said, "uh Dave I got something to tell you" I feel they poked you in the eye.

MR. COLE: They did and I'm still burning about it.

And I'm the kind of person I think I told you this if somebody pokes me in the eye they'd better - they'd better put something in front of their eyes because I'm goanna try poking them in the eye. That's just me. But so and I think you've done a good job - you know - I just think that this case to take it as the Troopers said - Gibbens said "for what it is" - a wolf issue in a world of wolves are holier than the grail any attorney would be probably - or anybody would be hesitant to just throw open the gates and just let the fur fly. You know I understand that - you know - but it's me ...

MR. COLE: But I have no problem doing that. I do it all the time but I'm sitting here looking at a man who has worked for 15 years - and I've represented guides that have lost their license for 5 years that are a hell of a lot mentally stabiler than you. And I know what it put them through and I know what it would put you through.⁴

MR. HAEG: Um maybe you don't feel we should do anything but like I said I'm a fight fire with fire kind of guy and they just - you know we got two battle ships out there and as far as I'm concerned they just laid a whole salvo right into my side. I would dearly love to just touch off our side and lay a salvo into their side. That's the kind of person I am.

MR. COLE: Well ok I will do what you ask.⁵ ...

MR. HAEG: Well that gets us back to I guess where we were in the beginning when we were goanna fly out to McGrath and plead guilty to exactly what we're trying to get to here same day airborne fur bearer. Which is a violation of a game statute but

⁴ Tr. 11/11/04 p. 14.

⁵ Tr. 11/11/04 p.21.

not a violation of same day airborne big game. Essentially we're...

MR. COLE: Ok. Where does that get us?

MR. HAEG: It would get us back to...

MR. COLE: You goanna get your plane back?

MR. HAEG: The opportunity for someone to hear my side and decide whether I need to lose the plane or not lose the plane. I just - it sticks in my craw that Leaders will not let a judge decide the whole sentence. That does stick in my craw - yes it does.

MR. COLE: Ok. I mean that's because as I've explained before for 99 times out of a 100 defendants don't want a judge to make a decision. I - quite frankly as I have said before why you would want that I don't know.⁶ ...

MR. COLE: And you are ruminating over this where as we have pretty much eliminated this moose case, we've pretty much eliminated the wolf case - we've got it down to 5 counts, we've pretty much eliminated you losing your guide license for more than a year and on principal you want to go back and open this whole thing up and run the risk that you may get your plane - I'll bet I can give you 15 attorneys in town to go - call defense attorneys that do Fish and Game stuff around the State you explain to them what you did with the plane and see how many say you're goanna get that plane back from any judge. Ask them and see what they say.

MR. HAEG: Yep but you know it I also remember why didn't - why didn't Leaders let us go out to McGrath when it was eleven counts and let the judge decide that?

MR. COLE: I don't know why he didn't do that. That pisses me off. He just -he has caused me to have to sit here and

⁶ Tr. 11/22/04 p.10-11.

explain this to you 25 times he did it because he wanted to be a dick and it pisses me off. It caused me so much problems in my dealing with you and I as much told him.

MR. HAEG: Yep.

MR. COLE: It pisses me off. He had no concept of what it has done to your and my relationship.⁷ ...

MR. HAEG: Well I think it all boiled - it all boiled down to like you admitted before and I admitted that it all boils down to the airplane. Because he didn't want to go out there and have the airplane up for grab - up for the judge to decide who keeps the plane. That's why that whole thing went down the tubes.

MR. COLE: He's so stupid. I don't know why he would do that quite frankly. I - I think a judge would give it away in a second so your right he did say that and what can I say - I cannot - I have no control over what parameters he set.

MR. HAEG: I guess what I'm getting at is there - is there any rational for me to go through this stuff like I did with the moose thing and pick it apart as best I can and then show at least some weaknesses in their case - does that help us at all? I mean is there - like what I've done...-

MR. COLE: It depends on what you want to do. Do you want to get back into the guiding and focus your attention on what you're goanna do come July 1st? In my opinion it that's your - if that is what is most important to you then I would move on. If you want to try to renegotiate this deal in any aspect or you want to have a trial on this thing then I would say yes.

MR. HAEG: Like I told you to me it's important to get the plane back somehow. You don't - I guess what you're saying we're not goanna do that short of a trial probably - I mean he's not goanna let the plane be decided by a judge or magistrate?

⁷ Tr. 11/22/04 p.16.

MR. COLE: It doesn't sound like it to me.

MR. HAEG: So he just put his foot down even though that isn't his job to administer punishment. It is his job to determine guilt or innocence as far as I'm concerned.

MR. COLE: They can do all that - they do it all the time - I mean you can say that but...

MR. HAEG: Well that's what I read through the Constitution. I mean that's how the governments set up.

MR. COLE: They do it day in and day out - they set penalties.⁸ ...

MR. HAEG: Um have you run it by Leaders that I'm thinking about going to a jury trial?

MR. COLE: Yep.

MR. HAEG: What does he say about that - great?

MR. COLE: I don't have good client control. He can't believe that I would do that. And I just say, "well..."

MR. HAEG: Ok.

MR. COLE: "...he wanted to go open sentencing - yeah I know I don't understand it but".⁹ ...

MR. COLE:...these circumstances you're never goanna feel good about this thing, regardless. But I know what the consequences are of a loss of 2 to 4 to 5 years and goddamn it I deal with these people, I've seen so many irrational things come out and I've seen so many goddamn judges just do whatever the Troopers say despite whatever I say. That it's almost goanna be over my dead body that we go into one of these things open sentencing. Knowing what the risk is.

MR. STEPENOSKY: **And with nothing in writing that I can see at this point I mean freaking Leaders can go in there before January 7th and amend that thing anyway he wants.**

⁸ Tr. 11/22/04 p. 18-19.

⁹ Tr. 11/22/04 p. 29-30.

MR. COLE: - But the bottom line is - nothing in writing - we have squeezed and squeezed and squeezed and you know - you know to me damn it you'd be back in business July 1st.

MR. STEPENOSKY: You're right we did squeeze and squeeze and squeeze well lets put two hands on it and give it one last ***** squeeze.

MR. COLE:: Ok - ok.¹⁰

¹⁰ Tr. 11/22/04 p. 32.